



2016

## Feedback Statement on CP99 - Consultation on amendments to the AIF Rulebook



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## Introduction

1. The AIF Rulebook was introduced with effect from 22 July 2013 to coincide with implementation of AIFMD. It sets out in a single rulebook format the conditions which the Central Bank of Ireland (the “Central Bank”) imposes on authorised AIF<sup>1</sup>, AIF management companies and depositaries<sup>2</sup>.
2. In keeping with the commitment set out when the AIF Rulebook was published, the requirements have been kept under review in the intervening period and a number of proposed amendments were identified.
3. On 30 November 2015 the Central Bank published consultation paper *CP99 Consultation on amendments to AIF Rulebook* (“CP99”). CP99 outlined certain technical and policy changes proposed to be made to the AIF Rulebook by the Central Bank.
4. Stakeholders were invited to provide observations and comments on the proposed amendments. The closing date for comments was 24 February 2016 and four responses were received.
5. This document sets out Central Bank feedback on responses received to CP99.
6. Consistent with the approach to UCITS, the AIF Rulebook is being converted into regulations to be issued by the Central Bank under section 48(1) of the Central Bank (Supervision and Enforcement) Act 2013 (the “CBI AIF Regulations”). Draft CBI AIF Regulations will be published for consultation.

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<sup>1</sup> AIFs 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.

<sup>2</sup> 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.

## Feedback on proposed policy changes to the AIF Rulebook

1. **Proposal to 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.**

One respondent sought clarification on the ability of a knowledgeable employee within the AIFM's group to benefit from such an exemption.

**Central Bank:** The Central Bank agrees that the policy intention is to permit knowledgeable employees within the AIFM's group benefit from the exemption. This matter will be clarified in the CBI AIF Regulations.

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

One response was received to this proposal which noted that maintaining a register of numbers of unitholders or calculating the net asset value of an investment fund was not a service provided by depositaries. This respondent also queried why depositaries are required to report given that AIFMs are required to ensure that depositaries are appointed.

**Central Bank:** The Central Bank considers that this reporting is appropriate. The report required in relation to non-Irish AIFs is a standard document applied for a considerable period to depositaries.

The Central Bank is concerned to ensure it has an accurate overview of the level of services provided by both Irish administrators and depositaries. Therefore, the Central Bank will require statistics in order to identify data which relates to (i) funds administered in Ireland and (ii) funds which are beneficiaries of depositary services.

3. **Proposal to amend the capital and reporting requirements which apply to AIFMs and AIF management companies.**

No responses were received in relation to the proposal to amend the capital requirements applying to AIF management companies. One respondent asked that the template report be retained as reference material for prospective AIFMs.

**Central Bank:** Amendments to capital requirements will be reflected in the CBI AIF Regulations. Requisite detail for reports from AIFMs is available on the Central Bank website.

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

No responses were received to this proposal.

**Central Bank:** The Central Bank is proceeding with this proposal.

5. **Proposal to 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.**

One respondent highlighted a perceived inconsistency between the required response to downgrades, depending on whether the downgrade related to eligible counterparties or to the collateral received by a Retail Investor AIF. The view expressed was that, in the context of a downgrade of collateral, the requirement to conduct a credit assessment would only apply where a rating applied to collateral was downgraded below the two highest short-term credit ratings and that subsequent or sharper downgrades would not attract a consequential credit assessment.

**Central Bank:** The inconsistency is noted and will be addressed in the CBI AIF Regulations.

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

No responses were received to this proposal.

**Central Bank:** The Central Bank is proceeding with this clarification.

7. **Proposed removal of all references to bearer shares in the AIF Rulebook.**

Two respondents agreed with this proposal.

**Central Bank:** This change will be reflected in the CBI AIF Regulations.

8. **Proposed requirement for AIFMs and AIF management companies to produce a second set of half-yearly accounts.**

Two responses, both of which disagreed with this proposal, were received. Both were of the view that the requirement was disproportionate and imposed increased costs and compliance burdens in the absence of an identifiable benefit.

**Central Bank:** The Central Bank acknowledges the concerns raised in responses received to this proposal. The Central Bank continues, however, to be of the view that the submission of half-yearly management accounts covering both 6 month periods is an important and necessary supervisory tool. These accounts will provide the Central Bank with information on a more timely and complete basis and will allow the Central Bank to compare and analyse reports from the first 6 months of the year with the second 6 months. This is not possible under current reporting requirements. The Central Bank is of the view that half-yearly management accounts should also provide better quality and more timely key risk indicators and alerts on PRISM. This approach is consistent with the reporting requirements for UCITS management companies and for other firms supervised by the Markets Directorate and will be reflected in the CBI AIF Regulations. On this basis, the Central Bank is proceeding to introduce this requirement.

## Feedback on proposed technical changes to the AIF Rulebook

### 1. Proposed clarification on which rules apply to Qualifying Investor AIF with non-EU AIFMs.

Two respondents welcomed the proposal to outline the obligations applicable to QIAIFs managed by non-EU AIFMS. Both responses requested clarity on the scope of application so as to ensure it was clear that it was only those QIAIFs which were authorised after 22 July 2013 and which had non-EU AIFMS which were in scope.

**Central Bank:** The Central Bank draws attention to question ID 1031 of its AIFMD Questions and Answers which clarifies this point.

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

One respondent highlighted the possibility that the Central Bank would not be notified in advance in the event of a material change in a qualifying shareholding.

**Central Bank:** The Central Bank agrees that this matter should be clarified in the CBI AIF Regulations.

### 3. Proposed amendment of the rule in relation to approval by the Central Bank for changes in direct or indirect ownership of AIF management companies.

No responses were received to this proposal.

**Central Bank:** The Central Bank is proceeding with this clarification.

### 4. Proposed removal of 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.

No responses were received to this proposal.

**Central Bank:** The Central Bank is proceeding with this clarification.

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

No responses were received to this proposal.

**Central Bank:** The Central Bank is proceeding with this clarification.

6. **Proposed clarification of the rules which apply where AIFs establish subsidiaries.**

No responses were received to this proposal.

**Central Bank:** The Central Bank is proceeding with this clarification.

7. **Proposed clarification that a Retail Investor AIF which invests in an underlying 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.**

One response was received to this proposal which questioned the application of this clarification to (i) a Retail Investor AIF that invests less than 30% of net assets in a underlying fund of funds, or (ii) a Retail Investor AIF that invests in two or more underlying investment funds which themselves are fund of funds.

**Central Bank:** The Central Bank notes that the proposed clarification is specific to Retail Investor AIFs which propose to invest more than 30% (and up to 100%) of net assets in another single investment fund and so the issues raised by the respondent do not apply to that scenario. The change set out in CP 99 will be reflected in the CBI AIF Regulations.

The Central Bank also notes that a Retail Investor AIF is permitted to invest up to 30% of net assets in any single regulated investment fund, including a fund of funds. It is only where a Retail Investor AIF invests more than 30% in aggregate in other investment funds that it is required to ensure that the individual funds do not themselves invest more than 30% in other funds.

8. **Proposed clarification of the conditions which apply where Retail Investor AIFs create share classes.**

No responses were received to this proposal.

**Central Bank:** The Central Bank is proceeding with this clarification.

## **Next Steps**

1. The Central Bank will proceed with preparation of the CBI AIF Regulations and shall, in due course, consult on the draft regulations.

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