Banc Ceannais na hÉireann
Central Bank of Ireland
Eurosystem

# AIFMD
# Questions and Answers

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# AIFMD Questions and Answers

This document sets out answers to queries likely to arise in relation to the implementation of the AIFMD. It is published in order to assist in limiting any uncertainty until definitive positions and practices are finalised. It is not relevant to assessing compliance with regulatory requirements. In addition to being published in 'Markets Update' it will be posted on the Central Bank website and will be updated there from time to time. You should check the website from time to time in relation to any matter of importance to you to see if the position has altered. The Central Bank reserves the right to alter its approach to any matter covered in this Q&A at any time.

## Acronyms

(Below we provide explanations of some of the key terms used in the remainder of this documents)

### ID 1001

*Q.* *What does 'AIFMD' refer to?*

A. In this document 'AIFMD' refers collectively to the Alternative Investment Funds Managers Directive (Directive 2011/61/EU) and the Commission Delegated Regulation (EU) No 231/2013. Directive 2011/61/EU was transposed into Irish law under the European Union (Alternative Investment Fund Managers) Regulations 2013 (the AIFM Regulations), on 16 July 2013. The AIFM Regulations are now the relevant point of reference for understanding the relevant law.

### ID 1002

*Q.* *What does 'AIF' refer to?*

A. 'AIF' stands for Alternative Investment Fund. Any structure for collective investment, which is not a UCITS, is probably an AIF.

### ID 1003

*Q.* *What does 'AIFM' refer to?*

A. AIFM stands for Alternative Investment Fund Manager as defined in the AIFMD.

### ID 1004

*Q.* *What is a 'RIAIF'?*

A. RIAIF stands for retail investor alternative investment fund which is an AIF authorised by the Central Bank of Ireland and which may be marketed to retail investors. This terminology was introduced in the Central Bank's consultation on the AIFMD.

### ID 1005

*Q.* *What is a 'QIAIF'?*

A. QIAIF stands for a qualifying investor alternative investment fund which is an AIF authorised by the Central Bank of Ireland and which may be marketed to investors who meet the qualifying investor criteria set out in the AIF Rulebook. It is similar to a 'QIF'. This terminology was introduced in the Central Bank's consultation on the AIFMD.

### ID 1006

Q. *What is a 'Registered AIFM'?*

A. 'Registered AIFM' is an AIFM which only acts as AIFM to AIFs which are smaller than a threshold size set out in the AIFMD. Registered AIFM are not required to comply with all the regulatory requirements with which an 'Authorised AIFM' must comply. As set out below, during the transition periods, certain other AIFM are only required to comply with the Central Bank imposed obligations of a 'Registered AIFM' as a transitional measure.

## Applications

### ID 1007

Q. *How do I apply for authorisation under the AIFMD?*

A. You apply by filling out the application forms which are now available. The forms are available here.

### ID 1008

Q. *Can I fill in the application form before all my arrangements are in place?*

A. While the substance of the AIFMD requirements must be ready, it will be possible to apply for authorisation notwithstanding that details in relation to some arrangements, e.g. reporting procedures, are not finalised

## Application process

### ID 1009

*[Deleted – no longer relevant]*

### ID 1010

Q. *Who do I contact if I have a query in relation to the application process?*

A. You should send your queries in relation to an AIF authorisation to: AIFauthorisations@centralbank.ie. You should send your queries in relation to an AIFM authorisation to AIFMauthorisations@centralbank.ie.

### ID 1011

*[Deleted – no longer relevant]*

### ID 1012

*[Deleted – no longer relevant]*

### ID 1013

*[Deleted – no longer relevant]*

## Rules

### ID 1014

Q. *What rules will apply to me as an AIF or an AIFM? There was guidance in the NU Series of Notices and related guidance notes that I relied on. Where do I get guidance now?*

A. The Central Bank has prepared what is called the "AIF Rulebook". This AIF Rulebook sets out the conditions which will be applied to an AIF or AIFM or other relevant entities when an authorisation is issued.

Please note the following:

- The AIF Rulebook does not include legislative requirements which apply directly. You must familiarise yourself with these legislative requirements and comply with them. You are advised to procure appropriate legal and professional compliance advice to inform your decisions in this regard.
- The AIF Rulebook does not include any of the matters of guidance. Guidance material has been published on the Central Bank's website

The definitive version of the conditions which will apply to your authorisation will be set out in a letter of authorisation which will be provided to you when an authorisation is issued. Meanwhile the AIF Rulebook provides you with the information you need on what those conditions will be. The AIF Rulebook is available on the AIFs Regulatory Requirements and Guidance webpage here.

### ID 1015

Q. *Will the AIF Rulebook change?*

A. Yes the AIF Rulebook will change over time as there continue to be issues where further work is being done. Over the longer term, the Central Bank is in a constant process of dialogue with industry and constantly monitors market developments to ensure that its rules are appropriate.

However, the AIF Rulebook, as now issued, benefits from a consultation process which has covered the bulk of the issues raised by the AIFMD and should, therefore, be relatively stable over the coming months.

Updates to the AIF Rulebook will appear in updated editions on the Central Bank website and these will be announced in the 'Markets Update'.

### ID 1105

Q. *RIAIFs and QIAIFs are not permitted to acquire any shares carrying voting rights which would enable them to exercise significant influence over the management of an issuing body. This rule is disapplied for RIAIFs and QIAIFs that are venture capital, development capital or private equity AIFs. If a RIAIF or QIAIF invests a portion of its assets in a venture capital, development capital or private equity strategy, does the significant influence rule apply?*

A. No. The significant influence rule does not apply to that proportion of assets which is invested in venture capital, development capital or private equity.

## ID 1140

Q. *The AIF Rulebook provides, subject to some exceptions, that neither a Retail Investor AIF nor a Qualifying Investor AIF (nor its management company, general partner or AIFM) may acquire any shares carrying voting rights which would enable the Retail Investor AIF or the Qualifying Investor AIF to exercise significant influence over the management of an "issuing body". In this case, does an "issuing body" include an "issuer" as defined in Regulation 5(1) of the European Union (Alternative Investment Fund Managers) Regulations 2013?*

A. Yes.

## AIFs which fall within the scope of AIFMD

## ID 1016

Q. *How do I find out whether my investment structure falls to be regulated under the AIFMD?*

A. If in doubt, you must review your status and seek appropriate legal advice. Should you operate without an authorisation when one is required, you will be in breach of the law. The Central Bank will pursue any such matters vigorously.

In considering your position, you may wish to have regard to the ESMA guidelines on key concepts of the AIFMD (ref ESMA/2013/611).

You may assume that if your investment structure requires an authorisation under the current Irish investment fund legislation and is not a UCITS it is within the scope of AIFMD.

## ID 1017

Q: *Are there vehicles which are currently not authorised under Irish domestic investment fund legislation which may fall within the definition of AIF and therefore fall within the scope of the AIFM Regulations?*

A. The definition of an AIF in the AIFMD is wide. It provides that an AIF means collective investment undertakings, including any investment compartment thereof, which:

(i) raise capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and

(ii) do not require authorisation pursuant to Article 5 of Directive 2009(65/EC) (UCITS).

You should not assume that because you have not required an authorisation up to now that you do not require authorisation. Please check and get legal advice, if in any doubt. ID 1065 may assist you in conducting this assessment.

## ID 1018

Q. *What is the Central Bank doing to help entities which will require authorisation for the first time?*

A: The Central Bank recognises that there may be other structures or similar arrangements which have been established in order to channel funds from investors and which have some element of pooled investment. For example, in its consultation paper CP 68 the Central Bank highlighted the existence of Exempt Unit Trusts (EUTs) and posed questions about the applicability of the domestic regulatory regime for authorised investment funds to EUTs. This work is on-going and we will also look at the impact of our AIF Rulebook for any structures which are not structured like typical collective investment funds. While the Central Bank will initially focus on EUTs, a review of other structures will also form part of our work, when these are brought to our attention. However, you should not wait for the outcome of this work to determine whether your structure requires authorisation or not. If in doubt, seek legal advice now. If it is not evident to you how the type of structure you use can comply with the AIF Rulebook requirements, please initiate

a discussion with our policy team. You may email them at fundspolicy@centralbank.ie. This email address should not be used for authorisation queries.

## ID 1144

Q. *Is it possible to establish an AIF which has a share class that makes distributions to charity? What are the obligations related to the establishment of such a share class?*

A. Yes, provided a number of requirements are met. The AIF must ensure that:

- An investor actively elects to subscribe to such a share class (for example, opting into the share class via subscription forms) and should not be automatically invested in such a share class;
- That the distributions should only be paid to a charity which is approved / authorised / registered in the relevant jurisdictions. Details of the charity and evidence of their approval / authorisation / registration status should be provided to the Central Bank when establishing the share class;
- The prospectus / supplement must clearly set out:
  - The implications of such a share class (i.e. that the relevant charity and not the investor which will benefit financially from distributions from the fund);
  - Details of the charity to which the distributions are being made and the circumstances under which such distributions will take place; and
  - That such distributions will not be paid out of the capital of the fund.
- Periodic reporting to investors (for example, in the annual reports) should take place and include:
  - The amounts that have been distributed to charity.

## ID 1146

Q. *I am an AIFM. An AIF I manage is of the view that it no longer meets the criteria of an AIF as per Regulation 5(1) of the AIFM Regulations. Am I required to engage with the Central Bank?*

A. Yes. The Central Bank expects that such an AIFM would engage with it should such a scenario arise. However, circumstances in which such a scenario is likely to arise is very limited. The definition of an AIF in the AIFMD is wide and as such a change in status is unlikely to occur. The AIFMD provides that an AIF means collective investment undertakings, including any investment compartment thereof, which:

> (i) raise capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and
> (ii) do not require authorisation pursuant to Article 5 of Directive 2009(65/EC) (UCITS).

## MiFID authorisations

## ID 1019

Q. *Where AIFMs are authorised to provide the services set out in Article 6(4) of the AIFMD, will the Central Bank authorise AIFMs to passport Article 6(4) services across the EU or to provide such services in Ireland?*

A. In light of the agreement on 14 January 2014, to amend Article 33 of AIFMD, as part of the agreement reached in principle by the European Parliament and the Council on updated rules for markets in financial instruments (MiFID II), the Central Bank will, with immediate effect:

- accept AIFM passport notifications from other national competent authorities where the notification includes services set out in Article 6(4) of AIFMD;
- The AIF Rulebook does not include any of the matters of guidance. Guidance material has been published on the Central Bank's website

## ID 1069

Q. *Can an AIFM be authorised under MiFID and provide investment management services to managed accounts?*

A. An entity authorised as an AIFM may not be authorised under MiFID but may, under Article 6(4) of AIFMD, be authorised to carry out "management of portfolios...in accordance with mandates given by investors on a discretionary, client-by-client basis". Therefore, an AIFM may manage AIFs and managed accounts.

## Registered AIFM

## ID 1020

Q. *If I think I am a Registered AIFM should I register with the Central Bank immediately?*

A. Not necessarily. If you are not sure of your status or what your likely status will be by July 2014, you should consider carefully whether you may either require authorisation as an AIFM, or wish to opt-in to that regime. Please consider this carefully before contacting the Central Bank to register as a Registered AIFM. During the transition period to July 2014, you should use your best efforts to determine whether you will become a Registered AIFM. You should seek registration as soon as you are clear that registration will be the appropriate option for you and, in any event, you must submit your AIFM registration form before 22 July 2014. The AIFM registration form is available from our website.

