



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

2015

Consultation on amendments to AIF Rulebook

Consultation Paper CP99



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Introduction

1. The Central Bank's AIF Rulebook was introduced with effect from 22 July 2013 to coincide with the implementation of the Alternative Investment Fund Managers Directive¹ ('AIFMD'). The AIF Rulebook consolidated in a single document the conditions which the Central Bank imposes on authorised AIF², their managers (alternative investment fund managers ('AIFM') or AIF management companies) and depositaries³.
2. The AIF Rulebook has been revised a number of times since its introduction to take account of specific developments. For example, it was amended in September 2014 to provide for the introduction of a new regime for Loan Origination Qualifying Investor AIF and in March 2015 to reflect the enactment of the ICAV Act 2015.
3. When the AIF Rulebook was first published, the Central Bank undertook to keep it under review and to adjust it on a periodic basis where appropriate revisions are identified, for example through supervisory experience or stakeholder engagement. In keeping with that commitment, the Central Bank is now conducting a full review of the AIF Rulebook.
4. A number of proposed amendments have been identified. Many of these are technical in nature while others propose a change to existing policy. The purpose of this Consultation Paper is to set out details of these amendments and to elicit feedback from stakeholders on the proposed approach.

Format of this Consultation Document

5. Section I of this Consultation Paper details the proposed policy amendments and Section II describes the proposed technical changes. The corresponding proposed revisions to the AIF Rulebook are also outlined in this Consultation Paper.

Consultation responses

6. The Central Bank invites all stakeholders to provide comments on the proposed policy and technical changes identified in this Consultation Paper.
7. Please make your submissions electronically by email to fundspolicy@centralbank.ie or in writing, to:

**AIF Rulebook Consultation
Markets Policy Division
Central Bank of Ireland
Block D
Iveagh Court**

¹ Directive 2011/61/EU

² AIF are authorised by the Central Bank under: the Unit Trusts Act, 1990; the Investment Limited Partnerships Act 1994; the Investment Funds, Companies and Miscellaneous Provisions Act 2005; the Companies Act 2014; and the ICAV Act 2015.

³ Fund administrators are also subject to the AIF Rulebook but requirements in respect of these firms will move to the Central Bank Investment Firm Regulations which are currently subject to consultation.

**Harcourt Road
Dublin 2**

8. Responses should be submitted no later than 24 February 2016.
9. It is the policy of the Central Bank to publish all responses to its consultations. All responses will be made available on our website. Commercially confidential information should not be included in consultation responses. We will send an email acknowledgement to all responses sent by email. If you do not get an acknowledgement of an emailed response please contact us on 2246000 to correct the situation.

**Markets Policy Division
Central Bank of Ireland
November 2015**

Section I – Proposed policy changes

1. **Extend the category of investors who are provided with an exemption from the eligibility criteria and minimum subscription amount required to invest in a Qualifying Investor AIF**

Eligible investors are prescribed in the Qualifying Investor AIF chapter of the AIF Rulebook and they must subscribe a minimum of €100,000. Certain investors can be accepted without meeting these requirements as follows:

- The management company, general partner, investment manager or investment advisor;
- A director of one of the above;
- An employee of one of the above who is either directly involved in the investment activities of the Qualifying Investor AIF or is a senior experienced employee.

It is proposed to extend the list of entities in the first bullet point to include the AIFM or an entity within the AIFM's group.

The NU series of Notices, which were replaced by the AIF Rulebook, had a similar exemption but included “the promoter or an entity within the promoters group”. Review of AIF promoters was discontinued when AIFMD was implemented given the regulatory regime which now applies to AIFM. When transposing the eligible investor exemption to the AIF Rulebook, the Central Bank noted that an AIFM would either act as AIF management company and/or investment manager and therefore did not include references to AIFM. In the light of queries received by the Central Bank, is proposed to avoid any misunderstanding by specifically stating that AIFM group entities can avail of the exemption.

