



Banc Ceannais na hÉireann  
Central Bank of Ireland

Eurosystem

# Consultation Paper No 152

## Own Funds Requirements for UCITS Management Companies and AIFMs authorised to perform discretionary portfolio management

December 2022

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## Introduction

1. This consultation paper signals the Central Bank of Ireland's (the "Central Bank's") proposed approach to the own funds requirements for management companies authorised under Regulation 16(2) of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (the "UCITS Regulations")<sup>1</sup> ("UCITS Management Companies") and for Alternative Investment Fund Managers authorised under Regulation 7(4) of the European Union (Alternative Investment Fund Managers) Regulations 2013 (the "AIFM Regulations")<sup>2</sup> ("AIFMs"). UCITS Management Companies and AIFMs so authorised may perform discretionary portfolio management and provide additional non-core services under those regulations respectively.

## Context

2. The own funds requirements for UCITS Management Companies and AIFMs are set out in Regulation 17 of the UCITS Regulations and Regulation 10 of the AIFM Regulations respectively.
3. These own funds requirements take into account the value of the portfolios for which UCITS Management Companies and AIFMs perform collective portfolio management<sup>3</sup>. However, they do not take into account the discretionary portfolio management and additional non-core services for which UCITS Management Companies and AIFMs may be authorised under Regulation 16(2) of the UCITS Regulations and Regulation 7(4) of the AIFM Regulations, respectively. Therefore UCITS Management Companies and AIFMs may not hold

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<sup>1</sup> S.I. No. 352 of 2011.

<sup>2</sup> S.I. No. 257 of 2013.

<sup>3</sup> Where the value of portfolios of UCITS Management Companies or AIFMs exceeds €250,000,000 the UCITS Management Company or AIFM shall provide an additional amount of own funds which shall be equal to 0.02% of the amount by which the value of the portfolios of the UCITS Management Company or AIFM exceeds €250,000,000. The required total of the initial capital and the additional amount shall not exceed €10,000,000.

sufficient own funds to reflect the risks to the firm and the risks to clients arising from the provision of such additional services.

4. In order to address this risk and to align the own fund requirements applicable to UCITS Management Companies and AIFMs with MiFID investment firms that provide similar services (MiFID portfolio managers<sup>4</sup>) the Central Bank imposes an additional condition of authorisation requiring these UCITS Management Companies and AIFMs to comply with the own fund requirements applicable under Regulation 18(2) of the European Communities (Capital Adequacy of Investment Firms) Regulation 2006 (“Capital Adequacy of Investment Firms Regulations”). Any additional capital required is included in the Internal Capital Adequacy Assessment Process (ICAAP), which is required to be updated on at least an annual basis.
5. However, MiFID portfolio managers are now subject to the own funds requirements set out in Regulation (EU) 2019/2033 on the Prudential Requirements for Investment Firms (“the IFR”). Therefore, the current condition of authorisation no longer imposes an analogous prudential regime on UCITS Management Companies and AIFMs to that currently applied on MiFID portfolio managers.
6. Consequently the Central Bank considers it appropriate and timely to review and update the own funds requirement applicable to UCITS Management Companies and AIFMs to allow for continued alignment between the own funds requirement applicable to firms providing similar services.

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<sup>4</sup> An investment firm authorised to carry out the activity listed in paragraph 4 of Part I of Schedule 1 of S.I. No. 375 of 2017.

## Proposal

7. In determining its proposed approach towards the own funds requirement to be applied to UCITS Management Companies and AIFMs, the Central Bank has had due regard to its statutory powers and responsibilities<sup>5</sup> including its objective to protect the users of financial services<sup>6</sup>. Additionally, the Central Bank has had regard to the own funds requirement currently applied to MiFID portfolio managers providing similar services.
8. The Central Bank considered several options including, but not limited to:
  - a. Leaving the current condition of authorisation requiring UCITS Management Companies and AIFMs to comply with the own funds requirements applicable under Regulation 18(2) of Capital Adequacy of Investment Firms Regulations in place;
  - b. Waiting for the European Commission to develop an EU-wide prudential regime for UCITS Management Companies and AIFMs authorised to manage portfolios of investments; and
  - c. Proposing a model for UCITS Management Companies and AIFMs capital requirements based on similar requirements applicable to MiFID portfolio managers under the IFR.
9. In considering these options, the Central Bank gave due regard to the risks associated with the potential for UCITS Management Companies and AIFMs to be undercapitalised when compared to MiFID portfolio managers performing similar services.
10. Additionally in determining a proposed approach towards the own funds requirement to be applied to UCITS Management Companies and AIFMs, the

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<sup>5</sup> See, e.g., *Central Bank Act 1942* and *Central Bank (Supervision and Enforcement) Act 2013*

<sup>6</sup> *Central Bank Act 1942*, section 6A.

Central Bank considers that the maintenance of a level playing field between the own funds requirements for both types of firms is appropriate and justified.