## Depositary services

## ID 1021

Q. *May an Irish authorised entity provide the safe-keeping and oversight duties set out in Article 21(7)-(9) of the AIFMD in respect of non-EU AIF as set out in Article 36 (1)(a)? If so is a specific authorisation required?*

A. Article 36(1)(a) does not set out eligibility criteria for entities, who will provide the safe-keeping and oversight duties prescribed in Article 21(7), (8) and (9), in respect of non-EU AIF where Article 36 applies.

Irish non-bank entities authorised to provide safe-keeping

I. If such an entity proposes to provide "safe-keeping" so that the duties set out in Article 21(8) can be met, it must have authorisation to provide "custodial operations involving the safe-keeping and administration of investment instruments" under the Investment Intermediaries Act 1995 or be an investment firm under the European Communities (Markets in Financial Instruments) Regulations 2007 and authorised to carry out safe-keeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management.

II. Such an entity will perform the duties in Article 21(7) and Article 21(9) as constituent parts of the safe-keeping and custodian functions for which it is authorised. While the duties in Article 21(7) and Article 21(9) are not subject to separate authorisation requirements, they must be carried out by the regulated entity in compliance with relevant regulations. As such, the performance of duties Article 21(7) and Article 21(9) are under the regulatory purview.

III. Where the entity performs only the duties in Article 21(7) and Article 21(9) in respect of an AIF, the Central Bank expects these duties to be provided to the same standard irrespective of whether the AIF is regulated or not by the Central Bank.

Irish non-bank entities authorised to provide "*the administration of collective investment schemes, including the performance of valuation services or fund accounting services or acting as transfer agents or registration agents for such funds*"

I. An Irish entity authorised under the Investment Intermediaries Act 1995, to provide fund administration services, may be appointed by an AIF to provide the services set out in Article 36(1)(a) where these refer to Article 21(7) and 21(9) without seeking additional authorisation.

II. In accordance with Regulation 4 of the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Investment Firms) Regulations 2017 an investment firm shall consult with the Central Bank before -
   a) Engaging in any new area of business or field of activity,
   b) Establishing a branch, office or subsidiary; or
   c) Introducing material changes to the investment firm's operating model.

Submissions to the Central Bank in this regard will be asked to demonstrate their capacity to provide the proposed activities without inappropriate conflicts.

Irish entities which are not authorised as above

I. Where an entity is only providing one or both of the services referred to in Article 21(7) and Article 21(9), the Central Bank will not issue an authorisation under the IIA.

II. Where a non-EU AIF appoints an Irish based entity to carry out the duties referred to in Article 21(7) and (9), its AIFM should ensure the Irish based entity does so in accordance with the relevant requirements of Chapter IV of the Level 2 Regulation.

## ID 1064

*Q.* *The Central Bank previously issued guidance to the Irish funds industry in relation to safekeeping of certain types of assets including but not limited to limited partnership interests, real estate assets and loans. Do these still apply?*

A. No. The safekeeping of an AIF's assets is a matter for its depositary. Depositaries must ensure that they are in compliance with the requirements set out within the AIFM Regulations and the Commission Delegated Regulation (EU) No 231/2013.

## ID 1094

*Q.* *What are the regulatory considerations around Irish authorised AIF seeking to acquire Chinese shares through the Shanghai-Hong Kong Stock Connect and Shenzhen-Hong Kong Stock Connect ('Stock-Connect infrastructure')?*

A. Before an Irish authorised AIF acquires Chinese shares through the Stock-Connect infrastructure for the first time, its depository would need to satisfy itself that the manner in which the shares were to be held allowed that depository to meet its legal obligation under the AIFM Regulations, the AIFMD Level 2 Regulation and any conditions imposed by the Central Bank.

The Stock Connect infrastructure is a joint collaboration between Hong Kong Stock Exchanges and Clearing Limited and the Shanghai and Shenzhen Stock Exchanges. The Stock Connect infrastructure involves two central securities depositaries - Hong Kong Securities Clearing Company Limited ('HKSCC') and China Securities Depository & Clearing Corporation Limited ('ChinaClear').

If an Irish authorised AIF proposes to acquire Chinese shares through Stock Connect, in order to meet the legal obligations on a depository, the depositary of the investment fund, or an entity within its custodial network (i.e. a sub-custodian), must ensure that it retains control over the shares at all times. The relevant legislation does not provide for the Central Bank to recognise eligible clearing structures. This obligation rests on the depositories in the first instance.

However, from the information provided by the relevant authorities, it is evident to the Central Bank that the legal obligations of a depositary cannot be met without at least being a participant in HKSCC. It is also clear that in cases where the transaction is not being settled on a real-time delivery versus payment basis and the broker is not an entity within the depositary's custodial network, this will not satisfy the provisions of the relevant legislation.

Depositories will need to consider both the terms on which they or a sub-custodian could become participants in HKSCC and the arrangements in place from time to time between HKSCC and ChinaClear and the applicable law.

There are a number of options in terms of level of participation within HKSCC, namely General Clearing Participant, Direct Clearing Participant or Custodian Participant. As the terms of participation may vary over time and as the appropriate level of participation will, to some extent, depend on the scale of envisaged activity and as the legal obligation applies directly upon the depository, the Central Bank is not in a position to designate the appropriate level of participation. The depository or a member of its custodial network must identify one or more levels of participation, if any, which would be in line with its legal obligations as a depository.

It is incumbent on the depository to review and keep under review the Stock-Connect infrastructure arrangements to ensure that its legal obligations can be met. This is the case with reliance on all such systems around the world.

## ID 1130

*Q.* *What are the regulatory considerations around Irish authorised AIFs seeking to acquire Chinese bonds through Bond Connect?*

**A.** Before an Irish authorised AIF acquires Chinese bonds through the Bond Connect infrastructure, its depositary must ensure that the manner in which the bonds are held allows the depositary to meet its legal obligation under the AIFM Regulations, the AIFMD Level 2 Regulation and any conditions imposed by the Central Bank.

If an Irish authorised AIF proposes to acquire Chinese bonds through Bond Connect the depository of the AIF, or an entity within its custodial network (i.e. a sub-custodian) must ensure it retains control over the bonds at all times.

It is incumbent on the depositary to review and keep under review the Bond Connect infrastructure arrangements to ensure that its legal obligations can continue to be met.

## ID 1136

*Q.* *I am a DAoFI, may I be appointed to AIFs which are not regulated by the Central Bank?*

*A.* Yes. A DAoFI may accept an appointment to act as depository to an AIF which is not regulated by the Central Bank. A DAoFI can only accept such an appointment from an AIF which meets the criteria for AIFs set out in Regulation 22(3)(b) of the European Union (Alternative Investment Fund Managers) Regulations 2013. Additionally, the DAoFI must not accept an appointment if the AIF is established for the purpose of investment by retail investors.

## ID 1137

*Q.* May an existing firm established under the Investment Intermediaries Act 1995 be authorised as a DAoFI?

*A.* Yes, provided always that the firm is not also a fund administrator, management company or general partner.

## ID 1138

Q. *Where a DAoFI holds financial instruments in custody and seeks to benefit from a guarantee similar to that required by Regulation 22(3)(a)(iii) of the AIFM Regulations 2013 must the DAoFI be related to, or owned by, the guarantor?*

A. No, the ability of a DAoFI to obtain a guarantee of this type is not dependent on the ownership structure of the DAoFI (and is thereby unrelated to the DAoFI's corporate relationship to the guarantor).

## ID 1139

Q. *What non-financial instrument assets may a DAoFI safe-keep?*

A. The Central Bank expects the AIF in respect of which a DAoFI is appointed to materially invest in illiquid assets. The Central Bank expects these assets to be physical assets which do not qualify as financial instruments under Directive 2011/61/EU or could not be physically delivered to the depositary. It considers that ownership of these assets will generally be represented by documents of title. Currently, the Central Bank considers that a DAoFI can safe-keep asset classes such as:

| | |
|---|---|
| 1. | Art |
| 2. | CIS[1] |
| 3. | Commodities (physical) |
| 4. | Companies (private) |
| 5. | Forestry |
| 6. | Infrastructure |
| 7. | Intellectual property and income therefrom (includes royalties) |
| 8. | Land |
| 9. | Life Assurance Policies |
| 10. | Loans |
| 11. | OTC derivatives |
| 12. | Plant and equipment |
| 13. | Precious stones |
| 14. | Real estate |
| 15. | Ships |
| 16. | Trade claims |
| 17. | Wine |
| 18. | Aircraft |

Applications for authorisation as a DAoFI must include details on the DAoFI's policies and procedures for the safe-keeping and ongoing monitoring of these assets as well as details on how proposals for such safe-keeping and ongoing monitoring of these assets accords with best practice.

[1] units or shares in collective investment schemes can only be safe-kept where, in accordance with applicable national law, they are directly registered with the issuer itself or its agent, in the name of the AIF or the AIFM acting on behalf of the AIF (in which case the provisions of Article 88(2) of the AIFMD Level 2 Regulation apply).

## ID 1143

Q. *I am a DAoFI. May I accept an appointment to perform the duties set out in Article 21(7)-(9) of the AIFMD in respect of non-EU AIF as set out in Article 36 (1)(a)?*

A. A DAoFI may accept an appointment to perform the duties in Article 21(8) to non-EU AIFs which meet the criteria for AIFs set out in Regulation 22(3)(b) of the European Union (Alternative Investment Fund Managers) Regulations 2013.

Notwithstanding the provisions of Central Bank QA ID 1136, a DAoFI may accept an appointment from a non-EU AIF to perform the duties in Article 21(7) and Article 21(9), including from AIFs which do not meet the criteria for AIFs set out in Regulation 22(3)(b) of the European Union (Alternative Investment Fund Managers) Regulations 2013.

## Transitional arrangements

## ID 1022

Q. *I am an existing Irish AIFM for an existing AIF. What rules apply to me and to the AIF, including the depositary, from 22 July 2013?*

A. In accordance with Article 61(1) of AIFMD, an AIFM performing activities before 22 July 2013 shall take all necessary measures to comply with national implementing legislation and submit an application for authorisation within one year. This transitional arrangement is available to an AIFM performing activities in Ireland before 22 July 2013. The European Commission has stated, as its interpretation of this Article, that during the one year transitional period AIFMs are expected to comply on a best efforts basis with national law stemming from the AIFMD. Accordingly, during the transitional period an Irish AIFM should seek to comply with the AIFM Regulations on a best efforts basis.

In the case of an existing Irish AIFM, with an existing AIF, the intention of the Central Bank is that the NU Series of Notices which have been imposed prior to 22 July 2013 will continue to apply to the AIF until the AIFM is authorised, at which point the AIF Rulebook will become applicable to both the AIFM and its AIFs. This is the case for both external AIFM and self-managed AIF. A depositary must comply with the AIFM Regulations in relation to each AIF from the date of authorisation of the AIFM of that AIF or from the end of the relevant transition period at the latest.

## ID 1023

Q. *I am an existing Irish AIFM with an existing umbrella AIF. Can I establish a new sub-fund notwithstanding that I have not yet submitted my application for authorisation/registration under the AIFM Regulations?*

A. Yes, a new sub-fund may be established and will, pending your authorisation/registration as an AIFM under the AIFM Regulations, be subject to the NU Series of Notices. Once you have been authorised/registered under the AIFM Regulations as its AIFM, the AIF Rulebook will apply to it. This is the case for both external AIFM and self-managed AIF.