Proposed amendment to paragraph 4 on page 103 of AIF Rulebook November 2015:

4. The Qualifying Investors AIF may grant an exemption from the minimum subscription requirement to the following:
- (a) the management company or general partner;
 - (b) the AIFM or an entity within the AIFM's group;
 - ~~(c)~~ a company appointed to provide investment management or advisory services to the Qualifying Investor AIF;
 - ~~(d)~~ a director of the management company, investment company or general partner or a director of the AIFM or a director of a company appointed to provide investment management or advisory services to the Qualifying Investor AIF; and
 - ~~(e)~~ an employee of the management company, investment company or general partner, or an employee of the AIFM or an employee of a company appointed to provide investment management or advisory services to the Qualifying Investor AIF, where the employee;

- is directly involved in the investment activities of the Qualifying Investor AIF, or
- is a senior employee of the company and has experience in the provision of investment management services.

In the case of investments by employees, the Qualifying Investor AIF must ensure that the management company, investment company or general partner or AIFM, as appropriate, is satisfied that prospective unitholders fall within the criteria outlined at ~~(e)~~ above. The Qualifying Investor AIF must ensure that investing employees must certify to it that they are availing of the exemption provided for in this sub-paragraph and that they are aware that the Qualifying Investor AIF is normally marketed solely to qualifying investors who are subject to a minimum subscription of €100,000.

Note: The footnotes in the final paragraph, which are included in the AIF Rulebook November 2015, will be retained without amendment.

2. Amend the reporting requirement which applies to AIF depositaries where they provide services to non-Irish AIF

AIF depositaries are required to provide a quarterly return to the Central Bank which provides aggregate information on non-Irish authorised investment funds to which they provide depositary services. The information is required for both prudential and statistical purposes and similar requirements apply to Fund Administrators, AIFMs and AIF Management Companies.

Under the current AIF Rulebook depositaries are not required to provide data in respect of investment funds which are included in the return provided by the other entities. It is proposed to remove this provision so that depositaries must always report even if another entity is also reporting separately on the services they provide for that investment fund.

The Central Bank proposes this change so that supervisors have an accurate picture of the amount of activity carried out by each regulated entity in their own right.

Proposed amendment to paragraph 1 of “Relationship with the Central Bank” on page 213 of AIF Rulebook November 2015:

1. Where a depositary provides services to an AIF not authorised by the Central Bank, it must be satisfied that the prospectus issued by the AIF does not imply, in any way, that the AIF is regulated by the Central Bank.

Where the depositary provides depositary services to AIFs not authorised by the Central Bank, it shall submit a quarterly return containing the following aggregate information, for all investment funds not authorised by the Central Bank to which services are provided, within each base currency category:

- domicile of the investment funds;
- number of investment funds;
- number of unitholders; and
- total net asset value.

~~Information is not required in respect of those investment funds, which are included in the return prepared by an authorised firm in accordance with paragraph 5 of section vii of chapter 3—Alternative Investment Fund Manager Requirements, paragraph 6 of section v of chapter 4—AIF Management Company Requirements or paragraph 1 of section iv of chapter 5—Fund Administrator Requirements.~~

3. Amend the capital and reporting requirements which apply to AIFMs and AIF Management Companies

A number of changes are proposed as follows:

AIFMs: While capital requirements applicable to AIFMs are set down in the AIFM Regulations 2013, the AIF Rulebook includes the template for reporting (Minimum Capital Requirement Report) with notes on compilation. The practice of including template reports in rulebooks was revised in the Central Bank UCITS Regulations. That approach is somewhat outdated given that these reports are now submitted via the Central Bank’s online reporting system. In addition, the list of expenses which can be deducted from the total expenditure figure was also updated in the Central Bank UCITS Regulations. It is proposed to align the AIFM capital reporting requirements with those applicable to UCITS management companies as set out in the

Central Bank UCITS Regulations. This will be done by replacing Annex I with requirements which mirror Regulation 96 of the Central Bank UCITS Regulations.

