

**Irish Funds Response to CP162  
Consultation on proposed  
amendments to the Central Bank  
Alternative Investment Fund  
Rulebook (AIF Rulebook)**

**November 2025**

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# Introduction

The Irish Funds Industry Association (Irish Funds) is the voice of the funds and asset management industry in Ireland. Our members include fund managers, fund administrators, transfer agents, depositaries, professional advisory firms, and other specialist firms involved in the international fund and asset management industry in Ireland. By enabling global investment managers to deploy capital around the world for the benefit of internationally based investors, we support saving and investing across economies. Ireland is a leading location in Europe and globally for the domiciling and administration of investment funds. The funds and asset management industry directly employs over 19,500 professionals across Ireland, with over 37,468 of a total employment impact right across the country<sup>1</sup> and provide services to almost 8,900 Irish regulated investment funds with assets of just under EUR 5 trillion<sup>2</sup>.

Irish Funds welcomes the Central Bank of Ireland's Consultation Paper 162 (CP162) on proposed amendments to the Alternative Investment Fund Rulebook (AIF Rulebook). In recent years, enhancement to the Irish private asset regime has been Irish Funds' number one strategic priority and we have been engaging with industry and regulatory bodies to advocate for an enhanced regime. We believe the proposed amendments mark a major milestone in Ireland's private asset fund offering and will help support Ireland's attractiveness to international capital, improve competitiveness and position Ireland to capture a greater share of the private assets market.

We support the alignment of the proposed reforms with the EU Savings & Investment Union ("SIU") initiative and the broader EU simplification agenda for investment funds. Facilitating investors' access to private asset strategies will help advance the SIU's objectives of mobilising capital and supporting long-term investment across the EU. We are also encouraged by the recommendations for better alignment with the more recently added ELTIF chapter in the AIF Rulebook. Furthermore, Irish Funds supports the amendments to the AIF Rulebook to better align with industry standard private asset fund features, the replacement of the domestic Irish loan origination fund regime with the new EU harmonised regime under AIFMD II and various changes to simplify fund financing

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<sup>1</sup> Assessment of the impact of the Funds & Asset Management Industry on the Irish Economy, Indecon, 2024.

<sup>2</sup> Central Bank of Ireland, December 2024.

arrangements. Adopting these changes on a timely basis will not only assist with the implementation of AIFMD II into Irish law ahead of the April 2026 deadline but will also enhance the Irish private assets offering and help advance the implementation of both the Department of Finance Funds Sector 2030 Final Report recommendation to support growth in private assets.

Irish Funds have suggested targeted amendments through the consultation response that, if adopted, will further enhance the changes already proposed by the Central Bank and ensure that Ireland stays at the forefront of an evolving funds and asset management industry.

Irish Funds welcomes the opportunity to discuss our response in further detail with the Central Bank.

## Definitions

### 6. Interpretation

The Definitions section of the AIF Rulebook will be updated to include new definitions to align with Directive (EU) 2024/927, insert additional definitions as required, delete definitions that are no longer applicable and correct errors.

The definition for 'Associated company' is deleted as the term is no longer referenced in the AIF Rulebook.

Definitions are included for the fund structures that a Retail Investor AIF, Qualifying Investor AIF and ELTIF may be established as.

The definition for 'Category 1 investment fund' is amended to include reference to investment funds established in Hong Kong.

A definition is included for a 'Depositary of Assets other than Financial Instruments' (DAoFI) to describe a depositary for AIFs under Regulation 22(3)(b) of the AIFM Regulations.

The definition for 'ESMA's Remuneration Guidelines' is amended to reference ESMA's guidelines on sound remuneration policies under the UCITS Directive and AIFMD (ESMA/2016/411).

A definition of 'European Long-term Investment Fund' (ELTIF) is included to reference the European Long-term Investment Funds Regulation.

A definition is included for 'Governing document' that includes both an AIF's constitutional document and its prospectus.

The definition of 'Irish Collective Asset-management Vehicle' is amended to make reference to the year of the Act.

The definition of 'Investment company' is amended to make reference to the updated Companies Act.

The definition of 'Investment fund legislation' is amended to make reference to the updated Companies Act.

In the definition of 'Qualifying Investor AIF', the term 'alternative investment fund' is amended to 'AIF'.

The Central Bank has corrected an error in the current AIF Rulebook that denotes a definition for 'Qualified Investor ELTIF' rather than 'Qualifying Investor ELTIF'. In that definition, the term 'A European Long-Term Investment Fund' is amended to 'An ELTIF'.

A definition for 'Regulated Investment Fund' is included to specify a collective investment vehicle that is authorised and supervised by a financial regulatory authority.

The definition of 'Related Company' is amended to make reference to the updated Companies Act.

In the definition of 'Retail Investor AIF', the term 'alternative investment fund' is amended to 'AIF'.

A definition for 'Value at Risk' (VaR) is included to clarify the components that characterise

the risk measure.

A definition for 'Votes cast' is included to reference a measure requiring approval of investors in an AIF as approval: (i) through voting at a general meeting; (ii) in writing; or (iii) as otherwise permitted by the AIF's constitutional document.

**Proposed amendments to Definitions across pages 9–16, AIF Rulebook March 2024.**

- **AIF Rulebook:** The Central Bank's rulebook in relation to AIFs which contains chapters concerning Retail Investor AIFs, Qualifying Investor AIFs, ELTIFs, AIF Management Companies, Alternative Investment Fund Managers AIFMs and AIF Depositaries.
- ~~**Associated company:** This term has the same meaning as is given to "associated undertaking" in the European Communities (Companies: Group Accounts) Regulations, 1992 (S.I. No. 201 of 1992). In general this states that companies are associated where a significant influence may be exercised by one company over the operating and financial policy of another. This is deemed to be the case where 20% or more of the voting rights in one company are owned directly or indirectly by another.~~
- **Authorised AIF:** An AIF authorised by the Central Bank under the investment fund legislation.
- **Category 1 investment fund:** Investment funds established in Hong Kong and authorised by the SFC under section 104 of the Securities and Futures Ordinance.
- **Common Contractual Fund:** Common Contractual Fund within the meaning of the Investment Funds, Companies and Miscellaneous Provisions Act 2005.
- **Depository of Assets other than Financial Instruments (DAoFI):** A depository for AIFs under Regulation 22(3)(b) of the AIFM Regulations.
- **Designated Investment Company:** Designated Investment Company within the meaning of section 1395 of the Companies Act 2014.
- **ESMA:** the European Securities and Markets Authority.

- ESMA's Remuneration Guidelines: ~~ESMA's Guidelines on sound remuneration policies under the AIFMD (ESMA/2013/201)~~. **ESMA's Guidelines on sound remuneration policies under the UCITS Directive and AIFMD (ESMA/2016/411)**.
- **European Long Term Investment Fund (ELTIF)** – A regulated collective investment undertaking which provides investors access to long-term investments in private equity or real assets in accordance with Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds as amended by Regulation (EU) 2023/606 of the European Parliament and of the Council of 15 March 2023.
- **Governing Documents:** The AIF's constitutional document and its prospectus.
- **ICAV:** An ~~ICAV~~ **Irish Collective Asset-management Vehicle** within the meaning of the ICAV Act 2015.
- **ICAV Act 2015:** The Irish Collective Asset-management Vehicles Act 2015.
- **Investment eCompany** – An investment company authorised under, ~~Part XIII of the Companies Act 1990~~, **Part 24 of the Companies Act 2014**, or an ICAV authorised under the ICAV Act 2015.
- **Investment fund legislation:** Unit Trusts Act 1990, ~~Part XIII of the Companies Act 1990~~, **Part 24 of the Companies Act 2014**, Investment Limited Partnerships Act 1994, Investment Funds, Companies and Miscellaneous Provisions Act 2005 and ICAV Act 2015.
- **Investment Limited Partnership:** Investment Limited Partnership within the meaning of the Investment Limited Partnerships Act 1994.
- **Professional Investor ELTIF:** An ~~European Long Term Investment Fund~~ **ELTIF** authorised by the Central Bank which may be marketed solely to professional investors, as defined in Article 2 of Regulation (EU) 2015/760.
- **Qualifying Investor AIF:** An ~~alternative investment fund~~ **AIF** authorised by the Central Bank which may be marketed to investors who meet the criteria set out in the Qualifying Investor AIF chapter.
- **Qualifying Investor ELTIF:** - A ~~European Long Term Investment Fund~~ An **ELTIF** authorised

by the Central Bank which may be marketed only to investors who meet the following criteria:

- (a) is a professional client within the meaning of Annex II of MiFID; or
  - (b) the investor receives an appraisal from an EU credit institution, a MiFID firm or a UCITS management company that the investor has the appropriate expertise, experience and knowledge to adequately understand the investment in the ELTIF; or
  - (c) the investor certifies that they are an informed investor by providing the following:
    - confirmation (in writing) that the investor has such knowledge of and experience in financial and business matters as would enable the investor to properly evaluate the merits and risks of the prospective investment; or
    - confirmation (in writing) that the investor's business involves, whether for its own account or the account of others, the management, acquisition or disposal of property of the same kind as the property of the ELTIF.
- **Registered AIFM:** An AIFM which ~~that~~ has been registered with the Central Bank in accordance with Regulation 4(3) of the AIFM Regulations.
  - **Regulated Investment Fund:** A collective investment vehicle that is authorised and supervised by a financial regulatory authority under a defined legal and regulatory framework. An investment fund which is either a category 1 investment fund or a category 2 investment fund.
  - **Regulated market:-** ~~Regulated market which operates regularly and is recognised and open to the public. This phrase~~ **A market which operates regularly and is recognised and open to the public and** is understood by reference to the following 4 components, which are not exhaustive and the assessment should include a general overview of the market, having regard to issues which would be relevant to the operation of the market and investments therein:
    - (a) Regulated: The market must be regulated. Such a market is subject to supervision by an authority or authorities, duly appointed or recognised by

the state in which it is located. The **authority** authorities should generally have the power to impose capital adequacy rules, to supervise directly members of the market, to impose listing standards, to ensure transparency in dealings and to impose penalties where breaches of rules or standards occur. The clearance and settlement system for transactions should also be regulated and should have acceptable settlement periods.

(b) **Recognised:** The market must be recognised or registered by an authority or authorities, duly appointed or recognised by the state in which it is located. Investment in the market by locally based retail investment funds should be permitted by the relevant authorities.

(c) **Operating Regularly:** Trading must take place with reasonable frequency and the market should have regular trading hours. The assessment must have regard to liquidity in the market, including the number of members/participants, and the

ability of the market to provide fair prices on an on-going basis. Custody arrangements should also be satisfactory i.e. a depository must be satisfied that it can provide for the safe-keeping of the assets of an authorised AIF in accordance with the conditions set down in the AIFM Regulations.

(d) **Open to the public:** The market must be open to the public. The public should have direct or indirect access to the securities traded on the market. The degree to which overseas investors are permitted to invest and any rules which may impede the repatriation of capital or profits must be taken into account.

- **Related Company:** This term has the same meaning as ~~in the Companies Act 1990, section 140(5)~~ **that which is specified in subsections (10) and (11), Part 1 of the Companies Act 2014**. In general this states that companies are related where 50% of the paid up share capital of, or 50% of the voting rights in, one company are owned directly or indirectly by another.
- **Retail Investor AIF:** ~~An alternative investment fund~~ **AIF** authorised by the Central Bank ~~which~~ **that** may be marketed to retail investors.
- **Retail Investor ELTIF:** ~~An European Long-Term Investment Fund~~ **ELTIF** authorised by the Central Bank ~~which~~ **that** may be marketed to retail investors, as defined in Article 2 of Regulation (EU) 2015/760.