## ID 1024

Q. *I am an existing Irish AIFM with an existing Irish AIF (or Irish UCITS). Can I establish a new AIF pending submission of my application for authorisation / registration under the AIFM Regulations?*

A. Yes. An existing Irish AIFM may establish a new AIF during the transitional period. In this case, the AIF Rulebook will apply to the AIF. The AIFM must comply on a best efforts basis. The depositary will, pending authorisation of the AIFM, be permitted to comply with the depositary regime applicable to start-up QIAIFs as set out in the Rulebook. AIFMs in this situation are advised to pay particular attention to ensuring that their planning towards compliance with the AIFMD takes fully into account the complex compliance challenges they particularly face in achieving best efforts. "Start-up QIAIFs" refers to the regime applicable to new QIAIFs which have registered AIFMs. These QIAIFs must appoint an authorised AIFM within two years of their launch date. During the start-up period, depositaries of start-up QIAIFs must comply with the AIFMD depositary regime except in relation to depositary liability.

## ID 1025

Q. *I am an existing EU AIFM with an existing Irish AIF. Can I continue to act for this AIF until I become authorised. Can I establish new sub-funds? Can I establish a new Irish AIF?*

A. Yes. A non-Irish EU AIFM with an existing Irish AIF (or Irish UCITS) may continue to act for that AIF, establish new sub-funds if it is an umbrella fund and establish new Irish AIF under the same conditions as are applied to Irish AIFM. Once authorised in its home Member State the Central Bank will expect to receive a passporting notification in accordance with Article 33 of the AIFMD. As set out in Question ID 1022 above, AIFM availing of the transitional arrangements under Article 61 of AIFMD, must submit an application for authorisation by 22 July 2014. In accordance with Article 8(5) of AIFMD, authorisations should be granted within 3 months of the date of application and no later than 6 months. Accordingly, the Central Bank expects that the passport notifications will have been received in most cases by 22 October 2013 and no later than 22 January 2015, with due allowances for cross-border notification timelines.

## ID 1026

Q. *I am a non-Irish EU Investment Manager performing investment management functions for an Irish AIF. Can I be the designated AIFM for that Irish AIF?*

A. Yes. Non-Irish EU AIFM who have been performing functions for Irish AIF can be the designated AIFM for Irish AIF from 22 July 2013, provided they are availing of a transition period in their home Member State. At the end of the transition period in their home Member State (or at the time of their authorisation if that is earlier), a passport notification in accordance with Article 33 of AIFMD should be issued. As set out in Question ID 1022 above, AIFM availing of the transitional arrangements under Article 61 of AIFMD, must submit an application for authorisation by 22 July 2014. In accordance with Article 8(5) of AIFMD authorisations should be granted within 3 months of the date of application and no later than 6 months. Accordingly, the Central Bank expects that the passport notifications will have been received in most cases by 22 October 2013 and no later than 22 January 2015, with due allowances for cross-border notification timelines.

## ID 1027

Q. *I am an existing non-EU Investment Manager operating as the delegate of the management company for non-UCITS funds or a self-managed investment company, do I have to stop in July 2013?*

A. No, you may continue to operate for so long as the AIF to which you provide services is authorised to continue.

## ID 1028

Q. *I am an existing non-EU AIFM operating as the delegate of the management company for non-UCITS funds or a self-managed investment company, Can I be the designated AIFM from July 2013?*

A. You can be the designated AIFM for a QIAIF. You cannot be the designated AIFM for a RIAIF.

## ID 1029

Q. *Will the Central Bank authorise a QIAIF from July 2013 which envisages a non-EU AIFM?*

A. Yes.

## ID 1030

Q. *Can a professional investor fund or a QIAIF have a non-EU AIFM?*

A. Under the current transitional arrangements for AIFMD, a professional investor fund or a QIAIF can have a non-EU AIFM. However, in accordance with Article 67(1)(b) of the AIFMD, ESMA was required to issue advice to the European Commission on inter alia the application of the AIFMD passport to non-EU AIFMs by 22 July 2015. If that advice is positive, the European Commission must adopt a delegated act specifying the date when the non-EU AIFM passport will be 'turned on'. This process is underway and the outcome is not yet known. Accordingly, professional investor funds and QIAIFs can continue to be managed by non-EU AIFMs under the existing transitional arrangements until the European Commission has reached a decision. At that time this position will be revisited and, if necessary, revised to align it with that decision and any transitional arrangements provided.

## ID 1129

Q. *Can a QIAIF have a UK AIFM when the UK exits the EU?*

A. Yes. UK AIFMs will become non-EU AIFMs under AIFMD when the UK exits the EU. A QIAIF will be permitted to designate a UK AIFM as its AIFM provided that the QIAIF and its UK AIFM comply with the provisions of the AIF Rulebook that apply in the case of QIAIFs with registered AIFMs. These QIAIF are subject to the full AIFMD depositary regime including the AIFMD depositary liability provisions.

## ID 1031

Q. *What requirements apply to QIAIFs with non-EU AIFMs during the transition period?*

A. QIAIF authorised before 22 July 2013 which designate a non-EU AIFM, will be allowed to avail of the relevant transition period outlined above provided that, at all times the QIAIF can show that its management company and AIFM arrangements when considered in their entirety at least meet the standard which would have applied under the non-UCITS regime which applied in Ireland immediately prior to 22 July 2013.

A QIAIF authorised on or after the 22 July 2013 which designates a non-EU AIFM, will be allowed to avail of the transition period provided that it and its non-EU AIFM comply with the provisions of the AIF Rulebook that apply in the case of QIAIFs with registered AIFMs.

## ID 1032

Q. *Can a RIAIF have a non-EU AIFM in the period before Article 37 of the AIFMD becomes effective?*

A. No, a RIAIF must have an authorised AIFM. A non-EU AIFM cannot become an authorised AIFM before Article 37 is effective.

## ID 1033

Q. *As an existing AIFM do I have to notify the Central Bank of my intention to avail of the transitional arrangements under Article 61 of AIFMD?*

A. Notification is not required.

## ID 1034

Q. *Must an AIFM which is subject to transitional arrangements ensure that co-operation agreements between the Central Bank and a supervisory authority in a third country are in place in the event that the AIFM has delegated portfolio or risk management to a third country entity?*

A. No, not during the transitional period.

## ID 1035

Q. *I am a depositary to an existing AIF. When must I comply with the AIFM Regulations?*

A. The obligation on depositaries is to provide depository services which meet the conditions imposed on the AIF and AIFM to which they provide services. A depositary must comply with the AIFM Regulations in relation to each AIF from the date of authorisation of the AIFM of that AIF and at the latest from the end of the relevant transition period.

## ID 1056

*[Deleted – consolidated into ID 1030]*

## ID 1057

Q. *What depositary regime applies to QIAIF with registered AIFMs?*

A. The Central Bank does not require QIAIF authorised before 22 July 2013 which have a registered AIFM to appoint an authorised AIFM at any time. However, these QIAIF are subject to the full AIFMD depositary regime including the AIFMD depositary liability provisions. Of course, if the AIFMD thresholds are exceeded, an authorised AIFM must be appointed in accordance with the requirements of the AIFMD.

QIAIF authorised after 22 July 2013 which have a registered AIFM are provided with a two year start-up period during which the Central Bank will not require that they have an authorised AIFM. After the start-up period, an authorised AIFM must be appointed. During the start-up period, these QIAIF are subject to the full AIFMD depositary regime excluding the AIFMD depositary liability provisions. The current liability standard set out in the NU Notices will apply during the start-up period.

## ID 1036

Q. *What are the 'objective' conditions which justify delegation or discharge of liability by depositaries?*

A. The AIFMD provides that a depositary may delegate certain safe-keeping functions to a third party provided that the depositary can demonstrate that there is an objective reason for the delegation. The AIFMD also requires a written contract between the AIF (or the AIFM acting on behalf of the AIF) and the depositary to expressly allow for a discharge of liability and establish the objective reason to contract such a discharge.

Where a depositary delegates safe-keeping functions to a third party and also contractually discharges liability to that third party, distinct obligations exist to be able to demonstrate objective reasons. Depositories may avail of this option, but only in the manner permitted by AIFMD and the Central Bank would expect that separate consideration would have been given to identifying suitable objective reasons for delegation and to identifying suitable objective reasons for discharge of liability.

Whether an appropriate objective reason for delegation and/or discharge of liability exists depends on the particular nature of each entity's business model, which is not only particular to it but may also vary over time. It is a matter for depositaries to judge this in the first instance and to keep the matter under review. Given the importance of this matter it would be prudent that the analysis and ongoing review should be documented and approved at least at a senior managerial level within the depositary. It may also be appropriate to have the matter approved at Board level.

AIFMs, in choosing depositaries, are advised to be satisfied that the depositaries they use are diligent in their compliance with these legislative obligations on an ongoing basis.

It is a matter for the Courts to determine where liability rests and judge contractual disputes between depositaries and third parties. The new Central Bank application forms require filing of all material contracts. However, the Central Bank will not review arrangements relating to discharge of liability as part of the authorisation or supervision process, but will take action where it sees evident disregard for a depositary's duty to conscientiously manage its compliance with the legislative requirements.

Depositaries are advised to seek expert legal advice on any envisaged delegation and contractual discharge of liability and to ensure that their legal advisors are fully advised on the objective nature of their business.

## ID 1042

Q. *As an AIFM for a structure which is not currently regarded as a collective investment undertaking but which may fall within the definition of AIF once the AIFM Regulations come into force, can I avail of the AIFM related transitional arrangements?*

A. Yes.

## ID 1043

Q. *I am the AIFM of an Irish AIF which is not subject to Irish domestic AIF legislation. Can I avail of the transitional arrangements for AIFM under the AIFMD?*

A. Yes.

## ID 1044

Q. *I am an EU AIFM marketing an EU AIF to professional investors in Ireland. Can I continue to market this AIF and/other EU AIF notwithstanding that I have not yet been authorised?*

A. Yes you can continue to market the AIF and/or other EU AIF, including newly launched AIF, to professional investors. Once you have received your authorisation you should comply with the AIFMD passporting notification process.

## ID 1045

Q. *I am an EU AIFM marketing a non-EU AIF to professional investors in Ireland. Can I continue to market this AIF and/or other non-EU AIF now that the AIFM Regulations have been implemented notwithstanding that I have not yet been authorised?*

A. Regulation 37 of the AIFM Regulations permits the marketing by EU AIFM of non-EU AIF to professional investors. You can continue to market the AIF and/or other non-EU AIF, including newly launched AIF, to professional investors pending authorisation as an AIFM. Once authorised, you must comply with Regulation 37.

## ID 1046

Q. *I am a non-EU AIFM marketing both EU and non-EU AIF to professional investors in Ireland. Can I continue to market these AIF and/or other AIF now that the AIFM Regulations have been implemented?*

A. Regulation 43 of the AIFM Regulations permits the marketing by non-EU AIFM of both EU and non-EU AIF, including newly launched AIF, to professional investors. You can continue to market EU and non-EU AIF to professional investors in Ireland. You must comply with the AIFM Regulations on a best efforts basis and submit a notification which meets with the requirements of Regulation 43 before 22 July 2014 at the latest. Regulation 43 requires non-EU AIFM to comply with the reporting obligations set out in Regulation 25. ESMA has published guidelines in relation to AIFM reporting obligations. On 7 March 2014, the Central Bank published a statement concerning the first reporting dates for AIFMs subject to the AIFM Regulations. Non-EU AIFM marketing AIF to professional investors in Ireland must comply with the first reporting dates set out in that statement.