Proposed text to replace the fifth sentence of “Operating conditions” on page 157 and Annex I on pages 164 to 170 of AIF Rulebook November 2015:

Capital

1. Every set of half-yearly financial accounts shall be accompanied by a minimum capital requirement report.
2. A minimum capital requirement report of an AIFM shall be:
 - a. prepared in the format prescribed by the Central Bank from time to time; and
 - b. completed by the relevant AIFM.
3.
 - a. An AIFM shall hold its expenditure requirement as specified in Regulation 10(5) of the AIFM Regulations in the form of eligible assets as defined in subparagraph (4).
 - b. For the purpose of subparagraph (a) the expenditure requirement is calculated as one quarter of an AIFM’s total expenditure taken from the most recent annual accounts.
 - c. For the purpose of subparagraph (b) total expenditure includes all expenditure incurred by an AIFM less the following items which may be deducted:
 - (i) profit shares;
 - (ii) bonuses;
 - (iii) net losses arising in the translation of foreign currency balances;
 - (iv) shared commissions and fees payable which are directly related to commission;

- (v) fees, brokerages and other charges which are paid to clearing houses, exchanges and brokers;
- (vi) fees to tied agents;
- (vii) interest paid on client money; and
- (viii) any other non-recurring expenses from non-ordinary activity.

4. a. An eligible asset must be:
- (i) accessible easily;
 - (ii) free from any lien or charge; and
 - (iii) maintained outside the AIFM's group.
- b. The eligible assets, shall be held in an account that is separate to the account that is, or the accounts that are, used by an AIFM for the day-to-day running of its business.
- c. The Central Bank must be provided with a recent written statement, from a source independent of the AIFM, evidencing the location of every eligible asset.
- d. Eligible assets are calculated as the value of total assets of the AIFM less the aggregate value of the items of the AIFM that are set out in clauses (i) to (xi):
- (i) fixed assets,
 - (ii) intangible assets,
 - (iii) cash or cash equivalents held with group companies,
 - (iv) debtors,
 - (v) bad debt provisions,
 - (vi) prepayments,
 - (vii) intercompany amounts (gross),
 - (viii) loans issued,
 - (ix) investment funds that are not daily dealing,

(x) investments in any investment fund that is promoted by a group company of the AIFM or to which a group company of the AIFM provides services, and
 (xi) any other asset that is not accessible easily and which is not included in clauses (i) to (x),
 where “total assets” are non-current assets plus current assets.

5.
 - a. An AIFM must be in a position to demonstrate its ongoing compliance with the capital requirements of the AIF Rulebook and of the AIFM Regulations.
 - b. Where the financial position of an AIFM changes materially at any time between reporting dates, which would impact on its compliance with its regulatory capital requirements, that AIFM must:
 - (i) notify the Central Bank immediately; and
 - (ii) take any necessary steps to rectify its position.

AIF Management Companies: Capital requirements applicable to AIF Management Companies are prescribed in the AIF Rulebook. These are consistent with requirements which are applied to Fund Administrators. As noted in footnote 3 above, the Fund Administrator requirements are moving from the AIF Rulebook to the Central Bank Investment Firm Regulations. Those regulations were published for public consultation in Consultation Paper CP97 on 4 November 2015. The consultation period is open until 27 January 2016 and CP97 is available at <http://www.centralbank.ie/regulation/poldocs/consultation-papers/Pages/default.aspx>

Question 1 of CP97 proposes certain amendments to capital requirements for Fund Administrators and the proposed rules are set out in Part 5 of the Central Bank Investment Firms Regulations. It is proposed to apply the same capital rules to AIF Management Companies and to amend the AIF Management Companies chapter of the AIF Rulebook accordingly.

4. Extend the list of requirements from the AIFM Regulations 2013 which apply to Qualifying Investor AIFs with registered AIFMs

Under AIFMD Member States are not required to authorise small AIFMs and these AIFMs must only be registered with and report annually to national competent authorities. They are not

subject to AIFMD related requirements including organisation, capital, risk management, liquidity management etc. and consequently cannot avail of the AIFMD passport to manage and/or market AIF in the EU.