11. Furthermore, it is not clear to the Central Bank that a harmonised European prudential regime addressing the capital requirements of UCITS Management Companies and AIFMs is likely to be in place in the near future.
12. Accordingly, in line with the own funds requirements applicable to MiFID portfolio managers, the Central Bank is proposing to apply different own funds requirements depending on whether the UCITS Management Company or AIFM is, or is not, small and non-interconnected (as such term is defined in the proposed requirements set out in Annex I and Annex II respectively).
13. Therefore, in summary, the Central Bank proposes that:
  - a. A UCITS Management Company or AIFM that meets all of the conditions to be a small and non-interconnected firm will be subject to the own fund requirement set out in Regulation 17 of the UCITS Regulations and Regulation 10 of the AIFM Regulations respectively.
  - b. A UCITS Management Company or AIFM that is not a small and non-interconnected firm will be required to have own funds of at least the highest of:
    - i. The total amount of initial capital and own funds which the UCITS Management Company or AIFM is required to hold pursuant to the UCITS Regulations or the AIFM Regulations, as applicable; or
    - ii. A new Risk to Client K-Factor requirement amount calculated in accordance with proposed new Regulation 100A of the Central Bank UCITS Regulations<sup>7</sup> as set out in Annex I hereto; or, a proposed amendment to Chapter 3 of the Central Bank AIF Rulebook, as set out in Annex II hereto (hereinafter Chapter 3 of the Central Bank AIF

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<sup>7</sup> Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investments in Transferable Securities) Regulations 2019 (S.I. No. 230 of 2019).

Rulebook), which will be imposed as a condition on the authorisation of each AIFM, as relevant.

14. In proceeding with this proposal, the Central Bank notes that
  - a. The capital requirements for UCITS Management Companies and AIFMs that would be classified as “small and non-interconnected” firms would be simplified - such firms would no longer be required to calculate the own funds requirement under Regulation 18(2) of the Capital Adequacy of Investment Firms Regulations and would not be required to calculate the K-factor requirement; and
  - b. The majority of UCITS Management Companies and AIFMs that may be required to calculate a K-Factor requirement would only be required to calculate K-AUM. This calculation is likely to represent a more appropriate and simplified own funds requirement calculation relative to that required under Regulation 18(2) of the Capital Adequacy of Investment Firms Regulations, thereby reducing administrative and regulatory costs for impacted firms.
  
15. UCITS Management Companies and AIFMs will continue to be required to have in place sound, effective and comprehensive arrangements, strategies and processes to assess and maintain an adequate level of internal capital on an ongoing basis and to submit an ICAAP questionnaire to the Central Bank on an annual basis. It is proposed that this requirement will be set out on a legislative basis through an addition to Part 11, Chapter 1 of the Central Bank UCITS Regulations as set out in Annex II for UCITS Management Companies; and as a

condition of authorisation of AIFMs reflected in an addition to Chapter 3 of the Central Bank AIF Rulebook as set out in Annex II.

**Question 1: Do you agree with the proposal to update the own fund requirements applicable to Management Companies and AIFMs given the application of the IFR to MiFID portfolio managers?**

**Please provide reasons for your answer.**

## Structure of this paper

16. The structure of this paper is set out as follows:
- Section I provides additional details with regard to the application of the Risk to Client K-Factor requirement;
  - Section II sets out the Central Bank's proposals with regard to transitional arrangements;
  - Section III deals with the reporting requirements arising from this proposal;
  - Section IV relates to the requirement to assess internal capital;
  - Annex I sets out the proposed amendments to the Central Bank UCITS Regulations;
  - Annex II sets out the proposed amendment to Chapter 3 of the Central Bank AIF Rulebook; and
  - Annex III lists questions raised in this paper.

## Consultation responses

17. The Central Bank invites all stakeholders to provide comments on the proposals outlined within this consultation paper. Responses should be submitted no later than **23 February 2023**.
18. Please make your submissions electronically by email to [fundspolicy@centralbank.ie](mailto:fundspolicy@centralbank.ie).
19. It is the policy of the Central Bank to publish all responses to its consultations. As 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 receive an acknowledgement, please contact us on +353 224 6000.

## Section I: Calculation of the Risk to Client K-Factor Requirement

### Conditions to be a “small and non-interconnected” firm

20. In order to determine whether a UCITS Management Company or AIFM needs to calculate the Risk to Client K-Factor requirement set out in proposed Regulation 100A of the Central Bank UCITS Regulations or in the proposed amendment to Chapter 3 of the AIF Rulebook, UCITS Management Companies and AIFMs will be required to assess whether they can be deemed “small and non-interconnected” firms. To do so a UCITS Management Company or AIFM must meet all of the conditions set out in proposed Regulation 100A of the Central Bank UCITS Regulations or proposed revised Chapter 3 of the AIF Rulebook.
21. To avoid double counting and to align with the own funds requirements applicable to MiFID portfolio managers, UCITS Management Companies and AIFMs will not be required to take their collective portfolio management into account in the determination of whether they would be considered a small and non-interconnected firm.

### Risk to Client K-Factor Requirement

22. The proposed Risk to Client K factor requirement is made up of the sum of the individual K-factors covering the business areas of UCITS Management Companies and AIFMs and is not subject to any limit.

$$\text{Risk to Client Requirement} = \text{K-AUM} + \text{K-CMH} + \text{K-ASA} + \text{K-COH}$$

Where further details regarding each of these terms is set out below and K-COH is only relevant for AIFMs.

23. To avoid double counting and to align with the own funds requirements applicable to MiFID portfolio managers, UCITS Management Companies and AIFMs will not be required to take into account their collective portfolio

management services in the calculation of the Risk to Client K-Factor requirement.