## ID 1047

Q. *Do the AIFM Regulations permit the marketing of AIF to Irish retail investors? What rules will apply?*

A. Regulation 44 of the AIFM Regulations permits the marketing of AIF to retail investors and is reflected in the AIF Rulebook at chapter 1 – RIAIF Requirements. Initially, the position which applies under the NU Series of Notices will continue to apply but the approach to marketing of AIF to retail investors, of both regulated and unregulated AIF will be subject to further review. Meanwhile, those AIF which were approved to market in Ireland by the Central Bank under Notice NU 19 of the NU Series of Notices may continue to operate.

## ID 1048

*[Deleted – no longer relevant]*

## ID 1049

Q. *What rulebook applies to closed-end AIFs which will (a) not make any additional investments after 22 July 2013 and/or (b) which have subscription periods which are closed before 21 July 2011, the date of entry into force of the AIFMD, and are constituted for a period of time which expires at the latest 3 years after 22 July 2013?*

A. The NU Series of Notices continue to apply these AIF. The AIFM will not require authorisation or registration. AIFs to which Regulation 60(3) and 60(4) of the AIFM Regulations 2013 apply should notify the Central Bank of this fact by 30 September 2013.

## ID 1050

Q. *I am an Irish AIFM that is ready to be authorised under the AIFM Regulations. However, I am not entirely compliant with the AIFMD for some of my existing AIFs under management. Can I proceed to obtain my AIFMD authorisation notwithstanding this?*

A. It may be the case that an AIFM is ready for authorisation under the AIFM Regulations and finds that, while it is compliant with the AIFM Regulations, AIFMD Level 2 and the AIF Rulebook for the majority of its existing AIF under management, it is not entirely compliant for some of its existing AIF. For example, the sub-custodial arrangements are not entirely in accordance with AIFMD Level 2. In such scenarios, if in advance of its authorisation the AIFM advises the Central Bank of the identity of the AIF, the non-compliance in question and confirms that these AIF are not subject to AIFMD passporting arrangements, the Central Bank will not take regulatory action provided the AIFM uses its best efforts and brings itself into compliance for those AIF at the earliest reasonable opportunity during the transitional phase and, in any event, no later than 22 July 2014.

## ID 1051

Q. *I am an existing Irish AIFM for an existing QIAIF. I intend to become a registered AIFM before July 2014. Can I act as AIFM for that QIAIF after I become a registered AIFM? What rules will apply?*

A. Existing QIAIF below the AIFMD threshold ('small QIAIF') are not required to appoint an authorised AIFM. However, they must comply with Part III of the QIAIF chapter of the AIF Rulebook. Small QIAIF cannot have non-Irish registered AIFMs because there is no passport for registered AIFMs.

## ID 1061

Q. *Does an AIF management company have to go through a separate application process with the Central Bank in order to become subject to the AIF Rulebook? When does it become subject to the AIF Rulebook?*

A. An AIF management company does not need to make a separate application to become subject to the AIF Rulebook. It will automatically move from the NU Series of Notices to the AIF management company chapter of the AIF Rulebook when the AIFM of the AIF which it manages becomes authorised or registered. At that time, the Central Bank will send a letter to the AIF management company imposing the conditions set out in that chapter on it.

## ID 1134

Q. *Must a general partner of an investment limited partnership ("ILP") also be authorised as an AIF management company?*

A. No. The general partner of an ILP has statutory functions imposed by the Investment Limited Partnerships Act 1994 relating to its authority to conduct the business of the ILP. The general partner appoints the AIFM to the QIAIF and also acts in an oversight capacity. A general partner is a regulated financial services provider and is subject to Central Bank Regulations[2] relating to fitness and probity. A general partner will not otherwise be authorised by the Central Bank. Directors or partners of a general partner (or general partners, where there are more than one in an ILP) will continue to perform Pre-Approval Controlled Functions within the meaning of those regulations[3] and must comply with relevant standards in that regard.

## ID 1135

Q. *I am a general partner and am also approved as an AIF management company. Can I seek revocation of that approval from the Central Bank?*

A. Yes. Application may be made by a general partner to the Central Bank for revocation of approval as an AIF management company. Information required to process such an application is available from MancoFSPauthorisations@centralbank.ie. Applications should be submitted to MancoFSPauthorisations@centralbank.ie.

## ID 1086

Q. *I am a non-EU AIFM who will be the designated AIFM for a QIAIF. Am I subject to the investment manager notification process as described in the Central Bank's guidance "Third Party Notification and Fund Authorisation Processes"?*

A. Yes. As you are not an authorised AIFM within the European Union, the Central Bank will apply the investment manager notification process which will inter alia require you to complete the Investment Manager Notification form.

## ID 1087

Q. *Can an AIFM authorised in a non-EU EEA Member State manage and market AIF in Ireland or act as a delegate investment manager to an Irish authorised AIFM?*

A. In light of the agreement in October 2014 to incorporate the EU ESAs Regulations into the EEA Agreement and pending amendment of that agreement to include AIFMD, the Central Bank will permit AIFMs authorised in the EEA to manage and market AIF in Ireland, under Article 42 of AIFMD, or act as a delegate investment manager to an Irish authorised AIFM, as long as the supervisory authority of the AIFM has already entered into the ESMA Multilateral Memorandum of Understanding.

Pending amendment of the EEA agreement to include AIFMD, applications from AIFMs authorised in a non-EU EEA Member State will be processed under the procedure set out in Articles 32-33 of AIFMD and accordingly will be submitted to the Central Bank by the relevant authority. As a result, once the EEA agreement has been amended to include AIFMD, there will be no need to submit new applications in relation to these AIFM.

2 Central Bank Reform Act 2010 (Sections 20 and 22) Regulations 2011.

3 Regulation 12, Central Bank Regulations.

## Delegation

### ID 1037

Q. *Will the Central Bank permit AIFM to delegate portfolio or risk management functions?*

A. In part, yes. However, this cannot include either of the functions in its entirety. Specifically, it can never include the tasks, as set out in the AIF Rulebook, which must be exercised directly by the board or its designated persons. Rather, certain portfolio and risk management tasks may be delegated. The proposed extent of delegation must be set out clearly for the Central Bank which will review each such proposed arrangement.

### ID 1070

Q. *I am an AIFM who proposes to appoint a delegate investment manager and this entity is not subject to regulation. What process will apply?*

A. Regulation 21(1)(c) of the AIFM Regulations provides that "where the delegation concerns portfolio management or risk management, it shall be conferred only on undertakings which are authorised or registered for the purpose of asset management and subject to supervision or, where that condition cannot be met, only subject to prior approval by the Bank". Accordingly, proposals by AIFM to appoint unregulated investment managers will be assessed by the Central Bank on a case by case basis. This assessment will be based on a review of a completed Investment Manager Application Form which should be sufficient to satisfy the Central Bank in relation to:

- why the proposed delegate is not subject to regulation;
- the track record and expertise of the firm (and its principals) in the relevant asset class; and
- the regulatory status and size of its parent entity (if applicable).

### ID 1085

Q. *I am an Irish authorised AIFM and I manage AIFs which are not authorised by the Central Bank. Does the guidance set out on the Central Banks website entitled "Third Party Notification and Fund Authorisation Processes" apply to arrangements relating to the delegation of investment management in respect of those AIF?*

A. No. That particular guidance relates to the authorisation of investment funds and the powers available to the Central Bank under domestic investment fund legislation. An AIFM authorised in Ireland under the AIFM Regulations, which proposes to delegate investment management in relation to AIFs which are not authorised by the Central Bank, must nonetheless comply with Regulation 21 of the AIFM Regulations which inter alia requires that an AIFM must notify the Central Bank fully before any delegation arrangements become effective. Should the Central Bank have concerns regarding any proposed arrangements, these concerns will be pursued with the AIFM.

## Qualifying investors

### ID 1038

Q. *Can an Irish investor who is currently permitted to invest in a Qualifying Investor Fund invest in a QIAIF notwithstanding that the investor does not fall within the definition of professional investor in AIFMD?*

A. The AIF Rulebook provides that investors in QIAIF must be investors who fall within one of the following categories:

a) be a professional client in accordance with MiFID; or

b) receive an appraisal from an EU credit institution, MiFID firm or UCITS management company that he/she has appropriate expertise, experience and knowledge; or

c) self-certify that he/she has sufficient knowledge and experience to enable him/her to properly evaluate the investment or his/her business involves the management, acquisition or disposal of property of the same kind as the property of the QIF.

In addition, the AIF Rulebook provides that within the EU, QIAIF may only be marketed to professional investors as defined in the AIFMD unless the Member State in question permits, under the laws of that Member State, AIF to be sold to other categories of investors and this permission encompasses investors set out in categories (b) and (c) above. Accordingly, Irish investors who fall within any one of the categories (a), (b) or (c) above are eligible to be sold units in a QIAIF.

## Remuneration guidelines

### ID 1039

Q. *Do the recently issued ESMA guidelines on remuneration apply equally to AIFM and self-managed AIF?*

A. Yes.

### ID 1072

Q. *What is meant by regulatory requirements which are 'equally as effective'?*

A. This refers to those entities properly identified on an on-going basis by the AIFM as subject to equally as effective regulatory requirements on remuneration. This includes, without limitation: (i) CRD/MiFID firms (including firms still subject to CRD III and which have availed of the CRD IV exemptions) and (ii) non-EU firms which are subject to group remuneration policies that are equally as effective as MiFID or CRD.

### ID 1073

Q. *What is meant by 'appropriate contractual arrangements'?*

A. Appropriate contractual arrangements are contractual terms which at least require the implementation of remuneration practices consistent with the ESMA remuneration guidelines in relation to relevant staff.

### ID 1074

Q. *Are there any alternatives to providing for payment of variable remuneration in the form of units in AIFs or linked instruments?*

A. Where legal, regulatory or tax issues make variable remuneration in the form of units in AIFs or linked instruments, the AIFM could substitute AIF units with payment of variable remuneration in an appropriate proxy such as shares in the AIFM or its parent or holding company or units in an AIF or other vehicle with an investment strategy which is materially the same as that of the relevant AIF.

### ID 1075

Q. *When should disclosures on remuneration first appear in the relevant AIF financial statements?*

A. The starting date for the first relevant AIF annual report, which would contain remuneration disclosures, would be the first full financial year of the relevant AIF following the AIFM's AIFMD compliant remuneration pay out process policy required to have taken effect. However, as set out by ESMA in the AIFMD Q/A "for an existing AIFM whose accounting period ends on 31 December which submits an application for authorisation by 22 July 2014 and obtains an authorisation after that date (including when the authorisation is obtained after 31 December 2014), the AIFMD rules on variable remuneration should apply to the calculation of payments relating to the 2015 accounting period".

## Passporting arrangements

### ID 1040

Q. *As an authorised AIFM can I operate under the passporting arrangements set out in Articles 32 and 33 notwithstanding that the AIFMD has not been implemented in a host Member State?*

A. Yes – AIFMD is effective across the EU from 22 July 2013.

## AIFs in liquidation

### ID 1041

Q. *My AIF is in liquidation or will be in liquidation during the transitional period and I do not propose to establish new AIF. Must I seek authorisation before 22 July 2014?*

A. Subject to the AIFM Regulations, the Central Bank considers that AIFMs acting solely for AIF which are in liquidation or will be in liquidation during the transitional period will not require authorisation provided the AIF have entered into a liquidation process before the expiry of the transitional period. The reference to "liquidation" should also be taken to refer to AIF which are undergoing a termination process.

## Agreements with non-EU authorities

### ID 1052

Q. *ESMA published a list of countries with which it had approved co-operation agreements. Has the Central Bank of Ireland entered into these agreements?*

A. As at 11 December 2013, ESMA approved co-operation agreements between EU securities regulators and 45 non-EU authorities. While ESMA has negotiated these MOUs they are bilateral agreements which must be signed by the EU authorities and the third countries involved. The Central Bank has signed all of these agreements other than those with the competent authorities in Maldives and Turkey.