Qualifying Investor AIFs are permitted to appoint a registered AIFM for an initial start-up period of two years within which the AIFM must be authorised or an authorised AIFM be appointed. During this initial two years the Qualifying Investor AIF is effectively subject to the regime which applied to Qualifying Investor AIFs before AIFMD was introduced. This is achieved through the application of certain requirements from the AIFM Regulations 2013⁴.

It is proposed to extend this list of requirements to include the following given their importance:

- (i) Regulation 13(1)(f) which requires authorised AIFM to treat all investors fairly; and
- (ii) Regulation 24(2) which requires authorised AIFM to inform investors of any arrangement made by the depositary to contractually discharge itself of liability and of any changes with respect to depositary liability without delay.

Proposed amendment to paragraph 1 on page 153 of AIF Rulebook November 2015:

1. Where a Qualifying Investor AIF has a registered AIFM, the registered AIFM must comply with the following provisions of the AIFM Regulations:
 - (a) General principles – Regulation 13(1)(f)
 - ~~(b)~~ Delegation – Regulation 21(1)(f)
 - ~~(c)~~ Liquidity management – Regulation 18(3)
 - ~~(d)~~ Valuation – Regulation 20(1) to (7) and 1st sentence of Regulation 20(15)
 - ~~(e)~~ Transparency obligations – Regulation 23 excluding Regulation 23(2)(e) and Regulation 23(2)(f) and Regulation 24 excluding Regulations 24(1)(e), 24(1)(p), ~~24(2)~~, 24(4) and 24(5).

5. Align the rules which apply to collateral received by Retail Investor AIFs under an OTC derivative or a repo / securities lending contract and the rules which reference external credit ratings with the rules recently introduced for UCITS

The rules which apply to collateral received by Retail Investor AIFs under an OTC derivative contract, a repurchase or reverse repurchase agreement or a securities lending contract are no

⁴ S.I. No. 257 of 2013

longer in keeping with the rules which are applied to UCITS in these areas. This is because the UCITS rules, on which the Retail Investor AIF rules are based, were recently amended taking into account amendments to the relevant ESMA guidelines. It is proposed to amend the Retail Investor AIF requirements in order to align them with those applied to UCITS. This will be done by revising the current collateral rules to mirror the requirements Regulation 24 of the Central Bank UCITS Regulations.

It is also proposed to include in that alignment amendments to the requirements for eligible counterparties. These are currently based on a minimum credit rating. In line with the approach which has been applied in respect of UCITS, it is proposed to include reference to a threshold which AIFMs must apply in their credit assessments of these entities. It is also proposed to amend the references to external credit ratings in the investment rules for Retail Investor AIF Money Market Funds and Qualifying Investor AIF Money Market Funds to align with the approach taken to external credit ratings in the equivalent rules for UCITS.

Proposed amendment to paragraph 3(b) on page 25 of AIF Rulebook November 2015:

- (b) in the case of a counterparty which is not a relevant institution, where the counterparty:
- (i) was subject to a credit rating by an agency registered and supervised by ESMA that rating shall be taken into account by the responsible person in the credit assessment process; and
 - (ii) where a counterparty is downgraded to A-2 or below (or comparable rating) by the credit rating agency referred to in subparagraph (i) this shall result in a new credit assessment being conducted of the counterparty by the responsible person without delay.
- ~~the counterparty has a minimum credit rating of A-2 or equivalent, or is deemed by the Retail Investor AIF to have an implied rating of A-2 or equivalent. Alternatively, an unrated counterparty will be acceptable where the Retail Investor AIF is indemnified or guaranteed against losses suffered as a result of a failure by the counterparty, by an entity which has and maintains a rating of A-2 or equivalent;~~

Proposed amendment to paragraph 5(c) on page 27 of AIF Rulebook November 2015:

(c) Issuer credit quality: ~~Where the collateral issuer is not rated A-1 or equivalent, conservative haircuts must be applied; Collateral received should be of high quality.~~ The Retail Investor AIF shall ensure that:

(i) where the issuer was subject to a credit rating by an agency registered and supervised by ESMA that rating shall be taken into account by the responsible person in the credit assessment process; and

(ii) where an issuer is downgraded below the two highest short-term credit ratings by the credit rating agency referred to in (i) this shall result in a new credit assessment being conducted of the issuer by the responsible person without delay.