### K-AUM

24. AUM or assets under management refers to the value of assets that a UCITS Management Company or AIFM, respectively, manages on a discretionary portfolio basis and includes investment advice of an on-going nature.
25. UCITS Management Companies or AIFMs should calculate K-AUM in line with the requirements set out in the proposed regulation or the proposed amendment to Chapter 3 of the AIF Rulebook.

### K-CMH

26. CMH or client money held relates to the amount of money that a UCITS Management Company or AIFM, respectively, holds on behalf of a client.
27. Where a UCITS Management Company or AIFM holds client money it will be required to calculate K-CMH in line with the requirements set out in the proposed regulation or the proposed amendment to Chapter 3 of the AIF Rulebook.

### K-ASA

28. ASA or assets safeguarded or administered means the value of assets that a UCITS Management Company or AIFM safeguards and administers for clients irrespective of whether assets appear on the UCITS Management Company's or AIFM's own balance sheet or are in third party accounts.
29. The K-factor ASA will only apply if a UCITS Management Company or AIFM is also authorised for the ancillary service of safekeeping and administration and

should be calculated in line with the requirements set out in the proposed regulation or the proposed amendment to Chapter 3 of the AIF Rulebook.

## K-COH

30. COH or client orders handled means the value of orders that an AIFM authorised for reception and transmission of orders in relation to financial instruments handles for clients through the reception and transmission of client orders.
31. An AIFM authorised for the non-core service of reception and transmission of orders will be required to measure K-COH in line with the requirements set out in the proposed regulation or the proposed amendment to Chapter 3 of the AIF Rulebook.
32. The measurement of COH should exclude transactions that are already included in the calculation of AUM.

**Question 2: Do you agree with the manner in which the Risk to Client K-Factors are to be calculated and that the Risk to Client K-Factor requirement is not subject to a limit?**

**Please provide reasons for your answer.**

## Section II: Transitional Arrangements

33. MiFID portfolio managers can benefit from the transitional provisions set out in Article 57(3) of the IFR such that they may apply lower own funds requirements for the period up to 25 June 2026 by way of derogation from the K-factor requirement<sup>8</sup> as follows:
- a. Where a MiFID portfolio manager was previously subject to the own funds requirements in the Regulation (EU) No 575/2013 (the “CRR”), the increase in the own funds requirements is limited to twice the own funds requirements under the CRR; or
  - b. Where a MiFID portfolio manager was not in existence on or before 26 June 2021, that firm may limit its own funds requirements under the IFR to twice its fixed overheads requirement.
34. In the interests of consistency of application, the Central Bank proposes that UCITS Management Companies and AIFMs should also be able to limit the increase in their own funds requirement arising from the introduction of a K-Factor requirement to twice their fixed overheads requirement for the period up to end June 2026.

**Question 3: Do you agree that UCITS Management Companies and AIFMs should be able to benefit from transitional arrangements up to the period ending 30 June 2026?**

**Please provide reasons for your answer.**

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<sup>8</sup> The application of these transitional provisions to the fixed overhead requirement is not relevant for this paper.

## Section III: Reporting

35. UCITS Management Companies and AIFMs are currently required to submit a Minimum Capital Requirement Report via the ONR system on a bi-annual basis.

### Frequency of reporting

36. Under the IFR a MiFID portfolio manager that does not meet the conditions to be a small and non-interconnected firm reports own funds requirements on a quarterly basis. A MiFID portfolio manager that meets the conditions to be a small and non-interconnected firm reports own funds requirements on an annual basis.
37. The Central Bank proposes that, pending further developments, UCITS Management Companies and AIFMs retain the current reporting frequency and continue to submit a Minimum Capital Requirement Report on a bi-annual basis in line with the reporting intervals specified in Regulation 98 of the Central Bank UCITS Regulations or Chapter 3 of the AIF Rulebook, as relevant.

### Reporting Format

38. The Central Bank proposes to amend the Minimum Capital Requirement Report to allow for reporting of compliance with the updated own funds requirement under a proposed Regulation 100A of the Central Bank UCITS Regulations or under a proposed revised Chapter 3 of the AIF Rulebook.

**Question 4: Do you agree that:**

- a) the frequency of submission of the Minimum Capital Requirement Report should remain as that currently in place; and
- b) the format of the Minimum Capital Requirement Report should be amended to allow for reporting of compliance with the updated own funds requirements?

**Please provide reasons for your answers.**

## Section V: Requirement to perform an assessment of internal capital

39. UCITS Management Companies and AIFMs are currently subject to a condition of authorisation requiring them to undertake an assessment of the adequacy of their internal capital (the ICAAP).
40. UCITS Management Companies and AIFMs are also required to submit an ICAAP questionnaire to the Central Bank on an annual basis.
41. The Central Bank, considering it appropriate to do so in the interest of consistency of application of supervisory requirements, is proposing to set out this requirement on a legislative basis for UCITS Management Companies through an addition to Part 11 of the Central Bank UCITS Regulations and, for AIFMs, as an amendment to Chapter 3 of the Central Bank AIF Rulebook which will be imposed as a condition on the authorisation of AIFM. This will ensure that current and future UCITS Management Companies and AIFMs will be required to undertake this assessment of their internal capital in a consistent and comparable manner.