### ID 1066

Q. *I am an Irish AIFM. Can I delegate portfolio management or risk management to a third country undertaking located in a jurisdiction where there is no cooperation agreement in place between the Central Bank and the relevant competent authority?*

A. No. In accordance with Article 20 of the AIFMD the delegate must be authorised for portfolio management in its home jurisdiction. Supervisory co-operation with the home regulator must be ensured. This means that a co-operation agreement which complies with ESMA guidelines must be in place.

## Professional investor funds

### ID 1053

Q. *I am an umbrella professional investor fund. When is the last day on which I can establish a new sub-fund?*

A. Additional sub-funds for umbrella professional investor funds are not being approved after 21 July 2013. It will be possible to establish new share classes within existing professional investors funds (or within sub-funds of existing umbrella professional investors funds) after that date.

### ID 1058

Q. *I am a professional investor fund. When will the NU Series of Notices cease to apply to me? What rules will apply instead?*

A. A professional investor fund will continue to be subject to the NU Series of Notices until the date that its AIFM becomes registered or authorised. From that date, the professional investor fund will be subject to a number of conditions the cumulative effect of which will be to apply an equivalent regime to the professional investor fund regime as is currently set out in the NU Series of Notices. For example, it will be subject to a condition that it shall comply with the provisions of its prospectus and to conditions concerning the publication and content of financial statements. If the professional investor fund has a registered AIFM, its depositary will also be subject to a condition that it shall comply with the AIFMD depositary regime, except in relation to depositary liability. The current non-UCITS depositary liability regime will apply instead unless the parties choose to apply the AIFMD depositary liability regime.

A professional investor fund may convert to become a RIAIF or a QIAIF in which case it must comply with all of the rules applicable to a RIAIF or QIAIF.

## Investments in unregulated master funds and derogations from the AIF Rulebook

### ID 1054

Q. *I am a Qualifying Investor Fund which will transition to the AIF Rulebook as a QIAIF. I have been approved to invest in a linked AIF under the provisions of Section D of Annex 1 to Guidance Note 1/01. Can I continue with this investment?*

A. Notwithstanding that the derogation mentioned in Section D, Annex 1 to Guidance Note 1/01 is no longer available, you can continue to operate in accordance with the derogation previously given. You are not required to apply to the Central Bank for approval to do so.

## ID 1071

Q. *I am an existing QIF/Retail Fund which must comply with the AIF Rulebook on authorisation of the AIFM. As a QIF/Retail Fund I previously sought and was granted certain derogations under the Non-UCITS regime. Will these derogations cease to have validity once the AIF Rulebook is imposed on the QIF/Retail Fund?*

A. Yes. Once an AIF becomes subject to the AIF Rulebook, derogations which have been granted to the AIF under the NU Series of Notices will no longer be valid or relevant, other than in the case outlined in ID 1054.

Any requests for derogations from the AIF Rulebook will be considered on a case-by-case basis, but will only be considered where the proposal includes a detailed and comprehensive rationale supporting the request.

## ID 1095

Q. *I am a QIAIF availing of the flexibility to invest more than 50% of net assets in an unregulated investment fund (ref. Paragraph 7 of Chapter 2, Part II, Section 2 of the AIF Rulebook). What other requirements of that section apply to me?*

A. A QIAIF that avails of this flexibility must also comply with the requirement to attach the periodic reports of the underlying investment fund to its own periodic reports (ref. paragraphs 6 and 9 of that Chapter 2, Part II, Section 2 of the AIF Rulebook).

## ID 1141

Q. *I intend to apply for authorisation from the Central Bank of Ireland as an AIF. Can I raise capital from investors by way of a shareholder (unitholder) loan?*

A. The Central Bank does not consider that such arrangements are in principle consistent with the objective of collective investment on behalf of an authorised AIF's members (investors). The legislation applicable to authorised AIFs provides for investor protections exercisable by the Central Bank in respect of equity investors (shareholders or unitholders in the AIF). In addition, the role of the depositary is framed in terms of the issue of shares or units. As such, raising capital from investors by way of a shareholder loan has not been provided for under the AIF Rulebook. This is without prejudice to transactions referred to in ID 1142.

## ID 1142

Q. *I am an authorised AIF. Can I enter into transactions with my investors?*

A. The AIF Rulebook does not envisage that transactions other than the issuance or redemption of units or shares in the authorised AIF would take place between an authorised AIF and its investors. Therefore, the AIF Rulebook does not currently apply rules which relate to transactions with connected parties to transactions with investors.

The Central Bank considers that if an authorised AIF proposes to enter into a transaction with an investor, it would be appropriate for the following matters to be separately considered and documented by the AIFM (or in the case of a non-Irish AIFM, the authorised AIF) and the AIF's depositary:

- Requirements under the AIFMD Level 2 Regulation (Commission Delegated Regulation (EU) No. 231/2013) regarding conflict management and treating all investors fairly;
- The purpose for and motivation behind the transaction, its consistency with the investment objectives of the AIF and the return it is designed to provide to the investor;
- Whether the proposed transaction is at arm's length and transacted on normal commercial terms (or whether terms are at least as beneficial to the AIF as those which could be obtained commercially); and
- Whether best execution principles have been applied.

The AIFM (or in the case of a non-Irish AIFM, the AIF) and the AIF's depositary should also be satisfied that there is no prejudice or potential prejudice to other investors in the authorised AIF as a result of the proposed transaction. Any transaction of this nature should be disclosed to other investors (for example, by way of periodic financial statements).

## Investments

### ID1145

Q. *Can a RIAIF or a QIAIF invest either directly or indirectly in crypto-assets?*

A. Crypto-assets are generally considered to be private digital assets that depend primarily on cryptography and distributed ledger or similar technology. However, the nature and characteristics of crypto-assets vary considerably. For example, crypto-assets that are tokenised traditional assets (whose value is linked to an underlying traditional asset or a pool of traditional assets (such as financial instruments or commodities)) may have a different risk profile when compared to other crypto-assets that are based on an intangible or non-traditional underlying. For the purposes of this Q&A "crypto-asset" is used to refer to the latter type of crypto-asset.

The Central Bank must be satisfied that direct or indirect exposure to crypto-assets is capable of being appropriately risk managed. As of the date of publication of this Q&A, the Central Bank has not seen information which would satisfy it that direct or indirect exposure to crypto-assets is capable of being appropriately risk managed. Though crypto-assets do not all have uniform characteristics, the Central Bank has noted that they can present significant risks, including liquidity risk; credit risk; market risk; operational risk (including fraud and cyber risks); money laundering / terrorist financing risk; and legal and reputation risks.

Taking into account the specific risks attached to crypto-assets and the potential that retail investors will not be able to appropriately assess the risks of making an investment in a fund which gives such exposures, the Central Bank is highly unlikely to approve a RIAIF proposing any exposure (either direct or indirect) to crypto assets.

In the case of a QIAIF seeking to gain exposure to crypto-assets, the relevant QIAIF would need to make a submission to the Central Bank outlining how the risks associated with such exposures could be managed effectively by the AIFM.

The Central Bank's approach in relation to crypto-assets will be kept under review, continue to be informed by European regulatory discussions on the topic and may change should new information or developments emerge in the future.

### ID 1149

Q. *I am a QIAIF that intends to invest more than 50% of net assets in an investment fund authorised in the UK. Is the UK investment fund treated as a category 1 or category 2 investment fund for the purposes of requirements set out in the AIF Rulebook?*

A. The matter of whether UK AIFs, including UK AIFs originally authorised under domestic legislation implementing Directive 2009/65/EC (UCITS), should be identified in the AIF Rulebook as a category of investment fund in which QIAIFs may invest over 50% of their net assets is under consideration by the Central Bank. For the period while it is under consideration, the Central Bank is not adopting a default position which treats the UK AIFs as ineligible for such an investment. UK AIFs are treated in the manner of a category 2 investment fund as provided for by the Qualifying Investor AIF requirements of the AIF Rulebook for the duration of this period.

## ID 1150

Q. *I am a RIAIF that intends to invest in an investment fund authorised in the UK. Is the UK investment fund treated as a category 1 or category 2 investment fund for the purposes of the requirements set out in the Central Bank AIF Rulebook?*

A. The Central Bank notice of intention of March 2019[4] set out that the Central Bank will consider whether UK AIFs, including those originally authorised under domestic legislation implementing Directive 2009/65/EC (UCITS), should be identified in Central Bank guidance as a category of investment fund in which RIAIFs may invest. For the period while this is under consideration, the Central Bank is not adopting a default position which treats the UK AIFs as ineligible.

UK AIFs are treated in the manner of a category 2 investment fund as provided for by the Retail Investor AIF requirements in the AIF Rulebook for the duration of this period.

## ID 1151

Q. *I am a QIAIF operating a private equity strategy or invested in physical assets which do not qualify as financial instruments. What are the Central Bank's expectations in respect of an arrangement involving a non-discretionary investment advisor which provides services to the QIAIF?*

A. An investment advisor may be appointed to provide services to a QIAIF on a non-discretionary basis. This may be appropriate where the expertise of an investment advisor is required, for example with respect to a geographical location or asset type. The role of the investment advisor is to provide relevant expertise in order to enable the AIFM (or investment manager if applicable) to perform their mandate.

The Central Bank understands that in the case of QIAIFs operating private equity strategies or otherwise invested in physical assets which do not qualify as financial instruments, an investment advisor may provide a range of services to the AIFM in respect of that QIAIF. Details to identify the investment advisor and the services provided should be comprehensively disclosed in the QIAIF's prospectus and may include services relating to identification and origination of investment proposals, due diligence and other operational activities relating to the assets or proposed investments of the QIAIF. Services of this nature are not typically provided for in other investment strategies, and as a result the fees paid to non-discretionary investment advisors providing these services appear disproportionately greater than those paid to other service providers of the QIAIF.

QIAIFs are required to disclose in its prospectus how fees of each service provider(s) are accrued and paid. Where such fees are payable directly from the assets of the QIAIF, the maximum fee and the potential to pay out of pocket expenses on normal commercial terms of each of the service provider is to be disclosed in the QIAIF's prospectus. Where a single figure is disclosed in the prospectus that covers all of the fees payable out of the assets of the QIAIF, the prospectus should disclose that the investment advisor will receive a fee greater than typically paid to a non-discretionary investment advisor. This disclosure should cross-reference details of the services that the investment advisor is providing to the QIAIF in order to provide context for this fee.

The QIAIF's prospectus should also detail the role of the AIFM with respect to its ongoing oversight and review of services provided by such non-discretionary investment advisors. This should include information on how the AIFM will discharge its functions under AIFMD Level 2, including inter alia, Article 75(e) and (f).

The Central Bank intends to keep such arrangements under review and, depending on the evolution of market practice in this area, may conduct additional supervisory initiatives with respect to QIAIFs, including the role of non-discretionary investment advisors. For the avoidance of doubt, it is the Central Bank's expectation that the investment advisor is only performing a role

[4] https://www.centralbank.ie/docs/default-source/regulation/industry-market-sectors/funds/aifs/guidance/190305_notice-of-intention_investment-in-uk-inv-funds-and-uk-cps-to-otc.pdf?sfvrsn=2

that is advisory in nature. The AIFM must be in a position to evidence this upon request from the Central Bank.