- **Underlying investment funds:** This term refers to the underlying investment funds which ~~that~~ form the assets of authorised AIFs.
- **Unit Trust:** A Unit Trust within the meaning of the Unit Trusts Act 1990.
- **Value at Risk (VaR):** A measure that estimates the potential loss in value of a portfolio over a defined period for a given confidence interval under normal market conditions.
- **Votes cast:** This means a vote cast at a general meeting, in writing or as otherwise permitted by the AIF's constitutional document.

**Question 1: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

As currently drafted the new "Governing Documents" definition and the use of the new defined term throughout the AIF Rulebook imposes a new obligation to disclose certain matters previously only required to be disclosed in the constitutional document to also now be disclosed in the prospectus (e.g. max management fee). Irish Funds does not believe it was the Central Bank of Ireland's (Central Bank) intention to create this duplicative disclosure obligation. Therefore, we suggest the new definition is updated to "Governing Documents: The AIF's constitutional document and/or its prospectus".

Irish Funds would also suggest that each piece of legislation which is defined in the rulebook should include "as may be amended from time to time".

# Rulebook Introduction

## 7. Update to legal structure and chapter references

To reflect regulatory changes and to provide greater clarity, the following amendments have been made:

- Definitions of the main fund types have been added.
- Other amendments have been included for clarity, including amending the numbering of the relevant sections and subsequently, the title of chapters reflecting the deletion of certain sections.

### Proposed amendments to i. General, page 17, AIF Rulebook March 2024.

Retail Investor AIFs, Qualifying Investor AIFs and ELTIFs may be established as:

- ~~u~~Unit ~~t~~Trusts, under the Unit Trusts Act 1990;
- ~~d~~Designated ~~i~~Investment ~~e~~Companies (i.e. investment companies which may raise capital by promoting their shares to the public) under the Companies Act 1990, Part XIII;
- ~~i~~Investment ~~L~~Limited ~~p~~Partnerships under the Investment Limited Partnerships Act 1994;
- ~~e~~Common ~~e~~Contractual ~~f~~Funds under the Investment Funds Act 2005; and
- ICAVs. under the ICAV Act.

Under the investment fund legislation the Central Bank is responsible for the authorisation and supervision of ~~U~~nit ~~t~~Trusts, ~~e~~Common ~~e~~Contractual ~~f~~Funds, ~~i~~Investment ~~e~~Companies and ~~i~~Investment ~~L~~Limited ~~p~~Partnerships, and has the power to impose conditions on them.

### Proposed amendments to i. General – paragraphs 5 and 6, page 17, AIF Rulebook March 2024.

Conditions in chapter 1 - Retail Investor AIF Requirements, chapter 2 - Qualifying Investor AIF Requirements, chapter ~~3~~ - ~~ELTIF Requirements~~ ~~4~~ - ~~AIF Management Company Requirements~~ and chapter 5 - AIF Depository Requirements and chapter ~~6~~ - ~~ELTIF Requirements~~ are conditions imposed by the Central Bank under powers given to the Central Bank under that legislation.

For chapter ~~3~~ ~~4~~ – Alternative Investment Fund Manager Requirements, conditions are imposed by the Central Bank under Regulation 9 of the AIFM Regulations.

**Question 2: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

## **8. Amendments to Chapter titles**

The update to the AIF Rulebook will include the deletion of the AIF Rulebook chapter requiring the authorisation of AIF management companies (AIF ManCos). With this change, the alignment of chapters within the AIF Rulebook will also change as detailed below.

**Proposed amendment to ii. Application of the chapters, page 18, AIF Rulebook March 2024.**

AIFMs which:

- (a) come within the scope of the AIFM Regulations and cannot avail of the exemptions from authorisation set out in Regulation 4 of the AIFM Regulations;
- or
- (b) opt to be authorised under the AIFM Regulations are subject to chapter 3 4– Alternative Investment Fund Manager Requirements.

~~Chapter 4 – AIF Management Company Requirements applies to AIF management companies which are not authorised under the AIFM Regulations. These AIF management companies will be required to become registered AIFMs if they are also an AIFM which does not exceed the thresholds detailed in the AIFM Regulations.~~

~~AIF management companies which are authorised under the AIFM Regulations are subject to chapter 3 – Alternative Investment Fund Manager Requirements.~~

**Question 3: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

# Chapter 1 – Retail Investor AIF Requirements

## 9. Deletion of obsolete references

The Central Bank has updated this section to remove an obsolete footnote and update references to 'AIF Management Company'.

**Proposed amendments to iii Directors of Retail Investor AIF investment companies, heading footnote, page 55, AIF Rulebook March 2024.**

Directors of Retail Investor AIF investment companies<sup>10</sup>

**Proposed amendments to iii Directors of Retail Investor AIF investment companies, paragraph 1, page 55, AIF Rulebook March 2024.**

Where the Retail Investor AIF is an investment company, departures from the office of director and the reason for the departure shall be notified to the Central Bank immediately by filing the relevant Central Bank form. In all cases where a director wishes to resign and prior to completing the relevant Central Bank form, the Retail Investor AIF (at Board or its Chair level) must form a view as to the impact of the resignation on the ~~Retail Investor AIF Management Company~~ having regard to the current and prospective financial state of the ~~Retail Investor AIF Management Company and the AIFs under management~~. In the event that the Board or, in the absence of a Board meeting, the Chair forms the view that the situation is one which could create such concern on the part of the Central Bank, it shall state this on the relevant Central Bank form. The Board or its Chair may consult the Central Bank in order to help it form a view on that matter.

**Question 4: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

# Chapter 2 – Qualifying Investor AIF Requirements

## 10. Committed capital arrangements and minimum subscriptions

A Qualifying Investor AIF shall have a minimum subscription of €100,000 or its equivalent in other currencies. Where a Qualifying Investor AIF operates a capital commitment mechanism, the AIF Rulebook will now provide for those Qualifying Investor AIFs to account for the contribution of the committed capital towards the minimum subscription amount.

A new footnote will be included to clarify the new amendment.

**Proposed amendments to i. General restrictions, paragraphs 1, 2 and 3, page 103, AIF Rulebook March 2024.**

1. Subject to approval by the Central Bank otherwise, the Qualifying Investor AIF shall have a minimum **capital commitment or** subscription of €100,000 or its equivalent in other currencies. **The aggregate of an investor's investments and/or capital commitments in the sub-funds of an umbrella Qualifying Investor AIF can be taken into account for the purpose of determining this requirement. The amounts of subsequent subscriptions or capital commitments from unitholders who have already subscribed/committed to the minimum subscription of €100,000 are unrestricted.**
2. The Qualifying Investor AIF shall not accept **capital commitment or** subscription from persons that group amounts of less than €100,000 for individual investors.
3. The Qualifying Investor AIF shall only accept **capital commitments or** subscriptions from an investor who:

**New Footnote: Applicable only to Qualifying Investor AIFs that operate a capital commitment mechanism.**

**Question 5: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

Paragraph 1 should be updated to add the following highlighted text tracking the existing Central Bank Guidance “Subscriptions into Qualifying Investor AIFs” [Subscriptions Into Qualifying Investor AIFs | Central Bank of Ireland](#):

1. Subject to approval by the Central Bank otherwise, the Qualifying Investor AIF shall have a minimum capital commitment or subscription of €100,000 or its equivalent in other currencies. **The aggregate of an investor’s investments and/or capital commitments in the sub-funds of an umbrella Qualifying Investor AIF can be taken into account for the purpose of determining this requirement. The amounts of subsequent subscriptions or capital commitments from unitholders who have already subscribed/committed to the minimum subscription of €100,000 are unrestricted.**

## **11. Derogations in relation to minimum subscription limits**

The AIF Rulebook limits the exemption for the minimum subscription to certain defined entities and persons. The AIF Rulebook will now grant an exemption from the minimum subscription requirement that includes: (i) the AIFM or other legal entity within the AIFM's group; and (ii) those that provide advisory services (both discretionary and non-discretionary) to the AIFM.

These parties possess the relevant expertise and knowledge to make an assessment of the investment objectives, strategy and potential risks of investing in the Qualifying Investor AIF, facilitating greater management participation. The requirement will continue to be limited to: (i) those directly involved in the investment activities of the Qualifying Investor AIF; or (ii) senior employees / partners / consultants / secondees of the management / investment / advisory company that have experience in the provision of investment management services.

**Proposed amendments to i. General restrictions, paragraphs 4 and 5, pages 103-104, AIF Rulebook March 2024.**

4. The Qualifying Investors AIF may grant an exemption from the minimum **capital commitment** or subscription requirement to the following:
- (a) the management company or general partner;
  - (b) the AIFM or a company or other legal entity within the AIFM's group**
  - ~~(b)-(c)~~ **(c) a company or other legal entity appointed to provide investment management or advisory services (whether discretionary or otherwise) to or in respect of the Qualifying Investor AIF;**
  - ~~(c)~~ **(d) a director (or equivalent) of the AIFM, management company, investment company or general partner or a director (or equivalent) of a company or other legal entity appointed to provide investment management services or advisory services (whether discretionary or otherwise) to or in respect of the Qualifying Investor AIF; and**
  - ~~(d)~~ **(e) an employee, consultant to, secondee to of the management company, investment company or general partner, or an employee of a company appointed to provide investment management or advisory services to the Qualifying Investor AIF or partner of any of the entities mentioned in (a), (b), or (c), where the employee, consultant, secondee or partner;**
    - **holds a formal agreement or employment contract with any of the entities mentioned in (a), (b) or (c), or**
    - **is directly involved in the investment activities of the Qualifying Investor AIF, or**
    - **is a senior employee of the company or other legal entity appointed to provide investment management or advisory services (whether discretionary or otherwise) and has experience in the provision of investment management services.**

In the case of investments by employees, **consultants, secondees and/or partners or groups of employees, consultants, secondees and/or partners**, the Qualifying Investor AIF must ensure that the **AIFM**, management company, investment company, **advisor** or general partner, as appropriate, is satisfied that prospective unitholders fall within the criteria outlined at ~~(e)~~ above. The Qualifying Investor AIF must ensure that, **where relevant, prospective unitholders 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 **capital commitment** or subscription of €100,000.

5. The Qualifying Investor AIF must ensure that prospective unitholders certify in writing to it that they meet the minimum criteria listed in paragraph 3 above and that they are aware of the risk involved in the proposed investment and of the fact that inherent in such investments is the potential to lose all of the sum invested.

**Question 6: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

The following clarification, highlighted in yellow, should be included at the end of paragraph 4;

" The Qualifying Investor AIF must ensure that, **where relevant, prospective unitholders** investing employees must certify...".

Irish Funds also suggest adding a provision (e.g. in a footnote) for vehicles through which such "Knowledgeable Persons" invest (as such persons don't typically invest in the Fund in their personal capacity, they may invest through a carry vehicle for example which does not itself fit into any of these categories).

## 12. Replacement of the term 'notes' with 'debt securities'

The AIF Rulebook allows a Qualifying Investor AIF to issue notes on a private basis to a lending institution to facilitate financing arrangements. However, there is a lack of clarity in the subsequent derogation that refers to 'notes' instead of 'debt securities'. The text will be amended to confirm the consistent application of the exemption.

**Proposed amendments to i. General restrictions, paragraph 6, page 104, AIF Rulebook March 2024.**

6. The Qualifying Investor AIF shall not raise capital from the public through the issue of debt securities. This restriction does not operate to prevent the issue of ~~notes~~ **debt**

~~issuance must be clearly~~ **securities** by Qualifying Investor AIFs, on a private basis, to a lending institution to facilitate financing arrangements **and where**. ~~Details of the note~~ **debt security are** issued must be clearly provided in the prospectus.