**Question 5: Do you agree that the requirement to undertake an assessment of internal capital be set out in the Central Bank UCITS Regulations and the AIF Rulebook?**

**Please provide reasons for your answer.**

## Annex I: Amendments to the Central Bank UCITS Regulations

**S.I. No.            of 202[ ]**

**CENTRAL BANK (SUPERVISION AND ENFORCEMENT) ACT 2013 (SECTION  
48(1))(UNDERTAKINGS FOR COLLECTIVE INVESTMENT IN TRANSFERABLE  
SECURITIES) (AMENDMENT) REGULATIONS 202[ ]**

In exercise of the powers conferred on the Central Bank of Ireland (the “Bank”) by section 48 of the Central Bank (Supervision and Enforcement) Act 2013 (the “Act”), the Bank, having consulted with the Minister for Finance and the Minister for Enterprise, Trade and Employment in accordance with section 49(1) of the Act hereby makes the following regulations:

1. These Regulations may be cited as the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) (Amendment) Regulations 202[ ].
2. These Regulations commence on [DATE].
3. The Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1))(Undertakings for Collective Investment in Transferable Securities) Regulations 2019 (S.I. No. 230 of 2019) are amended as follows:

(1) in Part 11, Chapter 1, by inserting the following regulations:

“Additional capital requirements of management companies providing individual portfolio management services

Regulation 100A

(1) In this Regulation –

"assets safeguarded and administered" or "ASA" means the value of assets that a management company safeguards and administers for clients,

irrespective of whether assets appear on the management company's own balance sheet or are in third-party accounts;

"assets under management" or "AUM" means both the value of assets that a management company manages for its clients under discretionary portfolio management and the value of assets in relation to which such management company provides investment advice of an ongoing nature;

"client" means a natural or legal person, or any other undertaking (including a UCITS), to whom a management company provides individual portfolio management services;

"client money held" or "CMH" means the amount of client money that a management company holds, taking into account the legal arrangements in relation to asset segregation;

"management company" refers only to a management company authorised to provide individual portfolio management services;

"own funds" means own funds as defined by the UCITS Regulations;

"small and non-inter-connected management company" has the meaning given to that term in Regulation 100A(3).

(2) A management company which is not a small and non-interconnected management company shall hold own funds which, subject to Regulation 20 of the UCITS Regulations, shall never be less than the higher of -

- (a) The total amount of initial capital and own funds which the management company is required to hold pursuant to the UCITS Regulations, or
- (b) Own funds which amount to the Risk to Client K-Factor requirement calculated in accordance with paragraph 4 of this Regulation.

(3) (a) A management company shall be deemed to be a small and non-interconnected management company for the purposes of this Regulation where it meets all of the following conditions:

(i) AUM measured in accordance with paragraph (5) is less than €1.2 billion;

(ii) ASA measured in accordance with paragraph (7) is zero;

(iii) CMH measured in accordance with paragraph (6) is zero;

(iv) the on- and off-balance-sheet total of the management company is less than €100 million;

(v) the total annual gross revenue from individual portfolio management services is less than €30 million, calculated as an average on the basis of the annual figures from the two-year period immediately preceding the given financial year.

(b) By way of derogation from the provisions of paragraph (4), (5) and (7), for the purposes of subparagraph (a)(i) and (ii), end-of-day values shall apply.

(c) For the purposes of subparagraph (a)(iii), and without prejudice to Regulation 23(1)(l) of the MIFID II Regulations and the first paragraph (Safeguarding client financial instruments and funds) and third paragraph (Depositing client funds) of Schedule 3 of those Regulations, intraday values shall apply, except where there has been an error in recordkeeping or in the reconciliation of accounts that incorrectly indicated that a management company breached the zero threshold referred to in subparagraph (a)(iii) and which is resolved before the end of the business day. The management company shall notify the Bank without delay of the error, the reasons for its occurrence and its correction.

(d) For the purposes of subparagraph (a)(iv) and (v), the levels at the end of the last financial year for which annual audited accounts have been finalised and approved by the management body shall apply.

(e) A management company shall measure the value under subparagraph (a)(i) by using the method specified under paragraph (5), with the exception that the measurement shall be done for a continuous period of no less than 12 consecutive months, without the exclusion of the three most recent monthly values.

(f) The conditions set out in subparagraph (a)(i), (iv) and (v) shall apply on a combined basis for all management companies that are group undertakings included in the same group. For the purpose of measuring the total annual gross revenue referred to in subparagraph (a)(v), those management companies may exclude any double counting that may arise in respect of gross revenues generated within the group of which they are group undertakings.

(g) The conditions set out in subparagraph (a)(ii) and (iii) shall apply to each management company on an individual basis.

(h) Where a management company no longer meets all the conditions set out in subparagraphs (a) to (e), it shall cease to be considered to be a small and non-interconnected management company, with immediate effect.

(i) By way of derogation from subparagraph (h), where a management company no longer meets the conditions set out in subparagraph (a)(i), (iv) and (v) but continues to meet the conditions set out in subparagraph (a)(ii) and (iii), it shall cease to be considered to be a small and non-interconnected management company after a period of three months, calculated from the date on which the threshold was exceeded. The management company shall notify the Bank without undue delay of any breach of a threshold.

(j) Where a management company which has not met all of the conditions set out in subparagraphs (a) to (e) subsequently meets them, it shall be considered

to be a small and non-interconnected management company only after a period of six months from the date on which those conditions are met, provided that no breach of a threshold has occurred during that period and the management company has notified the Bank accordingly without delay.