Proposed amendment to paragraph 11 on page 36 of AIF Rulebook November 2015:

11. ~~The counterparty to a repo contract or securities lending arrangement must have a minimum credit rating of A-2 or equivalent, or must be deemed by the Retail Investor AIF to have an implied rating of A-2 or equivalent. Alternatively, an unrated counterparty will be acceptable where the Retail Investor AIF is indemnified or guaranteed against losses suffered as a result of a failure by the counterparty, by an entity which has and maintains a rating of A-2 or equivalent. Where a counterparty to a repurchase or a securities lending agreement, which has been entered into by the Retail Investor AIF:~~

(a) was subject to a credit rating by an agency registered and supervised by ESMA that rating shall be taken into account by the responsible person in the credit assessment process; and

(b) where a counterparty is downgraded to A-2 or below (or comparable rating) by the credit rating agency referred to in subparagraph (a) this shall result in a new credit assessment being conducted of the counterparty by the responsible person without delay.

Proposed amendment to paragraph 3(a) on page 79 and 3(a) on page 81 of AIF Rulebook November 2015:

(a) the credit quality of the instrument, ~~(a money market instrument may not be considered to be of high quality unless it has been awarded one of the two highest available short term credit ratings by each recognised credit rating agency that has rated the instrument, or, if the instrument is not rated, it is of an equivalent quality as determined by the Retail Investor AIF).~~ Where a money market instrument:

(i) was subject to a credit rating by an agency registered and supervised by ESMA that rating shall be taken into account by the responsible person in the credit assessment process; and

(ii) where a money-market instrument is downgraded below the two highest short-term credit ratings by the credit rating agency referred to in clause (i) this shall result in a new credit assessment being conducted of the instrument by the responsible person without delay.

Credit quality must be monitored on an on-going basis;

Proposed amendment to paragraph 3(a) on page 133 and 3(a) on page 135 of AIF Rulebook November 2015:

(a) the credit quality of the instrument, ~~(a money market instrument may not be considered to be of high quality unless it has been awarded one of the two highest available short term credit ratings by each recognised credit rating agency that has rated the instrument, or, if the instrument is not rated, it is of an equivalent quality as determined by the Qualifying Investor AIF).~~ Where a money market instrument:

(i) was subject to a credit rating by an agency registered and supervised by ESMA that rating shall be taken into account by the responsible person in the credit assessment process; and

(ii) where a money-market instrument is downgraded below the two highest short-term credit ratings by the credit rating agency referred to in clause (i) this shall result in a new credit assessment being conducted of the instrument by the responsible person without delay.

Credit quality must be monitored on an on-going basis;

6. Clarify that the requirement to hold minimum capital as eligible assets and in a separate account does not apply to internally-managed AIF

Under AIFMD, certain AIF can be internally-managed. In this case certain of the AIFM rules apply including those relating to capital. In the case of AIFMs the Central Bank has issued additional rules with regard to capital and, in particular, that the minimum capital to be held in the form of eligible assets must be held in an account that is separate to the account used by the AIFM for the day-to-day running of its business.

It was not intended that this obligation should apply to internally-managed AIF. Accordingly it is proposed to clarify this position.

Proposed amendment to paragraph 5.2 on page 166 of AIF Rulebook November 2015:

5.2 Except in the case of internally managed AIF, ~~the~~ Central Bank requires Eligible Assets to be held in an account that is separate to the account(s) used by ~~the~~ AIFM for the day-to-day running of its business.

7. Remove all references to bearer shares in the AIF Rulebook

Reference to the possibility for both Retail investor AIF and Qualifying Investor AIF to issue bearer shares, subject to Central Bank approval, was carried over to the AIF Rulebook in 2013 from the pre-AIFMD regulatory regime. Issue of bearer shares by investment funds is no longer permitted under company law and it is proposed to amend the AIF Rulebook accordingly.