**Question 7: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

Should this provision be retained, we would advocate that the term “debt instruments” instead of or in addition to “debt securities” should be inserted. This is a broader term and avoids potential uncertainty caused by having to determine whether an instrument is a security or not.

### **13. Qualifying Investor AIFs granting loans or acting as a guarantor**

As part of the alignment with the new EU loan origination framework, the general restriction on Qualifying Investor AIFs granting loans and acting as guarantor will be removed.

The provision of guarantees is standard market practice for fund financing arrangements such as bridge financing and financing where the fund is part of a wider fund family, and in the context of private equity investments where financing is provided to underlying portfolio companies / investment vehicles. Additionally, there are no such restrictions in the AIFMD’s new European loan origination rules.

**Proposed deletion of i. General restrictions, paragraph 7, page 104, AIF Rulebook March 2024.**

~~7. The Qualifying Investor AIF shall not grant loans or act as a guarantor on behalf of third parties. This is without prejudice to the right of a Qualifying Investor AIF to acquire debt securities. It will not prevent Qualifying Investor AIFs from acquiring securities which are not fully paid or from entering into bridge financing arrangements where the financing extended to the Qualifying Investor AIF is backed by sufficient legally binding commitments to discharge the financing within a time period determined by the at least simultaneous triggering of obligations on unitholders to make capital contributions which they are previously contractually committed to making at the time the bridge financing is entered into.~~

**Question 8: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

**Yes**

**No**

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

Please confirm that ID1160 of the Central Bank's AIFMD Q&A will be deleted as part of the AIFMD Q&A to coincide with the publication of the updated AIF Rulebook.

## **14. Restriction on acquiring legal or management control over a company**

The AIF Rulebook currently prohibits a Qualifying Investor AIF from acquiring or from appointing a management company or general partner or AIFM that intends to acquire any shares carrying voting rights that would enable it to exercise significant influence over the management of an issuing body. This requirement is dis-applied where the Qualifying Investor AIF is a venture capital, development capital or private equity Qualifying Investor AIF, provided disclosures are made to this effect in the prospectus. the acquisition of such rights can form part of private asset strategies, including venture capital, management buy-out or leveraged buy-out transactions. In order to ensure Qualifying Investor AIFs can

implement such strategies, including as part of mixed strategy funds, the AIF Rulebook will now require Qualifying Investor AIFs that intend to exercise legal or management control over a company to disclose this in the prospectus in line with the Qualifying Investor AIF's investment strategy. Further, there already exist general requirements under AIFMD related to disclosure of investment strategy, the acquisition of control and depositary oversight.

**Proposed deletion of i. General restrictions, paragraph 8, page 105, AIF Rulebook March 2024.**

~~8. The Qualifying Investor AIF shall not, nor shall it appoint a management company or general partner or AIFM which would, acquire any shares carrying voting rights which would enable it to exercise significant influence over the management of an issuing body. This requirement does not apply to investments in other investment funds. It is also disappplied where the Qualifying Investor AIF is a venture capital, development capital or private equity Qualifying Investor AIF provided its prospectus indicates its intention regarding the exercise of legal and management control over underlying investments.~~

**Question 9: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

Please confirm that ID1105 of the Central Bank's AIFMD Q&A will be deleted as part of the update to the AIFMD Q&A to coincide with the publication of the updated AIF Rulebook.

## **15. Investments in units of a related investment fund**

The relevant paragraph will be amended to include a reference to 'or other legal entity' to the list of parties where the obligations of this paragraph apply to clarify the scope of the provision. A clarification will also be made to reference the 'AIFM' when referencing

'management company'.

**Proposed amendments of i. General restrictions, paragraph 9, page 105, AIF Rulebook March 2024.**

9. The Qualifying Investor AIF shall only invest in units of an investment fund managed by its management company or AIFM or by an associated or related company **or other legal entity** of either of these, where the **AIFM / management company** of the investment fund in which the investment is being made has waived the preliminary / initial / redemption charge which it would normally charge. **This provision shall not apply where the Qualifying Investor AIF is structured as a feeder fund which invests into a master fund managed by its management company or AIFM provided that in such circumstances no preliminary/initial/redemption charge is imposed by the Qualifying Investor AIF on its unitholders.**

**Question 10: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

Irish Funds would request that as part of its update to the AIF Rulebook, the Central Bank takes the opportunity to update this wording to clarify that this provision can be disapplied in circumstances where investment is made by a feeder fund into a related master fund provided that investors in the feeder fund are not subject to a preliminary/initial/redemption charge, thus ensuring that no double charging takes place.

We suggest that the wording is updated as highlighted in yellow below:

"The Qualifying Investor AIF shall only invest in units of an investment fund managed by its management company or AIFM or by an associated or related company or other legal entity of either of these, where the AIFM / management company of the investment fund in which the investment is being made has waived the preliminary / initial / redemption charge which it would normally charge. **This provision shall not apply where the Qualifying Investor AIF is structured as a feeder fund which invests into a master fund managed by its management**

company or AIFM provided that in such circumstances no preliminary/initial/redemption charge is imposed by the Qualifying Investor AIF on its unitholders.”

## 16. Qualifying Investor AIF obligations in respect of performance fees

The AIF Rulebook is updated to clarify that a Qualifying Investor AIF must ensure that its AIFM provides depositaries access to all necessary information to allow them to verify the calculation of the performance fee.

Proposed amendments of i. General restrictions, paragraph 10, page 105, AIF Rulebook March 2024.

10. The Qualifying Investor AIF shall ensure ~~that the calculation of performance fees is verified by the depositary or a competent person appointed by the AIFM and approved for the purpose by the depositary~~ **verifies that there are procedures in place to ensure that any performance fees payable and accrued pursuant to AIF performance fee payment cycle, are calculated in accordance with the constitutional document and the prospectus of the AIF.** **The Qualifying Investor AIF shall ensure that its AIFM provides the depositary or competent person with all necessary information regarding the calculation of the performance fee in advance of any such fees being paid.**

**Question 11: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

The Central Bank’s proposal has been thoroughly evaluated and considered. It should be emphasised that, under Article 94 of the AIFMD Level 2 Delegation Regulation, depositaries have well-defined duties regarding the valuation of units and have established robust oversight programs in line with these obligations. These programs ensure comprehensive due diligence and ongoing monitoring of the Fund Administrator’s operations, verifying that appropriate and consistent procedures are established for all valuation activities, including the calculation of performance fees, to meet regulatory requirements and sectoral guidance. Furthermore, they confirm that these procedures are effectively implemented and that all fees, including

performance fees, are calculated in accordance with the methodology outlined in the prospectus.

With this in mind, the consensus is that the proposed amendment to the depositary verification of performance fees provision is not, in itself, of material significance. Nevertheless, it is the prevailing view that the overall provision extends beyond the scope of ESMA's guidelines on performance fees ("Guidelines") and introduces requirements that are inconsistent with established EU regulatory standards. The additional requirements imposed on depositaries or other competent persons are not aligned with ESMA's Guidelines. Eliminating these requirements will help establish a level playing field for all market participants, promote consistency, reduce unnecessary complexity, and enhance the sector's competitiveness. We strongly advocate for the Central Bank to fully align and harmonise its performance fee requirements with ESMA's Guidelines.

If the requirement is to be retained, we recommend updating the wording (as highlighted in yellow) as follows for greater clarity:

"The Qualifying Investor AIF shall ensure ~~that the calculation of performance fees is verified by~~ the depositary or a competent person appointed by the AIFM and approved for the purpose by the depositary ~~verifies that there are procedures in place to ensure that any performance fees payable and accrued pursuant to AIF performance fee payment cycle, are calculated in accordance with the constitutional document and the prospectus of the AIF.~~ The Qualifying Investor AIF shall ensure that its AIFM provides the depositary ~~or competent person~~ with all necessary information regarding the calculation of the performance fee in advance of any such fees being paid.

Although captured in our proposed updated text, the reference to competent person, as highlighted in yellow, is not captured in the consultation's draft language.

"The Qualifying Investor AIF shall ensure that its AIFM provides the depositary ~~or competent person~~ with all necessary information regarding the calculation of the performance fee in advance of any such fees being paid".

## 17. Requirements in relation to changing the maximum annual fee

The AIF Rulebook is amended to clarify the reference to 'limited partnership agreement'.

The AIF Rulebook will provide for the Qualifying Investor AIF, when changing the maximum annual fee charged, to do so either by: (i) approval on the basis of a simple majority of votes cast or (ii) in accordance with the voting procedures / requirements of the

Qualifying Investor AIF's governing documents. (This can allow for a written resolution of the relevant unitholders where provided for in relevant regulation of that fund's legal structure). Certain conditions are applied in the AIF Rulebook related to voting requirements that ensure investor interests are safeguarded when there are proposed material changes to Qualifying Investor AIFs, particularly in cases where investors are not offered the opportunity to redeem their investment prior to the change taking effect.

**Proposed amendment of i. General restrictions, paragraph 11, page 105, AIF Rulebook March 2024.**

11. The Qualifying Investor AIF shall specify, in its ~~trust deed, deed of constitution,~~ **constitutional document**, management agreement, AIFM agreement or **limited partnership agreement**, the maximum annual fee charged by, as relevant, an AIFM, a management company and/or a general partner of the Qualifying Investor AIF. **Such** ~~The~~ maximum annual fee **of the Qualifying Investor AIF** shall not be increased without approval on the basis of a **simple** majority of votes cast ~~at general meeting~~. In the event of an increase in **the such maximum the** annual fee **charged to a Qualifying Investor AIF**, a reasonable notification period must be provided by the Qualifying Investor AIF to enable unitholders redeem their units prior to the implementation of the increase. The provisions of this paragraph are also applicable to the annual fee charged by an investment manager where this fee is paid directly out of the assets of the Qualifying Investor AIF.

**New Footnote: Only applicable to open-ended funds and open-ended funds with limited liquidity which provide the opportunity for investors to redeem prior to the implementation of the change. The AIF Rulebook provides for different procedures when there is no opportunity for investors to redeem.**

**Question 12: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

Irish Funds suggest the deletion of the reference to “limited partnership agreement” from the 1st line of paragraph 11. This is covered by the term “constitutional document” in the context of an ILP.

For clarity, "such maximum annual fee" should be referenced in place of the maximum annual fee of the QIAIF / charged to a QIAIF, highlighted in yellow:

“The Qualifying Investor AIF shall specify, in its ~~trust deed, deed of constitution,~~ **constitutional document**, management agreement, AIFM agreement ~~or limited partnership agreement~~, the maximum annual fee charged by, as relevant, an AIFM, a management company and/or a general partner of the Qualifying Investor AIF. **The Such** maximum annual **fee of the Qualifying Investor AIF** shall not be increased without approval on the basis of a **simple** majority of votes cast ~~at general meeting~~. In the event of an increase in **the such maximum** annual fee ~~charged to a Qualifying Investor AIF~~, a reasonable notification period must be provided by the Qualifying Investor AIF to enable unitholders redeem their units prior to the implementation of the increase. The provisions of this paragraph are also applicable to the annual fee charged by an investment manager where this fee is paid directly out of the assets of the Qualifying Investor AIF.

## **18. Requirements in relation to changing the maximum redemption fee**

Clarification has been made in relation to requirements around the maximum charge relating to the redemption or repurchase of units. The reference to ‘constitutional document’ or ‘prospectus’ has been replaced with ‘governing documents’ to ensure consistency in the use of terminology through the AIF Rulebook.

**Proposed amendments of i. General restrictions, paragraph 12, page 105, AIF Rulebook March 2024.**

12. The Qualifying Investor AIF shall specify, in its ~~constitutional document or prospectus~~ **governing documents**, the maximum charge relating to the redemption or repurchase of units. The maximum charge relating to the redemption or repurchase of units may not be increased without approval on the basis of a **simple** majority of votes cast ~~at general meeting~~. In the event of an increase in the ~~redemption or repurchase~~ charge a reasonable notification period must be provided by the Qualifying Investor AIF to enable unitholders redeem their units prior to the implementation of the increase.