(4) (a) For the purposes of paragraph 2(b), a management company shall calculate its Risk to Client K-factor requirement by using the following formula:

$$K\text{-AUM} + K\text{-CMH} + K\text{-ASA}$$

where:

K-AUM is equal to AUM measured in accordance with paragraph (5), multiplied by the corresponding coefficient in the below table;

K-CMH is equal to CMH measured in accordance with paragraph (6), multiplied by the corresponding coefficient in the below table;

K-ASA is equal to ASA measured in accordance with paragraph (7), multiplied by the corresponding coefficient in the below table.

K-Factors		Co-efficient
Assets under management under discretionary portfolio management	K-AUM	0.02%
Client money held	K-CMH (on segregated accounts)	0.4%
	K-CMH (on non-segregated accounts)	0.5%
Assets safeguarded and administered K-ASA	K-ASA	0.04%

(b) A management company shall only use information related to its individual portfolio management services in complying with the measurement of the K-Factors referred to in subparagraph (a).

(c) A management company shall monitor the value of its K-factors referred to in subparagraph (a) for any trends that could leave it with a materially different Risk to Client K-factor requirement value for the following reporting period applicable to the reporting of such information to the Bank and shall notify the Bank of that materially different Risk to Client K-factor requirement value.

(d) Where the Bank notifies a management company that there has been a material change in the business activities of the management company that impacts the amount of a relevant K-factor referred to in paragraph 4(a), the management company shall adjust the amount of additional capital held by the management company in accordance with the Bank's notification.

(5) (a) A management company shall comply with the following in calculating the K-AUM for the purposes of paragraph 4(a):

- (i) AUM shall be the rolling average of the value of the total monthly assets under management, measured on the last business day of each of the previous 15 months converted into the entities' functional currency at that time, excluding the three most recent monthly values;
- (ii) AUM shall be the arithmetic mean of the remaining 12 monthly values;
- (iii) K-AUM shall be calculated on the first business day of each month.

(b) Where the management company has formally delegated the management of assets under individual portfolio management services to another financial entity, those assets shall be included in the total amount of AUM measured in accordance with subparagraph (a).

(c) Where another financial entity has formally delegated the management of assets under individual portfolio management services to the management company, those assets shall be excluded from the total amount of assets under management measured in accordance with subparagraph (a).

(d) Where a management company has been managing assets for less than 15 months, or where it has done so for a longer period as a small and non-interconnected management company and it now exceeds the threshold for AUM, it shall use historical data for AUM for the period specified under subparagraph (a) as soon as such data becomes available to calculate K-AUM.

(e) For the purposes of subparagraph (d), the Bank may replace missing historical data points by regulatory determinations based on the business projections of the management company submitted in support of the management company's application for authorisation to provide individual portfolio management services.

(6) (a) A management company shall comply with the following in calculating K-CMH for the purposes of paragraph 4(a):

(i) CMH shall be the rolling average of the value of total daily client money held, measured at the end of each business day for the previous nine months, excluding the three most recent months;

(ii) CMH shall be the arithmetic mean of the daily values from the remaining six months;

(iii) K-CMH shall be calculated on the first business day of each month.

(b) Where a management company has been holding client money for less than nine months, it shall use historical data for CMH for the period specified under subparagraph (a)(i) as soon as such data becomes available to calculate K-CMH.

(c) For the purposes of subparagraph (b), the Bank may replace missing historical data points by regulatory determinations based on the business projections of the investment firm submitted in support of the management company's application for authorisation to provide individual portfolio management services.

(7) (a) A management company shall comply with the following in calculating K-ASA for the purposes of paragraph 4(a):

(i) ASA shall be the rolling average of the value of the total daily assets safeguarded and administered, measured at the end of each

business day for the previous nine months, excluding the three most recent months;

(ii) ASA shall be the arithmetic mean of the daily values from the remaining six months;

(iii) K-ASA shall be calculated on the first business day of each month.

(b) Where a management company has formally delegated the tasks of safeguarding and administration of assets to another financial entity, or where another financial entity has formally delegated such tasks to the management company, those assets shall be included in the total amount of ASA which is measured in accordance with subparagraph (a).

(c) Where a management company has been safeguarding and administering assets for less than six months, it shall use historical data for ASA for the period specified under paragraph (a) as soon as such data becomes available to calculate K- ASA.

(d) For the purposes of subparagraph (c), the Bank may replace missing historical data points by regulatory determinations based on the business projections of the management company submitted in support of the management company's application for authorisation to provide individual portfolio management services.

(8) (a) For the purposes of paragraph (5), the measurement of total monthly AUM shall be made in accordance with all of the following:

(i) the calculation shall include the value of financial instruments calculated at fair value in accordance with the applicable accounting standards;

(ii) financial instruments with a negative fair value shall be included in absolute value;

(iii) the calculation shall include cash except any amounts covered under CMH in accordance with subparagraph (b).

(b) For the purposes of paragraph (6), the measurement of CMH shall be based on the following:

- (i) balances that the management company uses for its internal reconciliations;
  - (ii) the values contained in the management company's accounting records.
- (c) For the purposes of paragraph (7), the measurement of total daily ASA shall include the value of all client financial instruments safeguarded and administered, calculated at fair value in accordance with the applicable accounting standards. It shall exclude CMH referred to in subparagraph (b).