## Fees and Charges

### ID 1152

Q. *Where an existing Retail Investor AIF has multiple managers or advisers ("multi-manager RIAIF"), can the RIAIF continue to pay a performance fee only on the performance of that part of the portfolio for which the investment manager or adviser is responsible and in respect of which there has been outperformance?*

A. The Central Bank intends to implement Section XV, Question 7 of the ESMA Questions & Answers on the AIFMD. The Application Forms will be updated shortly in this regard. As such, the Central Bank requires that existing multi-manager RIAIF will have transitioned their current performance fee models into compliance with the ESMA Q&A by 1 January 2023 and will have updated their prospectuses accordingly by that time.

### ID 1153

Q. *Can a new multi-manager RIAIF be established with a performance fee which does not comply with the performance fee requirements of Section XV, Question 7 of the ESMA Questions & Answers on the AIFMD from the date of establishment?*

A. No. From the date of this Q&A the Central Bank will not authorise new multi-manager RIAIFs that have a performance fee structure which does not comply with the aforementioned ESMA Q&A.

## Capital and shareholder suitability requirements for internally managed AIF

### ID 1055

Q. *I am an internally managed AIF. What capital rules apply to me? Do I need to submit minimum capital requirements reports?*

A. The European Commission has stated as its interpretation of the AIFMD that internally managed AIF are subject to the capital requirements set out in Article 9 of the AIFMD including Article 9(3) to 9(6). Internally managed AIF must submit minimum capital requirements reports. A template minimum capital compliance report, together with the notes on compilation, is set out in Annex I to the AIFM chapter in the AIF Rulebook.

### ID 1067

Q. *I am an internally managed AIF. Can the initial capital requirements referred to in Article 9(1) of the AIFMD and the additional amount of own funds referred to in Article 9(3) be met using shareholder funds?*

A. Article 9 does not specify the possible sources of capital for the 'own funds' requirement and does not prohibit internally managed AIFs from using shareholder funds to meet these capital requirements. Internally managed AIFs seeking to use shareholder funds to meet the own funds requirement should refer to Article 9(8) which requires that "Own funds, including any additional own funds as referred to in point (a) of paragraph 7, shall be invested in liquid assets or assets readily convertible to cash in the short term and shall not include speculative positions."

### ID 1059

Q. *I am an internally managed AIF. Am I subject to the provisions of Article 8(1)(d) of AIFMD?*

A. The requirement in Article 8(1)(d) allows competent authorities to assess the suitability of qualifying shareholders in light of the need to ensure sound and prudent management. The EU Commission has stated in its interpretation of the AIFMD that this Article applies to both external AIFMs and internally managed AIFs. In the case of internally managed AIFs, the Central Bank has assessed that the following categories of qualifying shareholders are suitable:

- investors in the AIF which meet the criteria for investment in that AIF and which satisfy anti-money laundering requirements; and
- shareholders who hold subscriber shares for the purposes of incorporating the AIF.

The condition set out in paragraph 3 of section vii of the AIFM chapter of the AIF Rulebook is disapplied in cases where the change in direct or indirect ownership or in qualifying holdings relates to a qualifying shareholder which falls within one of the categories listed above.

## Management companies of Irish AIF

### ID 1060

Q. *Will an Irish unit trust or common contractual fund require an Irish management company?*

A. A non-Irish AIFM may be appointed as a management company of an Irish AIF, including a unit trust or common contractual fund, provided the AIFM which proposes to act as a management company is authorised to provide the services set out in Section 2(a) and (b) (and (c) if relevant) of Annex 1 of AIFMD.

## Marketing

### ID 1062

Q. *Can a non-Irish registered EU AIFM market AIF to professional investors in Ireland?*

A. There is no provision in the AIFM Regulations which allows a non-Irish registered EU AIFM to market AIF in Ireland to professional investors. The provisions of the AIFM Regulations which allow AIFMs from other Member States to market AIFs to professional investors in Ireland (Regulations 33(2), 36(2) and 37(3)) only apply to authorised AIFMs.

### ID 1063

Q. *Can a non-EU 'sub-threshold' AIFM market AIF to professional investors in Ireland?*

A. Non-EU AIFM can market AIF in Ireland to professional investors pursuant to Regulation 43 of the AIFM Regulations. The size of the non-EU AIFM's AIF assets under management is not relevant in this regard. Regulation 4(3) of the AIFM Regulations is not relevant to non-EU AIFM.

### ID 1068

Q. *Will AIFM seeking to market other than under an AIFMD passporting arrangement be able to avail of the inward marketing regime as had been provided for in Notice NU 19?*

A. Since 22 July 2013 marketing AIF in Ireland is subject to the AIFM Regulations 2013 and specifically to Chapter 7, Chapter 8 and Chapter 9 of those Regulations. Conditions in relation to marketing without a passport are provided for in Regulations 37 and 43 and relate to: (i) authorised EU AIFM marketing non-EU AIF; and (ii) non-EU AIFM marketing EU or non-EU AIF.

### ID 1078

Q. *I am a non-EU AIFM which notified the Central Bank, in accordance with Regulation 43 of the AIFM Regulations, that I intend to market AIF to professional investors in Ireland. I have not commenced marketing. Am I required to report to the Central Bank in accordance with Regulation 25 of the AIFM Regulations?*

A. Yes, once a notification is made under Regulation 43 then you must report to the Central Bank under Regulation 25. Your obligation to report will end once you have notified the Central Bank that you have not commenced marketing and are withdrawing your notification or you are ceasing to market in Ireland and there are no investors in your AIF in this jurisdiction.

## Special Purpose Vehicles

### ID 1065

Q. *I am an SPV. Should I now seek authorisation as, or appoint, an AIFM?*

A. As a transitional arrangement, entities which are either:

a) Registered Financial Vehicle Corporations within the meaning of Article 1(2) of the FVC Regulation (Regulation (EC) no 24/2009 of the European Central Bank), or

b) Financial vehicles engaged solely in activities where economic participation is by way of debt or other corresponding instruments which do not provide ownership rights in the financial vehicle as are provided by the sale of units or shares are advised that they do not need to seek authorisation as, or appoint, an AIFM, unless the Central Bank of Ireland issues a Q&A replacing this one advising them to do so. The Central Bank of Ireland does not intend to do that at least for so long as ESMA continues its current work on this matter. If entities which believe they fall under (b) but not (a) wish to write to the Central Bank of Ireland in this regard, they may email AIFMDsecuritisation@centralbank.ie.

## Governing law

### ID 1076

Q. *I intend to act as AIFM to an Irish authorised AIF. Will the agreement with the AIF be required to be subject to Irish governing law?*

A. The law governing the agreement between an AIFM and an Irish authorised AIF is a matter for the parties to that agreement to determine by exercising the duty to act in the best interests of the investors in the AIF.

## Disclosure

### ID 1077

Q. *Is the requirement in Regulation 24(1) of the AIFM Regulations, to disclose the maximum level of leverage which the AIFM is entitled to employ on behalf of the AIF, a requirement to disclose leverage under both the gross and commitment methods?*

A. It is. Under Article 6 of the Level 2 Regulation AIFMs are required to calculate the exposure of an AIF in accordance with the gross method as set out in Article 7 and the commitment approach as set out in Article 8. Article 95(a) of the Level 2 Regulation requires that a depositary shall monitor the AIF's compliance with investment restrictions and leverage limits set in the AIF's offering documents.

### ID 1088

Q. *Regulation 24(4) of the AIFM Regulations requires AIFMs to provide certain disclosures on a periodic basis. Regulation 24(5) requires certain other disclosures on a regular basis. Is it sufficient if, in respect of the AIFs I manage and in accordance with the Level 2 Regulation, I provide these disclosures in the AIF periodic reports?*

A. It would be sufficient to provide the disclosures required by Regulation 24(4)(a) and (c) and Regulation 24(5)(b) in periodic reports but only as long as you have indicated this in your prospectus in accordance with Regulation 24(1)(p) of the AIFM Regulations.

In relation to Regulation 24(4)(b) and Regulation 24(5)(a), you must include in the prospectus an undertaking to provide details of any new arrangements for managing the liquidity of the AIF immediately and details of any changes to the maximum level of leverage, any right of re-use of collateral and any guarantee under leveraging arrangements without undue delay.

### ID 1127

Q. *I am an Irish authorised AIFM managing AIFs which reference a benchmark in the prospectus. Does the prospectuses of the AIFs I manage need to comply with the disclosure requirements set out in Article 29(2) of the Benchmark Regulation?*

A. The Central Bank understands that there is no obligation to comply with the disclosure requirements set out in Article 29(2) of the Benchmark Regulation unless the AIF is subject to Directive 2003/71/EC.

## Loan Originating Qualifying Investor AIF

### ID 1079

*[Deleted – no longer relevant]*

### ID 1080

Q. *If an intermediary introduces a borrower to a loan originating Qualifying Investor AIF who subsequently lends to that borrower, will the introducer be regarded as the originator of the loan?*

A. No – an originator in the context of the Central Bank's regulatory regime for loan originating Qualifying Investor AIF means the original issuer of the loan who in this case is the loan originating Qualifying Investor AIF. The potential implications arising from relationships with introducers and the need to comply with rules in relation to dealings with connected parties are set out in Section 4 of Chapter 2 of the AIF Rulebook (ref paragraph 5 of section iv).

### ID 1081

*[Deleted – no longer relevant]*

### ID 1082

Q. *The permitted operations of a loan originating Qualifying Investor AIF include "handling assets which are realised security". Does this mean that a loan originating Qualifying Investor AIF may receive equity following a loan workout? Is there a timeline within which the equity securities must be disposed of?*

A. The assets of a loan originating Qualifying Investor AIF may include equity where these securities have been received as a result of a loan workout. The timeline for disposing of these securities should primarily take into account the best interests of the investors in the loan originating Qualifying Investor AIF.

## ID 1083

Q. *As a loan originating Qualifying Investor AIF will I be subject to the requirements of the Credit Reporting Act 2013?*

A. As a loan originating Qualifying Investor AIF your activities in so far as they relate to the provision of credit, may fall within the scope of the Credit Reporting Act 2013 and you should refer to the Act for further clarification. For information, credit applications or credit agreements are covered by that Act where the applicant for provision of credit or the person for whom the credit is provided under the credit agreement is resident in the State at the time when the credit application or credit agreement is made; or the law governing any credit agreement made pursuant to the application would be, or the law governing the credit agreement is, the law of the State. With effect from 31 March 2018, providers of business loans are required to report to the Central Credit Register. Further information is available at https://www.centralcreditregister.ie/about/timeline/

## ID 1084

Q. *I am a Qualifying Investor AIF and have established a subsidiary in accordance with the requirements of the Central Bank. Can I fund the activities of the subsidiary by way of loan without seeking authorisation as a loan originating Qualifying Investor AIF?*

A. Yes – loans to wholly owned subsidiaries, established by authorised Qualifying Investor AIFs in accordance with the requirements of the Central Bank are not regarded as a breach of the prohibition on the granting of loans to which all AIF, other than loan originating Qualifying Investor AIF, are subject.

## ID 1117

*[Deleted – no longer relevant]*

## ID 1118

*[Deleted – no longer relevant]*

## ID 1119

Q. *I am a loan originating Qualifying Investor AIF. Can I invest in equity issued by group companies of entities that I have lent to?*

A. Yes provided the activity is related. A loan originating Qualifying Investor AIF can structure its lending in a package which includes investing in equity securities issued by group companies. Such investments in equity securities must be related to the loan originating Qualifying Investor AIFs lending activities.