Proposed amendment to paragraph 9 on page 38 of AIF Rulebook November 2015:

9. The Retail Investor AIF may ~~only:~~
- ~~(a) — issue bearer securities with the prior approval of the Central Bank and where such activity is permitted by its constitutional documents.~~
 - ~~(b) — issue registered certificates where such activity is permitted by its constitutional documents.~~

The Retail Investor AIF shall attach rights in proportion to the fraction of a unit held except for voting rights which can only be exercised by whole units. The Retail Investor AIF shall ensure that the certificates ~~and bearer securities~~ are signed by the depository. This signature may be reproduced mechanically.

Proposed amendment to paragraph 1(l)(iv) on page 60 of AIF Rulebook November 2015:

- (iv) the characteristics of the units: whether they are registered ~~or bearer;~~

Proposed amendment to paragraph 7 on page 107 of AIF Rulebook November 2015:

7. The Qualifying Investor AIF may ~~only:~~
- ~~(a) — issue bearer securities with the prior approval of the Central Bank and where such activity is permitted by its constitutional documents;~~
 - ~~(b) — issue registered certificates where such activity is permitted by its constitutional documents.~~

The Qualifying Investor AIF shall attach rights in proportion to the fraction of a unit held except for voting rights which can only be exercised by whole units. The Qualifying Investor AIF shall ensure that the certificates ~~and bearer securities~~ are signed by the depository. This signature may be reproduced mechanically.

Proposed amendment to paragraph 1(l)(iv) on page 122 of AIF Rulebook November 2015:

- (iv) the characteristics of the units: whether they are registered ~~or bearer;~~

8. Require AIFMs and AIF Management Companies to produce a second set of half-yearly accounts

The Central Bank UCITS Regulations introduced a requirement that UCITS management companies must produce an additional set of half-yearly reports covering the second half of the financial year. This is to provide the Central Bank with more complete and timely information and will allow the Central Bank to compare and analyse reports from the first 6 months of the year with the second 6 months.

It is proposed to align the AIF Rulebook with the Central Bank UCITS Regulations so that AIFMs and AIF Management Companies will be required to produce half-yearly reports covering the second half of the financial year.

Proposed amendment to first three sentences of “Operating conditions” on page 157 of AIF Rulebook November 2015:

The AIFM shall prepare and submit (i) two sets of half-yearly financial accounts covering the first six months and second six months of the financial year respectively and (ii) annual audited accounts of the AIFM to the Central Bank. The half-yearly accounts shall be submitted within two months of ~~each~~ the half year end and the annual audited accounts within four months of the year end. Where the AIFM is an internally managed authorised AIF, (i) it is not required to produce half-yearly accounts covering the second six months of the financial year and (ii) the half-yearly financial accounts shall be submitted within two months of the half year end and the annual audited accounts within six months of the year end.

Proposed amendment to first two sentences of paragraph 3 on page 176 of AIF Rulebook November 2015:

3 The AIF management company shall submit (i) two sets of half-yearly financial accounts covering the first six months and second six months of the financial year respectively and (ii) annual audited accounts of the AIF management company to the Central Bank. The half-yearly accounts shall be submitted within two months of ~~each~~ the half-year end and the annual accounts within four months of the year end.

Section II – Proposed technical changes

1. Clarify which rules apply to Qualifying Investor AIF with non-EU AIFMs

It is proposed to clarify that Part III of the Qualifying Investor AIF chapter of the AIF Rulebook applies to Qualifying Investor AIFs with non-EU AIFMs.

Part III currently applies certain requirements to Qualifying Investor AIF with small AIFMs. As noted under point 5, Annex I above, under AIFMD, Member States are not required to authorise small AIFMs (registered AIFMs) and the Central Bank permits Qualifying Investor AIFs to appoint a registered AIFM for an initial start-up period of two years.