**New Footnote: Only applicable to open-ended funds and open-ended funds with limited liquidity which provide the opportunity for investors to redeem prior to the implementation of the change. The AIF Rulebook provides for different procedures when there is no opportunity for investors to redeem.**

**Question 13: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

**Yes**

**No**

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

## **19. Process in relation to the remuneration of related parties**

Clarification is being provided to the process around providing for remuneration and the parties that are empowered to charge fees. Further, a single reference is made to the Qualifying Investor AIF instead of the list of legal vehicles used to establish the Qualifying Investor AIF. The AIF Rulebook will be amended to remove reference to 'the trust deed', 'deed of constitution', 'partnership agreement', 'the articles of association' or 'instrument of incorporation' and instead these will be replaced with a single reference to

constitutional document. Further, references to a 'unit trust', 'common contractual fund' or 'investment limited partnership' are removed to reference instead the 'Qualifying Investor AIF' to ensure consistency in such references throughout the AIF Rulebook.

Reference to the AIFM is included for clarification purposes.

The AIF Rulebook is further amended to remove reference to 'the articles of association' or 'instrument of incorporation' in favour of the singular reference to constitutional document.

**Proposed amendments to ii. Constitutional documents, paragraph 3, page 106, AIF Rulebook March 2024.**

3. The Qualifying Investor AIF shall, in its **constitutional document**, ~~prescribe the in the trust deed, deed of constitution or partnership agreement, prescribe~~ **provide for** the remuneration and the expenditure which the **AIFM**, management company or general partner and depositary are empowered to charge to a ~~unit trust, common contractual fund or investment limited partnership~~ **the Qualifying Investor AIF** and the method of calculation of such remuneration; and, the costs to be borne by the ~~unit trust, common contractual fund or investment limited partnership~~ **Qualifying Investor AIF**.

~~The Qualifying Investor AIF shall, in the articles of association or instrument of incorporation, prescribe the nature of the costs to be borne by the investment company.~~

**Question 14: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

## 20. Replacement of AIFM/management company/general partner

The AIFMD sets out requirements for the AIFM to act in the best interests of the AIF and its investors at all times. With respect to the replacement of the AIFM / management company / general partner, the current requirement to specify the procedure to be followed within the constitutional document of the Qualifying Investor AIF is not appropriate, given this relates to a policy or procedure that may be updated over time, and there are sufficient requirements to protect investors within the overall framework. The Central Bank is therefore proposing to remove this specific requirement.

Clarification will be added that the AIFM / management company / general partner of a Qualifying Investor AIF may not be replaced without the prior approval of the Central Bank.

**Proposed amendments to ii. Constitutional documents, paragraph 5, page 106, AIF Rulebook March 2024.**

5. The Qualifying Investor AIF shall, where relevant, specify, in its **governing constitutional** documents, the circumstances under which there may be effected, ~~and the procedure to be followed with respect to,~~ the replacement of the AIFM / ~~or the~~ management company / general partner with another AIFM / management company / general partner (including such a replacement by the Central Bank) and shall contain provisions to ensure the protection of unitholders in the event of any such replacement. **The AIFM / management company / general partner of a Qualifying Investor AIF may not be replaced without the prior approval of the Central Bank.**

**Question 15: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

## 21. Replacement of the depositary

The AIFMD sets out requirements on the AIFM to act in the best interests of the AIF and its investors. The current requirement to specify the procedure to be followed with respect to the replacement of the depositary is not appropriate within the constitutional documents given this relates to a policy or procedure that may be updated over time. The Central Bank is therefore proposing to remove this specific element of the requirement. Clarification is also included that the approval of the Central Bank must be attained prior to any appointment of a depositary.

**Proposed amendments to ii. Constitutional documents, paragraph 6, page 107, AIF Rulebook March 2024.**

7. The depositary of a Qualifying Investor AIF may not be replaced without the **prior** approval of the Central Bank. The Qualifying Investor AIF shall specify, in its **governing constitutional documents**, the conditions under which there may be effected, ~~and the procedure to be followed with respect to,~~ the replacement of the depositary of the Qualifying Investor AIF with another depositary (including such a replacement by the Central Bank) and shall contain provisions to ensure the protection of unitholders in the event of any such replacement.

**Question 16: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

## 22. Bearer securities

The issuing of bearer shares by investment funds is no longer permitted under Section 66(9-10) of the Companies Act 2014, and it is proposed to remove references in the AIF Rulebook accordingly.

**Proposed amendments to ii. Constitutional documents, paragraph 7, page 107, AIF Rulebook March 2024.**

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 the ~~a~~ **units** 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 depositary. This signature may be reproduced mechanically.

**Proposed amendments to ii. General information concerning the Qualifying Investor AIF, paragraph 1(l)(iv), page 121, AIF Rulebook March 2024.**

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

**Question 17: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

### **23. Update to requirements on partly paid units**

Text changed to refer to 'its' instead of 'their'.

**Proposed amendments to ii. Constitutional documents, paragraph 8, page 107, AIF Rulebook March 2024.**

8. The Qualifying Investor AIF may provide for the issue of partly paid units in ~~their~~**its** constitutional documents.

**Question 18: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

## 24. Rules for subscription in specie

Clarification that requirements related to subscriptions in specie are included in the Qualifying Investor AIF's constitutional document.

In addition, clarification has been provided to distinguish between the treatment of those assets that can be held in custody and other assets by the depositary.

**Proposed amendment to ii. Constitutional documents, paragraph 9, page 107, AIF Rulebook March 2024.**

9. The Qualifying Investor AIF shall ensure that where its constitutional document provides for subscription in specie, the following provisions must also be included **in its constitutional document**:
- the nature of the assets to be transferred into the Qualifying Investor AIF would qualify as investments of the Qualifying Investor AIF in accordance with the investment objectives, policies and restrictions of the Qualifying Investor AIF.
  - assets to be transferred **that can be held in custody** must be vested with the depositary or arrangements are made to vest the assets with the depositary;
  - **for other assets to be transferred that cannot be held in custody, the depositary shall verify the ownership of such assets by the AIF or the AIFM acting on behalf of the AIF**;
  - the number of units to be issued must not exceed the amount that would be issued for the cash equivalent; and
  - the depositary is satisfied that the terms of any exchange will not be such as are likely to result in any material prejudice to the existing unitholders of the Qualifying Investor AIF or the depositary is satisfied that there is unlikely to be any material prejudice to the existing unitholders of the Qualifying Investor AIF.

**Question 19: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

It should be clarified that, for "other assets" that cannot be held in custody, the depositary's obligations under Regulation 21(8)(b) of the AIFM Regulations are triggered at the point of exchange, rather than before the assets are transferred as part of a subscription in specie. At the point of exchange, the depositary will record the assets and begin verifying the ownership of the AIF, or the AIFM acting on behalf of the AIF, in respect of those assets.

Accordingly, we recommend removing the words "to be" (as highlighted in yellow) to clarify the sentence as follows:

"for other assets **to be** transferred to the AIF or the AIFM acting on behalf of the AIF, that cannot be held in custody, the depositary shall verify the ownership of such assets by the AIF or the AIFM acting on behalf of the AIF;"

## **25. Subscription in specie and exchange of assets**

To distinguish this process from the defined terms related to the use of LMTs under Directive (EU) 2024/927, the term 'exchange of assets' will be utilised instead of 'in-specie'. For clarity, a reference to the process of 'settlement of redemptions' is included.

**Proposed amendment to ii. Constitutional documents, paragraph 10 on pages 107-108, AIF Rulebook March 2024.**

10. The Qualifying Investor AIF shall ensure that where its constitutional document provides for **the settlement of redemptions through an exchange of assets** ~~in specie~~ the following provisions must also be included in the constitutional document:

- **the settlement of redemptions through an exchange of assets** ~~in specie~~ is at the discretion of the Qualifying Investor AIF and with

the consent of the redeeming unitholder;

- asset allocation is subject to the approval of the depositary; and
- a determination to provide **the settlement of redemptions through an exchange of assets** ~~in specie~~ may be solely at the discretion of the Qualifying Investor AIF where the redeeming unitholder requests redemption of a number of units that represent 5% or more of the NAV of the Qualifying Investor AIF. In this event the Qualifying Investor AIF will, if requested, sell the assets on behalf of the unitholder. The cost of the sale can be charged to the unitholder.

The requirements set out in the first and third bullet points above are not applicable for an exchange traded fund where the original subscription was made in specie.

**Question 20: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

Irish Funds firstly understands that this section of CP 162 should be titled “Settlement of redemptions through an exchange of assets” instead of “Subscription in specie and exchange of assets”.

This section, which addresses the provisions that must be included in the QIAIF’s constitutional document in order to provide for the settlement of redemptions through an exchange of assets, should be updated to align with the provisions set down in Section 56 of CP 162 which provides that where a settlement of redemptions can be made through an exchange of assets, the terms and conditions applicable to such framework must be included in the QIAIF’s prospectus. Specifically, Irish Funds would suggest that the three bullet point conditions should be deleted. We would note that the bullet point conditions would also conflict with the LMT Regulations and while we note that this section is intended to be supplemental to the LMT Regulations we do not believe it is appropriate to apply more onerous conditions.

## 26. Exchange of Assets in the case of a 'winding up'

Terminology is being changed to differentiate this concept in terms of a 'winding up' from that of a redemption in specie under Directive (EU) 2024/927.

Proposed amendment to ii. Constitutional documents, paragraph 11, page 108, AIF Rulebook March 2024.

11. The Qualifying Investor AIF shall ensure that where its governing constitutional documents provides for distribution in specie the distribution or exchange of assets as part of the redemption policy on a winding up, the governing documents must provide that the following provisions must also be included in its constitutional document the settlement of redemptions through an such distribution or exchange of assets on a winding up is at the discretion of the Qualifying Investor AIF subject to it being satisfied that the relevant unitholder(s) are or can reasonably be expected to be in a position to receive the assets proposed to be transferred by it to the unitholder(s). and is with the consent of the redeeming unitholder. Where the Qualifying Investor AIF agrees to sell the assets upon the request of the redeeming unitholder, the costs of such sale may be charged to the redeeming unitholder.

- an ordinary/special resolution is required; and asset allocation is subject to the approval of the depositary; and
- the Qualifying Investor AIF agrees to sell the assets if requested by a unitholder. The costs of such sale can be charged to redeeming unitholders.

**Question 21: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

Irish Funds proposes an update to Paragraph 11, as highlighted in yellow (also marked up above):

The Qualifying Investor AIF shall ensure that where its governing documents provides for the

~~distribution or exchange of assets as part of the redemption policy on a winding up, the governing documents must provide that the settlement of redemptions through an such distribution or exchange of assets on a winding up is at the discretion of the Qualifying Investor AIF subject to it being satisfied that the relevant unitholder(s) are or can reasonably be expected to be in a position to receive the assets proposed to be transferred by it to the unitholder(s) and is with the consent of the redeeming unitholder Where the Qualifying Investor AIF agrees to sell the assets upon the request of the redeeming unitholder, the costs of such sale may be charged to the redeeming unitholder~~

Section 26 is addressing the distribution in specie on a winding up of the relevant fund (e.g. the distribution of remaining assets by a liquidator after it has been appointed in respect of a fund or an ICAV).