## ID 1120

Q. *How can I assess whether my non-lending activities are 'related' to my lending activities?*

A. Typically a loan and a non-lending investment are 'related' if they form an investment package such that, for both parties, the willingness to enter into one type of investment is contingent on the other also being entered into.

## ID 1121

Q. *Does an equity investment related to a proposed lending have to be processed in accordance with the same credit and risk analysis as lending propositions?*

A. Where requirements in the rules for loan originating Qualifying Investor AIFs apply to the assessment of individual lending proposals, these do not apply to individual related investment proposals. Where requirements apply to the management of the overall portfolio of the loan

originating Qualifying Investor AIF, they apply to the management of the full portfolio of the loan originating Qualifying Investor AIF, including assets related to lending exposures.

### ID 1122

Q. *I am a loan originating Qualifying Investor AIF. Can I engage in treasury, cash management and hedging transactions with parties other than those I have lent to?*

A. Yes. A loan originating Qualifying Investor AIF can engage in treasury, cash management and hedging transactions with third parties.

### ID 1128

Q. *I am a loan originating Qualifying Investor AIF. Can I invest in derivatives other than for hedging purposes?*

A. No.

## Marketing of unauthorised AIF

### ID 1089

Q. *What is an 'unauthorised AIF'?*

A. An unauthorised AIF is one which is not authorised by the Central Bank under domestic investment fund legislation.

### ID 1090

Q. *Can an unauthorised AIF be marketed to appraised/self-certifying investors?*

A. An unauthorised AIF may be marketed to appraised/self-certifying investors[5] in Ireland if it has an authorised AIFM and that AIFM ensures that the unauthorised AIF at all times meets all the requirements which would apply to the AIF if it was a QIAIF.

### ID 1091

Q. *Can an unauthorised AIF be marketed to retail investors in Ireland?*

A. An unauthorised AIF may be marketed to all retail investors if it has an authorised AIFM and that AIFM ensures that the unauthorised AIF at all times meets all the requirements which would apply to the AIF if it was a RIAIF. Guidance on marketing to retail investors in Ireland is set out here - Inward Marketing Of AIF To Retail Investors Central Bank of Ireland.

As an exemption to the requirement to meet all RIAF requirements AIFs which meet the requirements of Section 705A to 705Q of the Taxes Consolidated Act 1997 and are therefore recognised as real estate investment trusts (REITs) do not need to comply with the leverage conditions which apply to RIAIFs in order to be permitted to market to retail investors.

### ID 1092

Q. *Can retail investors trade on the secondary market in unauthorised AIF which are not permitted to market to retail investors? Do any restrictions/constraints apply?*

A. Yes. Retail investors can trade, on the secondary market, in unauthorised AIF. Such secondary market trades will usually occur through investment intermediary firms and, therefore, the protections of the MIFID regime will apply.

[5] As set out in Chapter 2, Part I, Section 1, i, 3(b) and 3 (c) of the AIF Rulebook

### ID 1093

Q. I am an unauthorised AIF with Irish retail investors due to secondary market trading in my units. I am proposing a rights issue and pursuant to Company law must provide relevant documentation to all existing shareholders. Does the circulation of this documentation come within the scope of marketing to retail investors?

A. The Central Bank does not consider the provision of documents, including rights issue and/or open offer documentation, to existing investors, as an actionable breach of the rules in relation to the marketing of AIF provided that the documentation is strictly confined to what is necessary to comply with applicable law obligations in relation to the treatment of shareholders.

## Feeder AIF

### ID 1096

Q. *I am a QIAIF which raises capital from investors under a formally agreed commitment basis. For the purposes of the definition of "feeder AIF" in Regulation 5 of the AIFM Regulations can the reference to "assets" (net assets) be understood to refer to committed capital?*

A. Yes provided the QIAIF remains closed for redemptions during the capital commitment period.

## Directed brokerage

### ID 1097

Q. *Directed brokerage services are defined in the AIF Rulebook as:*
*"Brokerage services in relation to an authorised AIF pursuant to which a commission or similar payment is paid to or secured by the entity which issues instructions".*
*What do these services involve?*

A. This activity may involve the negotiation of recaptured commissions and monitoring of brokers to ensure that the selected brokers provide the highest standards for execution, value added services and investment research on behalf of their clients.

## Fund Management Companies

### ID 1098

Q. *The feedback statement to CP86 Consultation on Fund Management Company Effectiveness – Delegate Oversight provides that the Central Bank will amend its authorisation processes for fund management companies to require inter alia that the rationale for the board composition be included in the business plan/programme of operations. Are existing authorised AIFMs required to insert a board composition rationale into their programmes of operations?*

A. Only new authorised AIFMs are subject to the authorisation process which requires the rationale for the board composition to be documented in the programme of operations. However, the Central Bank is of the view that it is good practice for the director performing the Organisational Effectiveness role for each authorised AIFM (new or existing) to document the rationale for the board composition as part of developing this role and to include this in the programme of operations when it is next updated.

## ID 1104

Q. *I am the carrying out the Organisational Effectiveness role for a fund management company. The Central Bank's guidance on Organisational Effectiveness states that I should keep the effectiveness of the organisational arrangements of the company under ongoing review and organise periodic board effectiveness evaluations. How often should I conduct an organisational effectiveness review?*

A. Except in rare cases where unique and unusual circumstances apply, an organisational effectiveness review should, at a minimum, be conducted on an annual basis.

## ID 1113

Q: *I am an authorised external AIFM or an authorised internally managed AIF. What transitional arrangements (if any) apply in relation to (i) the managerial functions listed in the AIF Rulebook, Chapter 3, iii, 2; (ii) new requirements in relation to an effective supervision requirement and the retrievability of records; and (iii) adherence to the fund management company guidance chapters 1-6?*

A: Please refer to the following table:

| Provision | Transition date | | |
|---|---|---|---|
| | **Authorised before 1 November 2015** | **Authorised between 1 November 2015 and 30 June 2017 (inclusive)** | **Authorised after 30 June 2017** |
| Managerial Functions listed in the AIF Rulebook, Chapter 3, iii, 2 | 1 July 2018 | Applicable from date of authorisation | Applicable from date of authorisation |
| Performance of the organisation effectiveness role per AIF Rulebook, Chapter 3, iii, 3 | 1 July 2018 | Applicable from date of authorisation | Applicable from date of authorisation |
| Effective supervision requirement – location (to be included in forthcoming Central Bank AIF Regulations) | 1 July 2018 | 1 July 2018 | The Central Bank will only authorise fund management companies that are organised in a way that complies with these provisions. |
| Rule on retrievability of records (to be included in forthcoming Central Bank AIF Regulations) | 1 July 2018 | 1 July 2018 | |
| Guidance: Part I Delegate Oversight | 4 November 2015[6] | Applicable from date of | Applicable from date of |

[6] This is the date that the final guidance on Delegate Oversight, Organisational Effectiveness and Directors' Time Commitments was published.

| | | | |
|---|---|---|---|
| | | authorisation | authorisation |
| Guidance: Part II Organisational Effectiveness | Applicable from the date that a fund management company has appointed a person to the Organisational Effectiveness role. | | |
| Guidance: Part III Director' Time Commitments | 4 November 2015 | Applicable from date of authorisation. | Applicable from date of authorisation. |
| Guidance: Part IV Managerial Functions | 1 July 2018 | 1 July 2018 | Applicable from date of authorisation. |
| Guidance: Part V Operational Issues | Retrievability of records: 1 July 2018<br><br>Dedicated email address: 30 June 2017. | Retrievability of records: 1 July 2018<br><br>Dedicated email address: 30 June 2017. | The Central Bank will only authorise fund management companies that comply/are organised in a way that comply with these provisions |
| Guidance: Part VI Procedural matters | This guidance is a reflection of the existing fund management company guidance and is already applicable consequently, no transitional arrangements apply. | | |

## ID 1114

Q. *I am an existing AIFM or an authorised internally managed AIF that is availing of the transitional period per ID 1113. Can I make changes to my organisational structure during the transitional period?*

A. Yes. You can make changes to your organisational structure during the transitional period but only changes which bring you closer to compliance with the final CP86 rules and guidance.

## ID 1115

Q. *I am an authorised AIFM or an internally managed AIF and I want to amend my programme of activity (POA). Do I need to submit a draft POA to the Central Bank so that it can review and approve those changes in advance?*

A. The POA must be kept up to date but there is no need to submit changes to the POA to the Central Bank for review or approval. The POA must be provided on request to the Central Bank.

Where you propose to engage in any significant new activities, you must consult with the Central Bank in advance in accordance with Regulation 11 of the AIFM Regulations 2013.

## ID 1123

Q. *I am an authorised AIFM or an internally managed AIF. How should I submit details of my designated email address to the Central Bank?*

A. If you are:

- an internally managed AIF: You should submit the details to fundsupervision@centralbank.ie
- an authorised AIFM that is classified as "low impact" under PRISM: You should submit the details to FSPsupervision@centralbank.ie
- an authorised AIFM that is classified as "medium-low impact" or "medium-high impact" under PRISM: You should provide the details to your supervisor.

Designated email addresses are expected to be operational by 30 June 2017. The Central Bank may from time to time conduct tests to check how these are being monitored

## ID 1124

Q. *I am an Irish authorised AIF managed by a non-Irish fund management company. Must I maintain a designated email address?*

A. Yes, in order to facilitate effective and efficient communication between the Central Bank and Irish authorised funds, a designated email address should be provided for each Irish authorised AIF. This email address should be monitored for regulatory correspondence.

Individual email addresses can be set up for each Irish authorised AIF or a single email address for all Irish authorised AIFs under management by the non-Irish fund management company. These designated email addresses should be communicated to CP86email@centralbank.ie by 10 November 2017.

## ID 1147

Q. *I am an AIFM operating or planning to operate in the manner of a third party management company[7]. What should I consider and what actions should I take when taking on new business?*

A. Fund management companies need to have sufficient resources to enable them to carry out their functions to the required standard, taking into account the nature, scale and complexity of their business. This is of particular relevance to third party management companies where the on-boarding of new business may change the nature of or increase the number of delegate relationships, and therefore amplify the complexity of operations.

Where new business results in a material increase in the nature, scale or complexity of a firm's business, whether through a standalone transaction or on a cumulative basis, the Central Bank deems this to be a change that materially affects the basis on which authorisation has been granted and requires notification to the Central Bank in accordance with Regulation 11 of the AIFM Regulations 2013. This includes, but is not limited to, material increases in the number of funds under management and/or the number of delegates, and on-boarding of internally managed AIFs who are changing their status to be externally managed. In these circumstances, management companies are required to engage proactively with Central Bank supervisors and to

[7] As set out in the ESMA Brexit opinion (ESMA34-45-344), reference to third party fund management companies / white-label fund management companies, generally refers to "*fund managers that provide a platform to business partners by setting up funds at the initiative of the latter and typically delegating investment management functions to those initiators/business partners or appointing them as investment advisers.*"

ensure that they are appropriately resourced to service the additional business. The management company is required to submit revised financial and business growth (AUM, number of funds/sub funds, number of delegates) projections covering a period of two years as well as detailed assumptions on which the projections are based, an up to date capital plan and current programme of activity with increased resourcing projections for review.

## Non Material Changes

### ID 1099

Q. *Section 7 of the Unit Trusts Act, 1990 and Section 12 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005 provide for Central Bank approval for any amendment to the trust deed of a unit trust or deed of constitution of a common contractual fund respectively. Is unitholder approval also required for such amendments?*

A. The Central Bank will not grant approval unless the changes have also been approved by unit-holders. However, unitholder approval will not be required where the depositary certifies that it is satisfied that changes are not material and will not prejudice unitholders.