Under AIFMD Member States may permit non-EU AIFMs to manage and/or market AIFs to professional investors in their jurisdictions. These non-EU AIFMs cannot avail of the AIFMD passport. As is the case for registered AIFMs, the Central Bank imposes the equivalent of the regime which applied to Qualifying Investor AIFs before AIFMD was introduced. We have indicated that we will review our policy once the passport for non-EU AIFMs becomes available. In the interim the AIF Rulebook should be amended to clarify the regulatory approach.

Proposed amendment to first line of paragraph 1 on page 153 of AIF Rulebook November 2015:

1. Where a Qualifying Investor AIF has
- (a) a registered AIFM, the registered AIFM must; or
- (b) a non-EU AIFM, the Qualifying Investor AIF must

comply with the following provisions of the AIFM Regulations:

Proposed amendment to paragraph 2 on page 153 of AIF Rulebook November 2015:

2. Where a Qualifying Investor AIF has
- (a) a registered AIFM, the registered AIFM must; or
- (b) a non-EU AIFM, the Qualifying Investor AIF must

ensure that a single depository is appointed in accordance with Regulation 22(1).

Proposed amendment to first line of paragraph 3 on page 153 of AIF Rulebook November 2015:

3. Where a Qualifying Investor AIF has

(a) a registered AIFM, the registered AIFM must; or

(b) a non-EU AIFM, the Qualifying Investor AIF must

comply with the following provisions of AIFMD Level 2:

2. Remove the rule in relation to approval by the Central Bank for changes in direct or indirect ownership of AIFMs

Approval of the Central Bank is required in respect of any proposed change in direct or indirect ownership or in qualifying holdings of AIFMs.

It is not necessary to include this rule in the AIF Rulebook because under the AIFM Regulations 2013 an AIFM cannot be authorised unless *inter alia* the Central Bank is satisfied about the suitability of the shareholders who have qualifying holdings.⁵ Changes to ownership post authorisation must be notified to the Central Bank for decision.⁶

Proposed amendment to paragraph 3 on page 161 of AIF Rulebook November 2015:

~~3. Approval of the Central Bank is required in respect of any proposed change in direct or indirect ownership or in qualifying holdings. A qualifying holding for the purpose of this condition is defined in Regulation 5(1) of the AIFM Regulations.~~

3. Amend the rule in relation to approval by the Central Bank for changes in direct or indirect ownership of AIF Management Companies

Under the AIF Rulebook approval of the Central Bank is required in respect of proposed changes in direct or indirect ownership or in qualifying holdings for AIF Management Companies.

⁵ Regulation 8(2)(b) and Regulation 9(1)(a)(iv) of the AIFM Regulations 2013

⁶ Regulation 11 of the AIFM Regulations 2013

It is proposed to amend a typographical error in the text to require approval of proposed changes in qualifying holdings and define a qualifying holding with reference to direct or indirect shareholdings.

Proposed amendment to paragraph 5 on page 178 of AIF Rulebook November 2015:

5. Approval of the Central Bank is required in respect of any proposed change in ~~direct or indirect ownership or in~~ qualifying holdings. A qualifying holding for the purpose of this condition is defined as a direct or indirect shareholding of 10 % or more of an AIF management company.

4. **Remove the rule in relation to Client Asset Requirements issued under the MiFID Regulations where AIFMs propose to hold client asset accounts for processing subscriptions and redemption monies of AIFs**

The rules issued under MiFID are now revoked and the Central Bank's Investor Money Regulations issued under the Central Bank (Supervision and Enforcement) Act 2013 are applicable. It is not necessary for the AIF Rulebook to include this rule because AIFMs are included in the scope of those Regulations.

Proposed amendment to paragraph 1 of "Permitted activities" on page 161 of AIF Rulebook November 2015:

- ~~1. As part of the provision of collective portfolio management functions, an AIFM may maintain client asset accounts for processing subscriptions and redemption monies. In such cases, the AIFM shall comply, mutatis mutandis, with the Client Asset Requirements issued by the Central Bank under European Communities (Markets in Financial Instruments) Regulations, 2007 ("the MiFID Regulations").~~

5. **Clarify the rules that apply when a Qualifying Investor AIF invests more than 50% in a single unregulated investment fund**

Qualifying Investor AIFs may invest in unregulated investment funds provided that investment in any one underlying fund is limited to 50% of net assets. This rule does not apply where the

Qualifying Investor AIF has a minimum subscription of €500,000 and provides certain disclosures.