(9) The amount of own funds required to be held by a management company resulting from the calculation referred to in paragraph (2) shall not be required to exceed the sum of twice the amount required in accordance with Regulation 17(6) of the UCITS Regulations until the end of the five year period referred to in Article 57(3) of Regulation (EU) 2019/2033 of the European Parliament and of the Council.

## Internal Capital Adequacy Assessment

### Regulation 100 B

(1) A management company authorised to provide individual portfolio management services shall have in place sound, effective and comprehensive arrangements, strategies and processes to assess and maintain on an ongoing basis the amounts, types and distribution of internal capital that the management company considers adequate to cover the nature and level of risks which the management company may pose to others and to which the management company itself is, or might be, exposed.

(2) The arrangements, strategies and processes referred to in paragraph (1) shall be -

(a) appropriate and proportionate to the nature, scale and complexity of the activities of the management company, and

(b) subject to regular internal review.

(3) A management company authorised to provide individual portfolio management services shall complete and submit an ICAAP questionnaire to the Bank on an annual basis in the format published on the Bank's website."

Signed for and on behalf of the

**CENTRAL BANK OF IRELAND**

on [                      ] 202[   ]

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Explanatory Note

## Annex II: Amendments to the AIF Rulebook

### **viv. Additional capital requirements of AIFMS providing individual portfolio management services**

1. In this section -

“AIFM” refers only to an AIFM authorised by the Central Bank to provide individual portfolio management services;

“own funds” means own funds as defined by the AIFM Regulations;

"assets safeguarded and administered" or "ASA" means the value of assets that an AIFM safeguards and administers for clients, irrespective of whether assets appear on the AIFM’s own balance sheet or are in third-party accounts;

“assets under management" or "AUM" means both the value of assets that an AIFM manages for its clients under discretionary portfolio management and the value of assets in relation to which such AIFM provides investment advice of an ongoing nature;

“client” means a natural or legal person, or any other undertaking, to whom an AIFM provides individual portfolio management services;

"client money held" or "CMH" means the amount of client money that an AIFM holds, taking into account the legal arrangements in relation to asset segregation;

“client orders handled” or “COH” means the value of orders that an AIFM handles for clients through the reception and transmission of client orders;

"group undertaking" means an undertaking that is included in the same group for the purposes of preparing consolidated accounts, in accordance with Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings amending Directive

2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 84/349/EEC or in accordance with recognised international accounting rules;

“individual portfolio management services” means the services referred to in subparagraph (a) of paragraph (4) of Regulation 7 of the AIFM Regulations and includes the non-core services referred to in subparagraph (b) of that paragraph;

“small and non-inter-connected AIFM” has the meaning given to that term in paragraph 3.

2. An AIFM which is not a small and non-interconnected AIFM shall hold own funds which shall never be less than the higher of -

- (d) The total amount of initial capital and own funds which the AIFM is required to hold pursuant to the AIFM Regulations, or
- (e) Own funds which amount to the Risk to Client K-Factor requirement calculated in accordance with paragraph 4 of this section.

3. (a) An AIFM shall be deemed to be a small and non-interconnected AIFM for the purposes of this Regulation where it meets all of the following conditions:

- (i) AUM measured in accordance with paragraph 5 is less than €1.2 billion;
- (ii) ASA measured in accordance with paragraph 7 is zero;
- (iii) CMH measured in accordance with paragraph 6 is zero;
- (iv) COH measured in accordance with paragraph 8 is –
  - (I) EUR 100 million/day for cash trades; or
  - (II) EUR 1 billion/day for derivatives;
- (v) the on- and off-balance-sheet total of the AIFM is less than €100 million;
- (vi) the total annual gross revenue from individual portfolio management services of the AIFM is less than €30 million, calculated as an average on the

basis of the annual figures from the two-year period immediately preceding the given financial year.

(b) By way of derogation from the provisions of paragraphs 4, 5, 7 and 8, for the purposes of subparagraph (a)(i), (ii) and (iv), end-of-day values shall apply.

(c) For the purposes of subparagraph (a)(iii), and without prejudice to Regulation 23(1)(l) of the European Union (Markets in Financial Instruments) Regulations 2017 and the first paragraph (Safeguarding client financial instruments and funds) and third paragraph (Depositing client funds) of Schedule 3 of those Regulations, intraday values shall apply, except where there has been an error in recordkeeping or in the reconciliation of accounts that incorrectly indicated that an AIFM breached the zero threshold referred to in subparagraph (a)(iii) and which is resolved before the end of the business day. The AIFM shall notify the Bank without delay of the error, the reasons for its occurrence and its correction.

(d) For the purposes of subparagraph (a)(v) and (vi), the levels at the end of the last financial year for which annual audited accounts have been finalised and approved by the AIFM shall apply.

(e) An AIFM shall (i) measure the value under subparagraph (a)(i) by using the methods specified under paragraph (5) and (ii) measure the value under subparagraph (a)(iv) by using the methods specified under paragraph (8), with the exception that the measurements under (i) and (ii) shall be done for a continuous period of no less than 12 consecutive months, without the exclusion of the three most recent monthly values.