Accordingly Irish Funds believes that the wording proposed in Section 26 should be revised as outlined above to provide that a distribution or exchange of assets on a winding up should be permitted provided that (i) there is adequate disclosure in the prospectus, to which the investor has agreed at the point of investing in the fund, and (ii) the impacted investors are operationally in a position to receive the assets. We would note that closed ended funds with a fixed term (which can only be extended with investor consent), need to be able to wind up and terminate in accordance with the term set for the fund and agreed to by all investors at the outset. A requirement for a further investor consent at the point of winding up potentially blocks the winding up for all investors (rendering the agreed fixed term ineffective) and also potentially causing the investor to incur significant additional costs in keeping the fund operating past its agreed fixed term.

Furthermore, imposing a consent requirement for an in-specie distribution on a winding up would be inconsistent with the standard imposed for the settlement of redemptions through an exchange of assets put forward by the Central Bank in Section 56 of CP 162 (where no consent is required and the terms and conditions of such redemptions must be disclosed in the prospectus).

## 27. Companies Act 2014 risk spreading requirement

Duplicative reference to the Companies Act 2014 and spreading of investment risk is removed.

**Proposed deletion to ii. Constitutional documents, paragraph 12, page 108, AIF Rulebook March 2024.**

12. ~~Where the Qualifying Investor AIF is an investment company other than an ICAV it shall, in its memorandum and articles of association, state that the AIF shall comply with the aim of spreading investment risk in accordance with section 253(2)(a) of the Companies~~

Act 1990.

**Question 22: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

## **28. Limitations on temporary suspensions for ILPs**

Reference to the possibility for limitations to be placed on Investment Limited Partnerships from suspending temporarily the calculation of the NAV and redemptions are being removed as the revised LMT requirements of Directive (EU) 2024/927 do not provide for such limitations.

**Proposed deletion to ii. Constitutional documents, paragraph 13, page 108, AIF Rulebook March 2024.**

13. ~~Where the Qualifying Investor AIF is an investment limited partnership it may not temporarily suspend the calculation of the net asset value and redemptions except in the cases and according to the procedure provided for in the partnership agreement. Suspension may be provided for only in exceptional cases where circumstances so require and suspension is justified having regard to the interests of the partners.~~

**Question 23: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

**Yes**

**No**

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

## **29. Conditions for redemptions/repurchases**

In paragraph 3, 'withdrawal' is changed to 'withdrawals'. The term 'partners' is replaced by the term 'unitholders' as defined in the AIF Rulebook

**Proposed amendments to iii. Valuation, paragraph 3, page 109, AIF Rulebook March 2024.**

3. The Qualifying Investor AIF shall, in its constitutional document, establish conditions for the creation and cancellation of units or for contributions and withdrawals of contributions of ~~partners'~~ **unitholders'** capital, as appropriate.

**Question 24: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

**Yes**

**No**

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

### 30. Clarification on references to 'redemption fee'

The concept of 'redemption fee' has been clarified to distinguish from the use of similar mechanisms as LMTs.

**Proposed amendments to iv. Distinction between open-ended Qualifying Investor AIFs and those which are open-ended with limited liquidity arrangement, paragraph 1, page 109, AIF Rulebook March 2024.**

1. Where the Qualifying Investor AIF is an open-ended Qualifying Investor AIF it shall:
  - (a) provide redemption facilities on at least a quarterly basis;
  - (b) redeem when requested at least 10% of net assets on a monthly basis or 25% of net asset on a quarterly basis; and
  - (c) not impose a **charge on** redemptions in excess of 5% of ~~net asset value~~ **NAV** per unit.

**New Footnote: This provision refers to circumstances where the Qualifying Investor AIF imposes charges on redemptions that are not applied as an LMT in accordance with Annex V of Directive (EU) 2011/61.**

**Question 25: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

**Yes**

**No**

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

### 31. Clarification of reference to ‘calendar days’

The AIF Rulebook is amended to clarify that the period of time referred to under paragraph 2 as per below is 90 calendar (or consecutive) days.

**Proposed amendment to iv. Distinction between open-ended Qualifying Investor AIFs and those which are open-ended with limited liquidity arrangement, paragraph 2, page 109, AIF Rulebook March 2024.**

2. Qualifying Investor AIFs which:
  - (a) offer redemption and/or settlement facilities on a less than quarterly basis; or
  - (b) provide for a period of greater than 90 **calendar** days between the dealing deadline and the payment of redemption proceeds will not be subject to any regulatory parameters in terms of dealing frequency, minimum redemption quotas or timeframe for settlement, provided they classify themselves as open-ended Qualifying Investor AIFs with limited liquidity.

**Question 26: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

**Yes**

**No**

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

## 32. Clarification around settlement processes

The AIF Rulebook is amended to clarify that the extension to the days allowable under paragraph 3 of this section is an additional 5 calendar days.

**Proposed amendment to iv. Distinction between open-ended Qualifying Investor AIFs and those which are open-ended with limited liquidity arrangement, paragraph 3, page 110, AIF Rulebook March 2024.**

3. Where the open-ended Qualifying Investor AIF provides for dealing on a quarterly basis, the time between submission of a redemption request and payment of settlement proceeds must not exceed 90 calendar days. This period can however be extended ~~to~~ **by** 95 calendar days in the context of a Qualifying Investor AIF which invests in other investment funds, including a Qualifying Investor AIF which provides for dealing on a more frequent basis (e.g. monthly, weekly etc.).

**Question 27: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

**Yes**

**No**

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

## 33. Provisions related to side pockets and illiquid assets

The establishment of side pocket classes is permitted and is not contingent on the liquidity profile of the asset. Qualifying Investor AIFs are permitted to invest in illiquid assets subject to the redemption profile of the fund being calibrated accordingly and appropriate disclosures on the impact of investing in illiquid assets are detailed in the prospectus. As a result, these provisions are no longer necessary and will be removed.

**Proposed deletion to iv. Distinction between open-ended Qualifying Investor AIFs and those which are open-ended with limited liquidity arrangement, paragraph 4, page 110, AIF Rulebook March 2024.**

4. ~~Qualifying Investor AIFs which have the ability to establish side pocket share classes into which assets that are illiquid when purchased may be placed must classify themselves as open-ended with limited liquidity or as closed-ended.~~

**Question 28: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

**Yes**

**No**

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

### **34. Central Bank requirements on the use of share classes**

The AIF Rulebook will now be amended to clarify the requirements surrounding the creation of share classes. This includes the addition of new paragraphs (3-8).

Amendments incorporate the current Central Bank guidance on share classes for closed-ended funds to ensure that all AIFs can avail of these provisions to enable managers to better meet their investors' needs. Amendments also ensure that provisions align with AIFMD requirements regarding the granting of preferential treatment subject to investors being treated fairly and such arrangements being disclosed in the prospectus. Subject to certain requirements set out as paragraphs 4 to 8, these share classes provide for: (i) allocation of the returns of specific assets to the class; and / or (ii) participation by a class in the Qualifying Investor AIF other than on a pro rata basis. Further, the establishment of

share classes which provide for such differentiated participation will be permissible to reflect: (a) issue of shares / units / interests at a price other than NAV without prior approval of the Central Bank; (b) excuse and exclude provisions; (c) stage investing; and (d) management participation.

**Proposed amendments, deletions and inclusions to v. Share classes paragraphs 1 and 2, pages 110-111, AIF Rulebook March 2024.**

1. Subject to paragraph 2 below, ~~where the Qualifying Investor AIF creates more than one share class within the AIF or within an umbrella, it shall comply with the following~~ **a Qualifying Investor AIF shall only create one or more share classes within the Qualifying Investor AIF, or within a sub-fund of an umbrella Qualifying Investor AIF, where the following requirements are satisfied:**
  - a. the constitutional document of the Qualifying Investor AIF must provide for the creation of share classes. In the case of an umbrella Qualifying 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 Qualifying Investor AIF ~~or sub-fund~~ **thereof** must consist of a single ~~common~~ pool of assets;
  - c. ~~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 Qualifying Investor AIF/sub-fund;~~
  - e. ~~unitholders in a share class must be treated equally; and~~
  - f. **c. where more than one share class exists, all the unitholders in the different share classes must be treated fairly; and**
  - d. **no unitholder in a Qualifying Investor AIF or sub-fund thereof, whether in the same or different share classes, shall obtain preferential treatment, unless the granting of such preferential treatment is disclosed in the prospectus, including a description of how the Qualifying Investor AIF ensures the fair treatment of investors. Where a unitholder in a Qualifying Investor AIF or sub-fund thereof, whether in the same or different share classes, obtains such preferential treatment, it shall not result in a material disadvantage to other unitholders in the Qualifying Investor AIF or relevant sub-fund.**

Share classes may be established which may be differentiated on the basis of

subscription/redemption procedures, **asset exposure**, distribution policies or charging structure, hedging policies or other criteria clearly disclosed in the prospectus and permitted by the constitutional document.

2. Subject to paragraphs 3 to 4 ~~8~~ the

(i) **Qualifying Investor** AIF may allocate assets (including, without limitation, financial derivative instruments (“FDI”),) to individual share classes where the arrangement

- is not made for the purpose of pursuing a separate investment objective by the share class;
- does not result in a share class operating de facto as a separate sub-fund; or
- is not created in order to circumvent the requirements set out in paragraph 1 of this section.

(ii) **The Qualifying** Investor AIF shall distribute and/ or accrue capital gains/ losses and income from the above to each unitholder relative to their participation in the relevant share class provided that:

- (a) there is prominent disclosure in the prospectus of the ability to establish such share classes and the attendant risks;
- (b) there is clear authority in the constitutional document to create such share classes;
- (c) the constitutional document contains unambiguous valuation and allocation provisions; and
- (d) to the extent possible under the investment fund legislation and applicable law, the constitutional document contains provisions aimed at achieving segregation of liability between such share classes and the share classes participating in the ~~common~~ **single** pool of assets of the Qualifying Investor AIF ~~or sub-fund thereof~~. Where it is not possible to ensure such segregation of liability, this shall be prominently disclosed **in bold text** in the prospectus.

3. **Notwithstanding the requirements of Part 1, Section 1, iii Valuation, and without prejudice to the generality of paragraphs 1 and 2, share classes may be used to operationalise the capital commitment **or subscription** made by a unitholder or the participation of the investment management function in the Qualifying Investor AIF. These share classes may, subject to the requirements set out in paragraphs 4 to 8, provide for: (i) allocation of the returns of specific assets to the share class; and / or (ii) participation by a share class in the Qualifying Investor AIF other than on a pro rata basis. Establishment of share classes which provide for such differentiated participation is permitted to provide for:**

- (a) the issuance of shares at a price other than NAV without prior approval of the Central Bank;
- (b) excuse and exclude provisions;
- (c) stage investing; and,
- (d) management participation.

4. In order for a Qualifying Investor AIF to provide for a share class with one or more of the features noted in paragraph 3(a) – (d) and to allocate the returns of a specific asset to that share class the following general conditions apply:

(a) the ability to establish share classes providing for the features outlined in paragraph 3(a) –

(d) has been provided for in the Qualifying Investor AIF’s governing documents and has been disclosed to unitholders in advance;

(b) the Qualifying Investor AIF’s prospectus permits establishment of share classes which provide for different levels of participation in the Qualifying Investor AIF;

(c) the unitholder’s interest in a Qualifying Investor AIF is proportionate to:

- the capital it has paid into the Qualifying Investor AIF at a particular point in time; and/or
- the predetermined flow of capital returns to the share class; and/or
- the extent to which the share class held by the unitholder participates in the assets of the Qualifying Investor AIF.

(d) where the investor has subscribed in the Qualifying Investor AIF on the basis of a capital commitment and periodic drawdowns from the investor, the Qualifying Investor AIF maintains records on an individual investor basis to enable it to clearly identify commitments paid and commitments outstanding for each investor (“capital accounting”), and

(e) the capital accounting methodology is consistent with the requirements of Commission Delegated Regulation (EU) 231/2013 which require the AIFM to establish, implement and maintain accounting policies and procedures to ensure that the calculation of the NAV is carried out as required by that Delegated Regulation and the AIFM Regulations.