## Umbrella funds

### ID 1100

Q. *Can subscription and redemption monies of individual sub-funds, as fund assets, be held within a single account in the name of the umbrella fund?*

A. There is no regulatory obstacle to holding subscription and redemption monies for a single umbrella fund in this way. As this has not been prior practice in the context of Irish authorised investment funds, the Central Bank has published guidance entitled '*Umbrella funds – cash accounts holding subscription, redemption and dividend monies*'.

### ID 1101

Q. *The Central Bank's Guidance on 'Umbrella funds – cash accounts holding subscription, redemption and dividend monies' sets out 'that at all times the amounts within the umbrella cash account can be attributed to the individual sub-funds in order to comply with constitutional documents'.*

*Are there circumstances where this may not be possible?*

A. Yes. In accordance with paragraph 1(iii) under the heading "Treatment of subscription, redemption and dividend monies in umbrella cash accounts" in the Central Bank's guidance on 'Umbrella funds – cash accounts holding subscription, redemption and dividend monies' it may not be possible to attribute monies in the umbrella cash account for a period of time where subscription money is received with insufficient documentation to identify the owner. This could occur where –

i. A subscription application has been received and subscription monies have been received into the umbrella cash account but the subscription monies cannot be matched to the subscription application, for example due to insufficient information provided; or

ii. Subscription monies have been received but the subscription application has not been received.

While noting that these circumstances could occur, the reconciliation and attribution of the monies to a sub-fund should be effected without delay. Regulation 12 of the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) Investor Money Regulations 2015 for Fund Service Providers requires that unidentified monies are either attributed or returned within 5 working days of initial receipt of such monies. A similar approach could reasonably be applied to unattributed monies in umbrella cash accounts and this is provided for in paragraph 3 under the

heading "Treatment of subscription, redemption and dividend monies in umbrella cash accounts" in the Central Bank's guidance on 'Umbrella funds – cash accounts holding subscription, redemption and dividend monies'.

The AIFM should consider the appropriateness of using an umbrella cash account where such instances are occurring on more than an exceptional basis.

### ID 1102

Q. *Can the umbrella cash account be used to pay monies to parties other than investors and sub-funds; e.g. service providers or the Revenue Commissioners?*

A. No. Payments from an umbrella cash account should only be made to investors or to sub-funds. If an umbrella fund wishes to operate an account at umbrella level through which payments to other parties will flow, that account should be kept separate from the umbrella cash account holding subscription, redemption and dividend monies and every amount should be attributable to a specific sub-fund.

### ID 1108

Q. *Does the Central Bank's guidance on 'Umbrella funds – cash accounts holding subscription, redemption and dividend monies' apply to a segregated account established by an umbrella fund in respect of a sub-fund?*

A. No. As stated in the Central Bank's guidance on 'Umbrella funds – cash accounts holding subscription, redemption and dividend monies', an umbrella cash account is an account at the level of the umbrella fund. If a cash account is established as a segregated account in respect of a particular sub-fund of the umbrella fund, the Central Bank's guidance 'Umbrella funds – cash accounts holding subscription, redemption and dividend monies', does not apply.

### ID 1109

Q. *Is it possible for an umbrella fund to establish more than one umbrella cash account?*

A. The Central Bank has no objection to the establishment of multiple cash accounts by or on behalf of an umbrella fund provided each such umbrella cash account complies with the Central Bank's guidance 'Umbrella funds – cash accounts holding subscription, redemption and dividend monies'.

### ID 1110

Q. *May an umbrella cash account be operated for one or more umbrella funds (i.e. so that a number of sub-funds from different umbrella funds utilise the same umbrella cash account)?*

A. No. It is only permissible to open an umbrella cash account for a single umbrella fund and only the sub-funds of a single umbrella fund may utilise that account. It is possible to open more than one umbrella cash account for a single umbrella fund.

## Securities Financing Transactions Regulation ('SFTR')

### ID 1103

Q. *Article 33(2)(c) of Regulation (EU) 2015/2365 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 ('SFTR') provides a transitional arrangement for collective investment undertakings subject to the AIFMD that are constituted before 12 January 2016. Should sub-funds established after 12 January 2016 avail of this transitional arrangement?*

A. The Central Bank strongly recommends that any new sub-fund include in its prospectus documentation the SFTR required disclosure on the use of SFTs and total return swaps. SFTs and total return swaps are used at sub-fund level rather than umbrella level. Accordingly, the SFTR disclosures are required at sub-fund level. Further, the term 'collective investment undertaking'

is used in the context of sub-funds throughout the SFTR. For example, recital 16 refers to a "collective investment undertaking's investment strategy" and recital 20 refers to "a collective investment undertaking's investment policy" and investment policies apply at sub-fund rather than umbrella level. Accordingly, new sub-funds should make the disclosures required by the SFTR.

Should the European Commission suggest a different approach, this position will be revisited by the Central Bank and, if necessary, revised to align it with that approach.

## European Market Infrastructure Regulation ('EMIR')

### ID 1111

Q. *Can a RIAIF or a QIAIF (or a sub-fund in the case of an umbrella RIAIF or QIAIF) be considered a "pension scheme arrangement" under Article 2(10) (a) of EMIR?*

A. Article 2(10) (a) of EMIR refers to "institutions for occupational retirement provision within the meaning of Article 6(a) of Directive 2003/41/EC, including any authorised entity responsible for managing such an institution and acting on its behalf as referred to in Article 2(1) of that Directive as well as any legal entity set up for the purpose of investment in such institutions, acting solely and exclusively in their interest". It may be possible for a RIAIF or a QIAIF (or a sub-fund in the case of an umbrella RIAIF or QIAIF) which meets the relevant requirements to qualify as a pension scheme arrangement under Article 2(10) (a) of EMIR. Accordingly, the RIAIF or the QIAIF (or sub-fund) which qualifies as a pension scheme arrangement under Article 2(10) (a) of EMIR will limit investment in it to such institutions.

RIAIFs and QIAIFs are however subject to rules concerning eligible investors and the legislative provisions underpinning the various legal structures available to RIAIFs and QIAIFs have different approaches to public participation requirements. It is a matter for the AIFM in the first instance and the RIAIFs or QIAIFs investors to assess whether the RIAIF or QIAIF can and has limited its investors in the required manner and whether the RIAIF or QIAIF qualifies as a pension scheme arrangement under EMIR.

The above is subject to any contrary views or guidance that may be provided by relevant European authorities.

## Companies Act 2014

### ID 1106

Q. *Does the Central Bank require UCITS management companies, alternative investment fund managers, AIF management companies, fund administrators, depositaries and investment firms which are companies to convert to Designated Activity Companies ('DACS') under the Companies Act 2014?*

A. Section 18(2) of the Companies Act 2014 prohibits private companies limited by shares from carrying on the activity of a credit institution or insurance undertaking. Accordingly, existing credit institutions and insurance undertakings must re-register with the Companies Registration Office as a DAC unless they are public limited companies. The Companies Act 2014 does not require other regulated financial service providers which are companies to convert to DACs. Likewise, the Central Bank will not require the entities mentioned above to convert to DACs as it is of the view that corporate structuring is a matter for each entity. Notwithstanding the corporate structure chosen, regulated financial service providers must comply with all regulatory requirements applicable to them.

### ID 1107

Q. *Does the Central Bank require UCITS management companies, alternative investment fund managers, AIF management companies, fund administrators, depositaries and investment firms which are taking action to re-register as a company type recognised under the Companies Act 2014 to submit amendments to their constitution?*

A. No. However, where companies re-register as DACs a copy of the new certificate of incorporation should be submitted.

### ID 1112

Q. I am an existing QIF with a wholly owned Irish subsidiary that is converting to a private company limited by shares ('CLS') under the Companies Act 2014. Section 8.3.1 of the NU application form provides that my "subsidiary must have an objects clause which reflects the investment objective of the Irish authorised scheme". How should I now comply with this requirement given that, in accordance with the Companies Act 2014, CLS do not have an objects clause?

A. As a CLS cannot have an objects clause, the new constitutional document of the subsidiary should state that the subsidiary will be run in a manner which reflects the investment objective and policy of the QIF.

## Auditors

### ID 1116

Q. *I am an umbrella ICAV. Are my sub-funds permitted to have separate auditors?*

A. No. The Central Bank does not permit sub-funds within umbrella funds, including ICAVs to have separate auditors.

## PRIIPS Regulation 2014

### ID 1125

Q. *Are QIAIFs required to produce a PRIIPs KID?*

A. Yes if the QIAIF can be marketed to investors who are not professional clients under Directive 2014/65/EU.

### ID 1126

Q. *Are AIFs in scope of the PRIIPs Regulation required to file KIDs with the Central Bank?*

A. The Central Bank is likely to require AIFs in scope of PRIIPs to file KIDs on an ex post basis. This will include periodic updates to existing KIDs. Once requirements in this regard are in place the Central Bank will advise accordingly.

## Liquidity Stress Testing

### ID 1131

Q. *How often should Liquidity Stress Testing be carried out?*

A. The Central Bank considers that liquidity stress testing should generally be performed at least quarterly. The determination of a higher or lower frequency should be based on the fund's characteristics and the reasons for such a determination should be recorded in the liquidity stress testing policy.

## ID 1132

Q. *Should an Alternative Investment Fund Manager conduct Liquidity Stress Testing (LST) at the design phase of the fund's lifecycle?*

A. Yes. ESMA's Guidelines on liquidity stress testing in UCITS and AIFs set out that liquidity stress testing should, where appropriate, be employed at all stages in a fund's lifecycle. The use of liquidity stress testing at the design phase of an AIF's lifecycle should be carried out in order to adequately understand the potential risks that may impact the AIF, in various market conditions, throughout its lifecycle.

## ID 1133

Q. *The ESMA Guidelines on liquidity stress testing in UCITS and AIFs, Section V.3 "Interaction with National Competent Authorities" states that managers should notify NCAs of material risks and actions taken to address them. How should this notification be made and what should be included in the notification?*

A. Notification to the Central Bank takes the form of a two-stage process.

Initial notification: The Central Bank requires that it be immediately informed via an ONR IF Regulatory Report if a stress test performed reveals a material risk.

Subsequent notification: In addition to this initial notification, where a stress test reveals a material risk, the manager should draw up an extensive report with the results of the stress testing and a proposed action plan. Where necessary, the manager should take action to strengthen the robustness of the AIF including actions that reinforce the liquidity or the quality of the assets of the AIF. The manager shall again immediately inform the Central Bank via an ONR IF Regulatory report of the measures taken, to include the extensive report and the action plan.

# ESMA Guidelines on marketing communications under the Regulation on cross-border distribution of funds (the 'ESMA Marketing Guidelines')

## ID 1148

Q. *I am a RIAIF marketing units in Ireland to retail investors and as such, I must comply with the Consumer Protection Code of the Central Bank[8]. Does the statement set out in paragraph 47 of the ESMA Marketing Guidelines satisfy the requirement of provision 9.36 of the Consumer Protection Code?*

A. Yes. Paragraph 47 of the ESMA Marketing Guidelines requires the following statement when information on past performance is presented:

*'Past performance does not predict future returns'.*

Provision 9.36 of the Consumer Protection Code sets out a similar warning statement when information on past performance is presented, however the wording is not identical.

The Central Bank considers that the statement as per the paragraph 47 of the ESMA Marketing Guidelines satisfies the requirements of 9.36 of the Consumer Protection Code.

[8] See Chapter 1, Part III, paragraph 4 of the Central Bank AIF Rulebook.

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