(f) The conditions set out in subparagraph (a)(i), (iv), (v) and (vi) shall apply on a combined basis for all AIFMs that are group undertakings included in the same group. For the purpose of measuring the total annual gross revenue referred to in subparagraph (a)(vi), those AIFMs may exclude any double counting that may arise in respect of gross revenues generated within the group of which they are group undertakings.

(g) The conditions set out in subparagraph (a)(ii) and (iii) shall apply to each AIFM on an individual basis.

(h) Where an AIFM no longer meets all the conditions set out in subparagraphs (a) to (e), it shall cease to be considered to be a small and non-interconnected AIFM, with immediate effect.

(i) By way of derogation from subparagraph (h), where an AIFM no longer meets the conditions set out in subparagraph (a)(i),(iv), (v) and (vi) but continues to meet the conditions set out in subparagraph (a)(ii) and (iii), it shall cease to be considered to be a small and non-interconnected AIFM after a period of three months, calculated from the date on which the threshold was exceeded. The AIFM shall notify the Bank without undue delay of any breach of a threshold.

(j) Where an AIFM which has not met all of the conditions set out in subparagraphs (a) to (e) subsequently meets them, it shall be considered to be a small and non-interconnected AIFM only after a period of six months from the date on which those conditions are met, provided that no breach of a threshold has occurred during that period and the AIFM has notified the Bank accordingly without delay.

4. (a) For the purposes of paragraph 2(b), an AIFM shall calculate its Risk to Client K-factor requirement by using the following formula:

$$K-AUM + K-CMH + K-ASA + K-COH$$

where:

K-AUM is equal to AUM measured in accordance with paragraph 5, multiplied by the corresponding coefficient in the below table;

K-CMH is equal to CMH measured in accordance with paragraph 6, multiplied by the corresponding coefficient in the below table;

K-ASA is equal to ASA measured in accordance with paragraph 7, multiplied by the corresponding coefficient in the below table;

K-COH is equal to COH measured in accordance with paragraph 8, multiplied by the corresponding coefficient in the table below.

K-Factors		Co-efficient
Assets under management under discretionary portfolio management	K-AUM	0.02%
Client money held	K-CMH (on segregated accounts)	0.4%
	K-CMH (on non-segregated accounts)	0.5%
Assets safeguarded and administered K-ASA	K-ASA	0.04%
Client orders handled	K-COH cash trades	0.01%
	K-COH derivatives	0.01%

(b) An AIFM shall only use information related to its individual portfolio management services in complying with the measurement of the K-Factors referred to in subparagraph (a).

(c) An AIFM shall monitor the value of its K-factors referred to in subparagraph (a) for any trends that could leave it with a materially different Risk to Client K-factor requirement value for the following reporting period applicable to the reporting of such information to the Bank and shall notify the Bank of that materially different Risk to Client K-factor requirement value.

(d) Where the Bank notifies an AIFM that there has been a material change in the business activities of the AIFM that impacts the amount of a relevant K-factor referred to in paragraph 4(a), the AIFM shall adjust the amount of additional capital held by the AIFM in accordance with the Bank's notification.

5. (a) An AIFM shall comply with the following in calculating the K-AUM for the purposes of paragraph 4(a):

- (i) AUM shall be the rolling average of the value of the total monthly assets under management, measured on the last business day of each of the previous 15 months converted into the entities' functional currency at that time, excluding the three most recent monthly values;
- (ii) AUM shall be the arithmetic mean of the remaining 12 monthly values;
- (iii) K-AUM shall be calculated on the first business day of each month.

(b) Where the AIFM has formally delegated the management of assets under individual portfolio management services to another financial entity, those assets shall be included in the total amount of AUM measured in accordance with subparagraph (a).

(c) Where another financial entity has formally delegated the management of assets under individual portfolio management services to the AIFM, those assets shall be excluded from the total amount of assets under management measured in accordance with subparagraph (a).

(d) Where an AIFM has been managing assets under individual portfolio management services for less than 15 months, or where it has done so for a longer period as a small and non-interconnected AIFM and now exceeds the threshold for AUM, it shall use historical data for AUM for the period specified under subparagraph (a) as soon as such data becomes available to calculate K-AUM.

(e) For the purposes of subparagraph (d), the Bank may replace missing historical data points by regulatory determinations based on the business projections of the AIFM submitted in support of the AIFM's application for authorisation to provide individual portfolio management services.

6. (a) An AIFM shall comply with the following in calculating K-CMH for the purposes of paragraph 4(a):

(i) CMH shall be the rolling average of the value of total daily client money held, measured at the end of each business day for the previous nine months, excluding the three most recent months;

(ii) CMH shall be the arithmetic mean of the daily values from the remaining six months;

(iii) K-CMH shall be calculated on the first business day of each month.

(b) Where an AIFM has been holding client money for less than nine months, it shall use historical data for CMH for the period specified under subparagraph (a)(i) as soon as such data becomes available to calculate K-CMH.

(c) For the purposes of subparagraph (b), the Bank may replace missing historical data points by regulatory determinations based on the business projections of the investment firm submitted in support of the AIFM's application for authorisation to provide individual portfolio management services.

7. (a) An AIFM shall comply with the following in calculating K-ASA for the purposes of paragraph 4(a):

(i) ASA shall be the rolling average of the value of the total daily assets safeguarded and administered, measured at the end of each business day for the previous nine months, excluding the three most recent months;

(ii) ASA shall be the arithmetic mean of the daily values from the remaining six months;

(iii) K-ASA shall be calculated on the first business day of each month.