5. Where a Qualifying Investor AIF issues new units at a price below NAV, this shall not result in a material disadvantage to other unitholders in the Qualifying Investor AIF.

6. A Qualifying Investor AIF may facilitate excuse provisions (which enable an investor to be excused from an investment that the Qualifying Investor AIF proposes to make) and/or exclude provisions (which permits the Qualifying Investor AIF to exclude an investor from a proposed investment that the Qualifying Investor AIF proposes to make) provided that:
- (a) the excuse and/or exclude provisions are predetermined and documented by the Qualifying Investor AIF (in respect of excuse provisions by way of a written document between the Qualifying Investor AIF and the investor prior to an investment being made in the Qualifying Investor AIF and, in respect of exclude provisions, by providing for the circumstances in which this may occur in the governing documents of the Qualifying Investor AIF); and  
in each case unless the written document agreed with the investor or the [governing documents] provide[s] otherwise
  - (b) a ~~formal~~ notification must be provided by the unitholder or Qualifying Investor AIF (depending on the party invoking the provision) outlining the basis on which the excuse or exclude provision is being invoked;
  - (c) ~~the board of the Qualifying Investor AIF and the AIFM must document:~~
    - ~~whether or not it accepts the formal notification so provided, and~~
    - ~~the consequences of accepting or disagreeing with such notification.~~
7. A Qualifying Investor AIF may, at a later stage in the life cycle of the Qualifying Investor AIF, permit new investors to acquire shares in the Qualifying Investor AIF. The purchase of shares by way of transfer from an existing unitholder or the subscription for new shares in the Qualifying Investor AIF may be facilitated by the Qualifying Investor AIF by way of establishment of a new class which provides for participation in (i) one or more existing investments, (ii) one or more existing and future investments or (iii) one or more future investments of the Qualifying Investor AIF ~~or in future investments~~ only and provided that:
- (a) upon acquisition by way of transfer, the terms of investment by the new investor is clearly documented;
  - (b) upon the issue of new shares, a new share class is established for the investor; and
  - (c) the commitments paid and commitments outstanding for each investor are accounted for using a capital accounting methodology.
8. A Qualifying Investor AIF may establish management share classes which permit persons designated by the AIFM as entitled to participate in investments of the Qualifying Investor AIF. Such classes may participate in the Qualifying Investor AIF on the basis of conditions which differentiate the class from other classes in

the Qualifying Investor AIF. This is subject to:

- the conditions applicable to such classes being provided for in the prospectus.
- capital payments (both committed capital and preferred returns) being allocated to relevant investor share classes and management share classes in accordance with the Qualifying Investor AIF's governing documents.

**Question 29: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.

Irish Funds suggests a formatting change (see highlighted in yellow) to paragraph 2 to ensure that the reference to paragraphs 3 to 8 in the opening part of this paragraph applies equally to the provisions relating to the distribution of capital gains/losses to each unitholder relative to their participation. (“(i) Qualifying Investor AIF may allocate...” and “(ii) The Qualifying Investor AIF shall distribute...”).

The suggested amendment in paragraph 3 (highlighted in yellow) – “share classes may be used to operationalise the capital commitment or subscription...” - is to clarify that the provisions that follow can be adopted in a share class which operates on a fully funded model. Irish Funds' members do not believe that paragraph 6(c) is necessary and suggest its deletion. A fund should have a record of everything it does and not just excuse/exclude activities. Therefore, the notification requirement under 6(b) should be sufficient (noting the suggested mark-up highlighted in yellow “a formal notification...” and the suggested amendment in 6(a) highlighted in yellow above – “and in each case unless the written document agreed with the investor or the [governing documents] provide(s) otherwise”).

Irish Funds would also highlight that it will have been clearly agreed and predetermined in advance when an excuse or exclude provision will be triggered (as the Central Bank requires), which may be automatic and objective in many cases (for example if a state pension fund cannot be exposed to fossil fuels for binding legal reasons). Unless these predetermined contractual provisions provide otherwise, it is sufficient for transparency and governance reasons thereafter that the triggering party notifies the other it is triggering pre-agreed/pre-disclosed contractual rights. This is in line with best practice in the market.

For paragraph 7, Irish Funds suggest updating as highlighted in yellow to make clear that it is possible for an investor to participate in one or more existing investments (without being required to participate in future investments) or in one or more future investments (without being required to participate in all future investments).

“...for participation in (i) one or more existing investments, (ii) one or more existing and future investments, (iii) one or more future investments of the Qualifying Investor AIF ~~or in future investments~~ only..”.

### 35. Illiquid asset share classes

The share class provisions in the AIF Rulebook have been amended to include asset exposures and a separate section devoted to side pocket arrangements for holding illiquid assets is no longer necessary.

Specific requirements within the AIF Rulebook with respect to the use of side pockets as LMTs and referenced in Directive (EU) 2024/927 have been aggregated into a separate section of the Qualifying Investor AIF chapter.

**Proposed deletion of v. Share classes, ‘Side pockets share classes – Assets which become illiquid or difficult to value’ and ‘Side pocket share classes – Assets which are illiquid when purchased’, paragraphs 3 to 10, pages 111-112, AIF Rulebook March 2024.**

~~Side pocket share classes—Assets which become illiquid or difficult to value~~

- ~~3.—A Qualifying Investor AIF may establish side pocket share classes into which assets which have become illiquid or difficult to value may be placed provided that the ability to establish these share classes has been provided for in the Qualifying Investor AIF’s constitutional document and has been disclosed to unitholders in advance.~~
- ~~4.—The Qualifying Investor AIF must, in its constitutional document, prescribe the parameters which will apply to the creation of side pocket share classes.~~
- ~~5.—The Qualifying Investor AIF shall, at all times, be able to demonstrate that any assets placed in side pocket share classes comply with the approved parameters.~~
- ~~6.—The Qualifying Investor AIF shall report to the Central Bank on an annual basis confirming~~

~~whether or not the parameters continue to be respected and outlining the prospects and/or plans for the side pocketed assets.~~

~~7.— The Qualifying Investor AIF must specify in its prospectus a clear and unambiguous description of the proposed side pocket arrangements and information on the action which will be taken in the event that the assets within the side pockets are not re-admitted to trading or otherwise increase in value and/or liquidity as anticipated.~~

~~8.— The Qualifying Investor AIF shall, in advance of establishing a side pocket share class, provide in conjunction with its depositary written confirmation to the Central Bank that the proposed establishment is in accordance with the Qualifying Investor AIF's constitutional document and takes into account the interests of all unitholders.~~

~~Side pocket share classes— Assets which are illiquid when purchased~~

~~9.— A Qualifying Investor AIF may establish side pocket share classes into which assets which are illiquid when purchased may be placed, provided that the ability to establish these share classes has been provided for in the Qualifying Investor AIF's constitutional document and has been disclosed to unitholders in advance.~~

~~10.— A Qualifying Investor AIF which has the ability to establish side pocket share classes for the purposes set out in paragraph 9 above must classify itself as either open-ended with limited liquidity or as closed-ended.~~

**Question 30: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

## 36. Charity share classes

The 49th Edition of the Central Bank's AIFMD Q&A, ID 1144 provides for the possibility of establishing an AIF that has a share class that makes distributions to a charity provided a number of requirements are met. It is proposed to now include this Q&A in the AIF

Rulebook as part of the general share class provisions. As a result, ID 1144 in the AIFMD Q&A will be deleted.

**Proposed insertion v. Share classes - 'Charity Share Classes' page 112, AIF Rulebook March 2024.**

1. A Qualifying Investor AIF may establish a share class that makes distributions to charity, subject to the following requirements:
  - the investor must elect to subscribe to such a share class and cannot be automatically invested in such a share class;
  - distributions should only be paid to a charity that is approved / authorised / registered in the relevant jurisdictions. Details of the charity and evidence of their approval / authorisation / registration status should be provided to the Central Bank on request;
  - the prospectus / supplement must clearly set out:
    - o the implications of such a share class - that the relevant charity and not the investor will benefit financially from distributions from the Qualifying Investor AIF;
    - o details of the charity to which the distributions are being made and the circumstances under which such distributions will take place; and
    - o that such distributions will not be paid out of the capital of the Qualifying Investor AIF.
  - periodic reporting to unitholders (for example, in the annual reports) must include details of the amounts that have been distributed to charity.

**Question 31: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

**Yes**

**No**

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

### 37. Compliance with rules at sub-fund level

Updated to include clarification that the provisions of paragraph 2 apply to all sub-funds of the Qualifying Investor AIF, and not just at an umbrella level.

**Proposed amendments to vi. Umbrella Qualifying Investor AIFs, paragraph 2, page 112, AIF Rulebook March 2024.**

2. Where the Qualifying Investor AIF is constituted as an umbrella Qualifying Investor AIF, it shall ensure that **each of** its sub-funds **complies** with the requirements to which it is subject.

**Question 32: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

### 38. Disclosure in constitutional document

Text in paragraph 3 clarifies that relevant provisions per paragraph 3 are provided for in its constitutional document and reflect all available legal structures.

**Proposed amendments to vi. Umbrella Qualifying Investor AIFs, paragraph 3, page 112, AIF Rulebook March 2024.**

3. Where the Qualifying Investor AIF is an umbrella Qualifying Investor AIF it shall, as appropriate, provide ~~that its trust deed, deed~~ **in its constitutional document** ~~articles of~~

~~association or instrument of incorporation, provide that separate records will be maintained for each subfund~~ **sub-fund** with the assets and liabilities being allocated to each sub-fund.

**Question 33: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

**Yes**

**No**

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

### **39. Umbrella fund and sub-fund compliance**

Paragraph 4 duplicates elements that have been incorporated into paragraph 2 as set out in section 38 and will be deleted.

**Proposed deletion to vi. Umbrella Qualifying Investor AIFs, paragraph 4, page 112, AIF Rulebook March 2024.**

4. ~~Where the Qualifying Investor AIF constitutes an umbrella Qualifying Investor AIF, it shall ensure that its sub-funds comply with the requirements to which it is subject.~~

**Question 34: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

**Yes**

**No**

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

## 40. Rules in relation to intermediary investment vehicles

The AIF Rulebook allows for the establishment of wholly owned subsidiaries and for co-investment in investment vehicles, collectively intermediary investment vehicles. In this update, the Central Bank will clarify requirements around investment through such intermediary investment vehicles. Clarifications and amendments incorporate existing rules in the AIF Rulebook, and certain requirements under the AIFMD Q&A, ID 1158 and ID 1159.

The proposed changes recognise that protections related to the acquisition of control, asset valuation, depositary oversight and leverage look-through requirements are provided for under AIFMD.

**Proposed amendment to vii. Investment through subsidiary companies, paragraph 1, pages 113-114, AIF Rulebook March 2024.**

**vii. Investment through ~~subsidiary companies~~ intermediary investment vehicles**

~~1. A Qualifying Investor AIF may not establish a subsidiary unless the Qualifying Investor AIF complies with the following conditions:~~

- ~~(a) the establishment of a subsidiary must receive the prior approval of the Central Bank;~~
- ~~(b) the subsidiary must be wholly owned and controlled by the Qualifying Investor AIF; the directors of the Qualifying Investor AIF must form a majority of the board of directors of the subsidiary;~~
- ~~(c) the subsidiary must not be an investment fund or issuing body;~~
- ~~(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;~~
- ~~(e) the constitutional document of the Qualifying Investor AIF must provide for the ability of the Qualifying Investor AIF to establish subsidiaries;~~
- ~~(f) the constitutional document of the subsidiary must include provisions which restrict the subsidiary from acting other than under the control of the Qualifying Investor AIF and which restrict any person or entity other than the Qualifying Investor AIF from holding shares in the subsidiary; and~~

(g) the assets held by the subsidiary must be valued in accordance with the Qualifying Investor AIF's valuation rules.