Stakeholder feedback on the text as set out in the current AIF Rulebook was that the text gave rise to some misunderstanding where Qualifying Investor AIFs avail of the exemption, in particular with regard to an obligation to provide investors with periodic reports from the underlying unregulated investment fund. It is proposed to clarify the AIF Rulebook accordingly.

Proposed amendment to first line of paragraph 7 on page 142 of AIF Rulebook November 2015:

7. Paragraphs 1-2 to 5 and 8 of this section does not apply in circumstances where:

6. Clarify the rules which apply where AIFs establish subsidiaries

The AIF Rulebook requires that a subsidiary must not appoint any third parties or enter into any contractual arrangements unless the AIF is a party to such appointments or contractual arrangements.

It is proposed to clarify that the reference to contractual arrangements is to those arrangements relating to the appointment of third parties.

Proposed amendment to paragraph 1(d) on page 48 of AIF Rulebook November 2015:

(d) the subsidiary must not appoint any third parties ~~or enter into any contractual arrangements~~ unless the Retail Investor AIF is a party to such appointments ~~or contractual arrangements~~;

Proposed amendment to paragraph 1(d) on page 113 of AIF Rulebook November 2015:

(d) the subsidiary must not appoint any third parties ~~or enter into any contractual arrangements~~ unless the Qualifying Investor AIF is a party to such appointments ~~or contractual arrangements~~;

7. Clarify that a Retail Investor AIF which invest in an underling fund of funds is not subject to the obligation to ensure that the underlying fund of funds does not itself invest more than 30% in other funds

Retail Investor AIFs may invest in other investment funds provided that the funds in which they invest do not themselves invest more than 30% in other investment funds. Retail Investor AIFs

may also invest in an underlying investment fund which is itself a fund of funds provided that the fund is regulated and due attention is brought to the higher fees which will arise from this layered structure. The AIF Rulebook implies that the underlying fund of funds could not invest more than 30% in other funds. It is proposed to amend the AIF Rulebook to clarify this.

Proposed amendment to paragraph 1 on page 91 of AIF Rulebook November 2015:

1. The Retail Investor AIF may invest more than 30% of net assets in an open-ended investment fund and may disregard paragraphs 10 and 11 of section 1.ii (*Investment restrictions*) of Part I provided that the underlying fund is a Category 1 investment fund or a Category 2 investment fund.

8. Clarify the conditions which apply where Retail Investor AIFs create share classes

The text concerning the creation of Retail Investor AIF share classes in the current AIF Rulebook could be interpreted to invalidate the application of some of the rules which apply when share classes are created. It is proposed to clarify this text.

Proposed amendment to paragraph 1 of “Share classes” on page 44 of AIF Rulebook November 2015:

1. ~~Subject to paragraphs 3 and 4 below, a~~ Retail Investor AIF shall only create one or more share classes within the Retail Investor AIF, or within a sub-fund of an umbrella Retail Investor AIF, where the following requirements are satisfied:
 - (a) the constitutional document of the Retail Investor AIF must provide for the creation of share classes. In the case of an umbrella Retail Investor AIF the provision in the constitutional document to establish the way in which sub-funds, and share classes within sub-funds, are created must be clear and unambiguous;
 - (b) each Retail Investor AIF or sub-fund thereof must consist of a single common pool of assets;
 - (c) ~~subject to paragraphs 3 and 4 below,~~ assets may not be allocated to individual share classes;
 - (d) the capital gains/losses and income arising from that pool of assets must be distributed and/or must accrue equally to each unitholder relative to their participation in the Retail Investor AIF or sub-fund thereof;
 - (e) unitholders in a share class must be treated equally; and
 - (f) where more than one share class exists, all the unitholders in the different share classes must be treated fairly.

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