(b) Where an AIFM has formally delegated the tasks of safeguarding and administration of assets to another financial entity, or where another financial entity has formally delegated such tasks to the AIFM, those assets shall be included in the total amount of ASA which is measured in accordance with subparagraph (a).

(c) Where an AIFM has been safeguarding and administering assets for less than six months, it shall use historical data for ASA for the period specified under paragraph (a) as soon as such data becomes available to calculate K- ASA.

(d) For the purposes of subparagraph (c), the Bank may replace missing historical data points by regulatory determinations based on the business projections of the AIFM submitted in support of the AIFM's application for authorisation to provide individual portfolio management services.

8. (a) An AIFM shall comply with the following in calculating K-COH for the purposes of paragraph 4(a):

(i) COH shall be the rolling average of the value of the total daily client orders handled, measured throughout each business day over the previous six months, excluding the three most recent months;

(ii) COH shall be the arithmetic mean of the daily values from the remaining three months;

(iii) K-COH shall be calculated on the first business day of each month.

(b) K-COH shall be measured as the sum of the absolute value of buys and the absolute value of sells for both cash trades and derivatives in accordance with the following:

(i) for cash trades, the value is the amount paid or received on each trade;

(ii) for derivatives, the value of the trade is the notional amount of the contract.

(c) The notional amount of interest rate derivatives shall be adjusted for the time to maturity (in years) of those contracts. The notional amount shall be multiplied by the duration set out in the following formula:

$$\text{Duration} = \text{time to maturity(in years)} / 10$$

(d) COH shall exclude transactions handled by the AIFM that arise from the servicing of a client's investment portfolio where the AIFM already calculates K-AUM in respect of that client's investments or where that activity relates to the delegation of management of assets to the AIFM not contributing to the AUM of that AIFM by virtue of paragraph (5)(b).

(e) Where an AIFM has been handling client orders for less than six months, or where it has done so for a longer period as a small and non-interconnected investment firm, and it now exceeds the threshold for COH, it shall use historical data for COH for the period specified under paragraph (a) as soon as such data becomes available to calculate K-COH.

(f) For the purposes of subparagraph (e), the Bank may replace missing historical data points by regulatory determinations based on the business projections of the AIFM submitted in support of the AIFM's application for authorisation to provide individual portfolio management services.

9. (a) For the purposes of paragraph 5, the measurement of total monthly AUM shall be made in accordance with all of the following:

- (i) the calculation shall include the value of financial instruments calculated at fair value in accordance with the applicable accounting standards;
- (ii) financial instruments with a negative fair value shall be included in absolute value;
- (iii) the calculation shall include cash except any amounts covered under CMH in accordance with subparagraph (b).

(b) For the purposes of paragraph 6, the measurement of CMH shall be based on the following:

- (i) balances that the AIFM uses for its internal reconciliations;
- (ii) the values contained in the AIFM's accounting records.

(c) For the purposes of paragraph 7, the measurement of total daily ASA shall include the value of all client financial instruments safeguarded and administered, calculated at fair value

in accordance with the applicable accounting standards. It shall exclude CMH referred to in subparagraph (b).

10. The amount of own funds required to be held by an AIFM resulting from the calculation referred to in paragraph 2 shall not be required to exceed the sum of twice the amount required in accordance with Regulation 10(5) of the AIFM Regulations until the end of the five year period referred to in Article 57(3) of Regulation (EU) 2019/2033 of the European Parliament and of the Council.

#### Vv. Internal Capital Adequacy Assessment

1. An AIFM authorised to provide individual portfolio management services shall have in place sound, effective and comprehensive arrangements, strategies and processes to assess and maintain on an ongoing basis the amounts, types and distribution of internal capital that the AIFM considers adequate to cover the nature and level of risks which the AIFM may pose to others and to which the AIFM itself is, or might be, exposed.

2. The arrangements, strategies and processes referred to in paragraph 1 shall be -

(a) appropriate and proportionate to the nature, scale and complexity of the activities of the AIFM, and

(b) subject to regular internal review.

3. An AIFM authorised to provide individual portfolio management services shall complete and submit an ICAAP questionnaire to the Bank on an annual basis in the format published on the Central Bank's website.”

## Annex III: List of Questions

**Question 1:** Do you agree with the proposal to update the own fund requirements applicable to Management Companies and AIFMs given the application of the IFR to MiFID portfolio managers?

Please provide reasons for your answer.

**Question 2:** Do you agree with the manner in which the Risk to Client K-Factors are to be calculated and that the Risk to Client K-Factor requirement is not subject to a limit

Please provide reasons for your answer.

**Question 3:** Do you agree that UCITS Management Companies and AIFMs should be able to benefit from transitional arrangements up to the period ending 30 June 2026?

Please provide reasons for your answer.

**Question 4:** Do you agree that

- a) the frequency of submission of the Minimum Capital Requirement Report should remain as that currently in place; and
- b) the format of the Minimum Capital Requirement Report should be amended to allow for reporting of compliance with the updated own funds requirements?

Please provide reasons for your answer.

**Question 5:** Do you agree that the requirement to undertake an assessment of internal capital be set out in the Central Bank UCITS Regulations and the AIF Rulebook?

Please provide reasons for your answer.

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December 2022