1. A Qualifying Investor AIF, for the purposes of implementing its investment strategy, may invest through intermediary investment vehicles, including but not limited to special purpose vehicles, aggregators, subsidiaries or on a co-investment basis, subject to the following:
  - a. the use and purpose of such intermediary investment vehicles is disclosed in the prospectus of the Qualifying Investor AIF;
  - b. where a Qualifying Investor AIF establishes a wholly-owned subsidiary, which for any reason is not under its "control" as defined in AIFMD, the constitutional document of the subsidiary shall restrict its ability of the subsidiary to act other than in a manner consistent with the investment objective and policy of the Qualifying Investor AIF shall be restricted by the constitutional document of the subsidiary;
  - c. the intermediary investment vehicle must not be an investment fund;
  - d. the Qualifying Investor AIF shall ensure that its AIFM conducts appropriate due diligence of the intermediary investment vehicle prior to investment in the intermediary investment vehicle;
  - e. the Qualifying Investor AIF shall ensure that the AIFM has documented policies and procedures in place related to its due diligence, oversight and active monitoring of intermediary investment vehicles used by the Qualifying Investor AIF; and,
  - f. the Qualifying Investor AIF shall confirm in writing to the Central Bank that the AIFM will carry out effective appropriate due diligence and ongoing oversight of the activities of the intermediary investment vehicle in accordance with the relevant policies and procedures and its compliance with the Qualifying Investor AIF's stated investment objectives, policy, and strategy.

**Question 35(a): Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

While Irish Funds agree with the Central Bank's objective of ensuring that any wholly-owned subsidiary of a Qualifying Investor AIF acts consistently with the QIAIF's investment objective and policy, we do not consider section 1b. is required or proportionate to ensure the prudential aims of this section are met for a 100% owned subsidiary noting (i) we envisage that there will be "control" of such subsidiary as defined in AIFMD and (ii) the investor transparency and other protections at sections 1a and c-f apply in any event.

However, in the event that a QIAIF does not have control within the meaning of AIFMD of a wholly owned subsidiary established by the QIAIF then we agree that paragraph 1b should apply but per the suggested mark-ups in yellow below:

b. where a Qualifying Investor AIF establishes a wholly-owned subsidiary, which for any reason is not under its "control" as defined in AIFMD, the constitutional document of the subsidiary shall restrict its ability of the subsidiary to act other than in a manner consistent with the investment objective and policy of the Qualifying Investor AIF shall be restricted by the constitutional document of the subsidiary;

Ultimately, it is Irish Funds position that it is artificial to distinguish a wholly-owned subsidiary from any other intermediate vehicle where control exists as it may, as set out below, be unhelpful in some cases.

Accordingly, we believe it is disproportionate to mandate that the constitutional document of a wholly-owned subsidiary, where control exists, contain bespoke terms as it may cause operational, administrative or legal issues for the QIAIF. For example, such a subsidiary may be formed before or acquired after the fund is set up, or a subsidiary may be disposed of as a means of selling the underlying asset(s) or the fund may change its name or be merged into another fund. In each case a need to update the constitutional document may cause a breach, even inadvertently, including under local law or for administrative reasons.

We support the proposal of the Central Bank to remove ID 1158 and ID 1159 from its AIFMD

Q&A given that, as the Central Bank acknowledges in CP 162, the clarifications made by it on rules relating to intermediary investment vehicles “incorporate existing rules in the AIF Rulebook, and certain requirements under the AIFMD Q&A, ID 1158 and ID 1159”. Accordingly, ID 1158 and ID 1159 are superseded by the new framework governing the use of intermediary investment vehicles. We would also ask the Central Bank to confirm the deletion of ID 1157.

Additionally, in section 1f “effective due diligence” should be replaced with “appropriate due diligence” in line with both section 1d and Article 15(3)(a) of AIFMD.

**Question 35(b): In respect of the requirements set out in section 1(d) and 1(e) provide additional information as to how an AIFM will satisfy these requirements.**

There are existing obligations in AIFMD on due diligence (see for example Level 1 Article 12 (general principles) & Article 15(3) (risk management) and Level 2 Article 18 (due diligence) and therefore we do not deem it necessary to dictate how an AIFM satisfies these obligations within the AIF Rulebook.

## 41. Parties subject to dealing rules

‘Unitholders’ will be added to the list of entities subject to the requirements under the provisions directed at ‘Dealings by management company, general partner, depositary, AIFM, investment manager or by delegates or group companies of these’. This addition has been identified by the Central Bank as necessary given instances of investment funds entering into transactions with unitholders (i.e. investors). This will protect the interests of all unitholders in a relevant fund where such transactions take place. A new footnote details that the relevant requirement does not apply to transactions by unitholders in relation to their units.

**Proposed amendment to viii. Dealings by management company, general partner, depositary, AIFM, investment manager or by delegates or group companies of these, paragraph 1, page 114, AIF Rulebook March 2024.**

viii. Dealings by management company, general partner, depositary, AIFM, investment manager, **unitholder** or by delegates or group companies of these

The Qualifying Investor AIF shall only enter into a transaction with (i) unitholders and (ii) the AIFM, depositary, management company, general partner, investment manager (or their delegates or associated group companies) ~~a management company, general partner, depositary, AIFM, investment manager, unitholder or by delegates or group companies of these~~ where it is negotiated at arm's length. Transactions must be in the best interests of the unitholders.

New Footnote: This requirement does not apply to transactions by unitholders in relation to their units. This includes subscriptions, redemptions, conversions or dividend payments.

**Question 36: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer. – See page below for response.**

It would be helpful to clarify (per UCITS Q&A 1032) that "The appointments of service providers to carry out services are not transactions with the QIAIF".

It might also be helpful, for avoidance of doubt, to add in the footnote that subscriptions/redemptions includes any in specie (or equivalent) dealings.

Irish Funds would also suggest that the Central Bank confirm that it will withdraw ID 1142 of the AIFMD Q&A to avoid any ambiguity as to what framework applies.

Finally, regarding "unitholders" we would propose the wording be revised to make clear that the "delegate or group companies" requirements does not extend to transactions with unitholders, with the heading of this section updated to read:

"Dealings by the Qualifying Investor AIF with (i) unitholders and (ii) the AIFM, depositary, management company, general partner, investment manager (or their delegates or associated group companies)", along with corresponding updates to the wording in paragraph 1:

"The Qualifying Investor AIF shall only enter into a transaction with (i) unitholders and (ii) the AIFM, depositary, management company, general partner, investment manager (or their delegates or associated group companies) where it is negotiated at arm's length. Transactions must be in the best interests of the unitholders."

This point is also applicable to question 55 and its equivalent in the ELTIF section on Conflicts of Interest (section 124/question 119).

The above heading should then also be inserted, as relevant, in the bullet points appearing in paragraph 2(k) (pages 129-130 – AIF Rulebook) as set out below at Section 67 (question 62) and the two bullet points at paragraph 3(l) (pages 131 – 132 – AIF Rulebook) as set out below at Section 68 (question 63) and the equivalent sections in the ELTIF chapter (section 128/question 123 and section 129/question 124).

## 42. Pre-notification to the Central Bank

Amendment to reflect that changes to the name of the Qualifying Investor AIF or any of the Qualifying Investor AIF's sub-funds are added to the list of matters that require pre-notification to the Central Bank. Requirement to notify the Central Bank where a Qualifying Investor AIF invests in the units of another sub-fund within the same umbrella, by way of transfer for consideration is no longer required.

**Proposed amendment and deletions to i. General conditions, paragraphs 3 and 4, page 115, AIF Rulebook March 2024.**

3. The Qualifying Investor AIF shall notify the Central Bank in advance of proposed amendments to the ~~Qualifying Investor AIF~~ documentation following including (i) the ~~prospectus, constitutional document~~ governing documents, (ii) name of the Qualifying Investor AIF or any of its sub-funds, or (iii) material agreements entered into with third parties previously filed with the Central Bank. The Central Bank may object to the amendments notified to it and amendments objected to by the Central Bank may not be made.
4. ~~The Qualifying Investor AIF shall not permit a sub-fund of the Qualifying Investor AIF to invest in the units of another sub-fund within the same umbrella, by way of transfer for consideration, without prior notification to the Central Bank.~~

**Question 37: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

Irish Funds would propose that paragraph 3 as drafted should be made clearer, as the obligation is to notify the Central Bank of any change to the "QIAIF" which is broader/less clear than before, therefore Irish Funds suggest the following updates highlighted in yellow;

"The Qualifying Investor AIF shall notify the Central Bank in advance of proposed amendments to the ~~Qualifying Investor AIF~~ following including (i) the ~~prospectus, constitutional document~~

governing documents, (ii) name of the Qualifying Investor AIF or any of its sub-funds, or (iii) material agreements entered into with third parties previously filed with the Central Bank. The Central Bank may object to the amendments notified to it and amendments objected to by the Central Bank may not be made.”

### 43. Timeline for reporting to the Central Bank

Amendment to provide greater clarity on requirements related to the communication of breaches and errors to the Central Bank.

**Proposed amendments to i. General conditions, paragraph 5, page 115, AIF Rulebook March 2024.**

5. The Qualifying Investor AIF shall notify the Central Bank ~~promptly~~ **immediately** of any material breach of the investment fund legislation, the requirements imposed on it by the Central Bank or provisions of its prospectus.

**Question 38: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

Irish Funds does not agree with the amendment made. On becoming aware of a material breach, "promptly" denotes that action must be taken as soon as reasonably possible in the circumstances, and at the least without unnecessary delay. On identifying the breach the QIAIF will likely require some coordination between its board and AIFM (or other key delegates) to prepare a notification for the Central Bank without delay. The term immediately could denote no time can be taken to gather preliminary facts. Therefore, Irish Funds strongly advocates for the term 'promptly' to be re-inserted.

In terms of notification, Irish Funds would also suggest that a materiality threshold is applied in terms of the reporting of breaches across (i) QIAIFs and (ii) Irish authorised AIFMs under the AIF Rulebook and (iii) Irish UCITS management companies under Regulation 107 of the Central Bank UCITS Regulations. See related response at Section 85 below.

## 44. Clarification around commencement of the offer period

Amendment to ensure that the commencement of the initial offer period for a Qualifying Investor AIF cannot occur prior to the authorisation of the Qualifying Investor AIF.

Proposed amendment to ii. Offer period, paragraph 1, page 116, AIF Rulebook March 2024.

1. The Qualifying Investor AIF shall ensure that the offer period does not commence or **the initial closing does not occur** prior to the authorisation of the Qualifying Investor AIF or approval in the case of a sub-fund and must be for a period no longer than six months.

**Question 39: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

Irish Funds suggests the following edits to paragraph one as highlighted in yellow; "...commence or **the initial closing does not occur**...". If not incorporated, we would request the Central Bank to clarify the distinction between the reference to "does not commence" and "does not occur"?

## 45. Return of subscription proceeds on an extension to the 'offer period'

Paragraphs 2, 3 and 4 will be deleted given that requirements around subscriptions, repurchases and redemptions are required to be disclosed to investors in accordance with the AIFMD. Provisions will now be included providing for the return to investors of subscription proceeds in the event that the Qualifying Investor AIF does not issue units in respect of such proceeds following the closure of the initial offer period. This will enhance

the protection of investor interests by ensuring they have the ability to request the return of their investment in such circumstances.

The AIF Rulebook now provides that a Qualifying Investor AIF can launch share classes at a fixed price after the initial offer period where it has been confirmed to the Central Bank that the interests of existing shareholders in the Qualifying Investor AIF are not prejudiced. Provisions under paragraph 5 are therefore no longer necessary.

**Proposed deletion and insertion ii. Offer period, paragraphs 2 to 5, page 116, AIF Rulebook March 2024.**

- ~~2. In the case of Qualifying Investor AIFs which are established as venture capital, development capital, private equity, real estate or loan originating Qualifying Investor AIFs, the initial offer period may extend up to two years and six months provided that the terms of the offer ensure that early unitholders are not prejudiced by the arrangements. Where these Qualifying Investor AIFs have multiple closings, this period must commence no later than the date of first closing.~~
  - ~~3. The Qualifying Investor AIF may extend the initial offer period, without prior notification to the Central Bank, provided that no subscriptions have been received at the date of the proposed extension. The Qualifying Investor AIF shall notify the Central Bank of any such extensions on an annual basis.~~
  - ~~4. The Qualifying Investor AIF may only extend the initial offer period, where subscriptions have been received, if it has received the prior written approval of the Central Bank for such an extension.~~
  - ~~5. A Qualifying Investor AIF shall only launch share classes at a fixed price after the initial offer period where it has been confirmed to the Central Bank that existing shareholders in the Qualifying Investor AIF are not prejudiced.~~
2. The initial offer period shall be disclosed in the prospectus of the Qualifying Investor AIF.
  3. Where during the initial offer period subscription proceeds are received by the Qualifying Investor AIF but the Qualifying Investor AIF does not issue units in respect of such proceeds, upon the expiry of the initial offer period or where the initial offer period is extended, the investor may request the return of the subscription proceeds and the AIFM shall arrange for such return to the investor without undue delay and no later than

3 months , or as soon as is reasonably practicable, from the date of the request subject to applicable law and regulation.

**Question 40: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

There may be circumstances where monies cannot be returned to an investor within the 3 month timeframe, for example in the event that complete AML documentation has not been provided, sanctions rules prevent a return of monies or the investor is deceased and probate / inheritance rules prevent a return to the beneficiary within that time period. Therefore, we propose including a clarification in paragraph 3 that "...the AIFM shall arrange for such return to the investor without undue delay and no later than 3 months, or as soon as is reasonably practicable, from the date of the request subject to applicable law and regulation".

## 46. Footnote to 'Directors of Qualifying Investor AIF investment companies'

Footnote 21 is deleted to reflect the deletion of Chapter 4 - AIF Management Company Requirements in this update to the AIF Rulebook.

**Proposed deletion to iii. Directors of Qualifying Investor AIF investment companies footnote 21, page 116, AIF Rulebook March 2024.**

~~Footnote 21 – The provisions of footnote 1 in chapter 4 – AIF Management Company Requirements will apply mutatis mutandis to directors of Qualifying Investor AIF investment companies which are in distressed or failing circumstances.]~~

**Question 41: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

## **47. Departures from the office of director of an investment company**

The AIF Rulebook currently refers to the impact on the AIF Management Company where there is a resignation at the board level of a Qualifying Investor AIF investment company. It is proposed to clarify that the requirement more accurately reflects the impact of a resignation on the Qualifying Investor AIF itself.

**Proposed amendment to iii. Directors of Qualifying Investor AIF investment companies, paragraph 1 on pages 116-117, AIF Rulebook March 2024.**

Where the Qualifying Investor AIF is an investment company, departures from the office of director and the reason for the departure must be notified to the Central Bank immediately by ~~filling the relevant~~ in accordance with Central Bank ~~form~~ **processes and procedures**. **Such processes and procedures may be amended from time to time**. In all cases where a director wishes to resign and prior to ~~completing~~ **providing** the relevant Central Bank ~~form~~ **notification**, the Qualifying Investor AIF (at Board or its Chair level) must form a view as to the impact of the resignation on the **Qualifying Investor AIF Management Company** having regard to the current and prospective financial state of the **Qualifying Investor AIF**. ~~Management Company the AIFs under management~~ In the event that the Board or, in the absence of a Board meeting, the Chair forms the view that the situation is one which could create such concern on the part of the Central Bank, it shall state this on the relevant Central Bank ~~form~~ **notification**. The Board or its Chair may consult the Central Bank in order to help it form a view on that matter.

**Question 42: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

## **48. Clarification to operation of suspensions**

Specific requirements within the AIF Rulebook with respect to LMTs as referenced in Directive (EU) 2024/927 have been aggregated in a single section of the Qualifying Investor AIF chapter. References and provisions related to these LMTs in other sections of the AIF Rulebook have been deleted to remove duplication.

**Proposed deletion of iv. Suspensions, paragraph 1, page 117, AIF Rulebook March 2024.**

~~1. Where the Qualifying Investor AIF temporarily suspends the calculation of the net asset value and repurchase or redemption of its units it must inform the Central Bank immediately, and in any event within the working day on which such suspension took effect.~~

**Question 43: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

## 49. Obligations around the replacement of a depositary

Updated to include 'AIFM' when referencing 'management company' and 'general partner'. Reference to specific fund legal structures has been deleted.

**Proposed amendment to v. Replacement of depositary, paragraph 1, page 117, AIF Rulebook March 2024.**

1. The Central Bank requires that the procedures to be followed in relation to the replacement of a depositary must be approved by the board of the investment company, the **AIFM** / management company of a unit trust scheme or common contractual fund or **the** general partner of an investment limited partnership. Where the Qualifying Investor AIF replaces its depositary, the Qualifying Investor AIF must ensure that the Central Bank receives, as required, confirmation from both the retiring depositary and new depositary that they are satisfied with the transfer of assets.

**Question 44: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

**Yes**

**No**

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

## 50. Third party contracts

Updated to include 'AIFM' and 'general partner' when referencing 'management company'. Reference to specific fund legal structures has been deleted for editorial purposes.

Proposed amendment to vi. Replacement of AIFM, management company, general partner or third party, paragraph 2, page 118, AIF Rulebook March 2024.

2. The Central Bank must be notified in advance of any proposal to replace **the following** third parties which have contracted (directly or indirectly) with the **investment company/AIFM / management company / general partner**. **These third parties are:** ~~in the case of a unit trust or common contractual fund, investment company or investment limited partnership to carry out services~~
- a. **depository;**
  - b. **investment manager;**
  - c. **auditor; and**
  - d. **fund administrator.**

The Central Bank may object to the proposals and replacements objected to by the Central Bank may not proceed.

**Question 45: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

- Yes  
 No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

Irish Funds suggest the following edit highlighted in yellow to include reference to “investment company” given that in the case of an externally managed fund, the appointment of the depository must be made by the investment company itself:

“...with the **investment company/AIFM / management company...**”

## 51. Reporting requirements

Requirements related to reporting have been amended to provide for the current requirements as set out on the Central Bank’s website.

**Proposed amendment and deletions to vii. Monthly and quarterly returns, paragraphs 1, 2 and 3, pages 118-119, AIF Rulebook March 2024.**

vii. ~~Monthly and quarterly returns~~ **Reporting requirements**

1. The Qualifying Investor AIF ~~must~~**shall** submit a ~~monthly return~~ to the Statistics Division of the Central Bank using the ~~Central Bank's Online Reporting System~~ **periodic returns in accordance with the requirements specified on the Central Bank's website.**

~~The contents of the monthly return are set out below in paragraph 2 of this section~~

2. ~~The following information must be included in the monthly returns~~
  - (a) ~~the Central Bank code issued to the sub-fund of the Qualifying Investor AIF;~~
  - (b) ~~the base currency of the Qualifying Investor AIF (the return must be denominated in the base currency of the Qualifying Investor AIF);~~
  - (c) ~~the Qualifying Investor AIF type (designated by investment strategy);~~
  - (d) ~~total gross asset value of the Qualifying Investor AIF at end month;~~
  - (e) ~~total net asset value of the Qualifying Investor AIF at end month;~~
  - (f) ~~number of units in circulation at end month;~~
  - (g) ~~net asset value per unit at end month;~~
  - (h) ~~payments received from the issues of units during month;~~
  - (i) ~~payments made for the repurchase of units during month; and~~
  - (j) ~~net amount from issues and repurchases during month;~~
  - (k) ~~profit/loss from operations during the period;~~
  - (l) ~~investment management fees accrued during the period (excluding performance fees);~~  
~~and~~
  - (m) ~~all other expenses accrued during the period (excluding investment management fees).~~

~~This return must be submitted to the Statistics Division of the Central Bank within 10 working days of the end month to which it refers.~~

3. The Qualifying Investor AIF ~~must~~ submit a quarterly Survey of Collective Investment Undertakings ~~return to the Statistics Division of the Central Bank within ten working days of the end quarter to which it refers.~~ The Qualifying Investor AIF ~~must also submit a Funds Annual Survey of Liabilities return to the Statistics Division of the Central Bank, along with the quarterly Survey of Collective Investment Undertakings return, for the first quarter of each year.~~

**Question 46: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

While Irish Funds agrees in principle with the proposed update, any amendments to the periodic returns and supervisory records required, as outlined on the Central Bank's website, should be subject to appropriate industry engagement. This required industry engagement should be appropriately reflected in any update to this section of the AIF Rulebook. This is necessary to assess the potential impact of proposed changes and to ensure that sufficient notice is provided to allow firms to implement new or updated reporting requirements in an orderly manner.

In our view, it would not be acceptable for the Central Bank to publish changes on its website without prior consultation and engagement with industry regarding any proposed changes before they occur and again this section of the AIF Rulebook should be updated to reflect this.

## **52. Voting procedures for changes to investment objectives and policies**

The AIF Rulebook will provide for the Qualifying Investor AIF, when changing its investment objectives or effecting a material change to its investment policies, to do so either by: (i) approval on the basis of a simple majority of votes cast or (ii) in accordance with the voting procedures / requirements of the Qualifying Investor AIF's governing documents. (This can allow for a written resolution of the relevant unitholders where provided for in relevant regulation of that fund's legal structure). Certain conditions are applied in later sections of the AIF Rulebook related to voting requirements that ensure investor interests are safeguarded when there are proposed material changes to Qualifying Investor AIFs, particularly in cases where investors are not offered the opportunity to redeem their investment prior to the change taking effect. In accordance with

the obligations under the AIFMD, proposed changes to matters related to the management of the Qualifying Investor AIF should at all times be undertaken in the best interests of investors.

**Proposed amendment to i. General requirements paragraph 7, page 120, AIF Rulebook March 2024.**

7. The Qualifying Investor AIF may not change its investment objectives or effect a material change to its investment policies, as disclosed in the prospectus without the prior written approval of all unitholders or without approval on the basis of a **simple** majority of votes cast ~~at general meeting~~. "Material" shall be taken to mean, although not exclusively

“changes which significantly alter the asset type, credit quality, borrowing or leverage limits or risk profile of the Qualifying Investor AIF”.

In the event of a change of investment objectives and/or investment policy, on the basis of a **simple** majority of votes cast ~~at a general meeting~~, the Qualifying Investor AIF shall provide a reasonable notification period to enable unitholders redeem their units prior to implementation of these changes.

**New Footnote: Only applicable to open-ended funds and open-ended funds with limited liquidity which provide the opportunity for investors to redeem prior to the implementation of the change. The AIF Rulebook provides for different procedures where there is no opportunity for investors to redeem.**

**Question 47: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

- Yes  
 No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

## 53. Prospectus disclosures for Qualifying Investor AIFs

The 'Asset Valuation for Authorised AIF' guidance includes the provisions of paragraph 1 of section 1. iii (Valuation) of Part I of the Qualifying Investor AIF chapter (which requires that Qualifying Investor AIFs specify, in their constitutional document, the rules for the valuation of assets). Another provision of the guidance states that 'Additional details regarding the valuation of a Qualifying Investor AIF may be set out elsewhere e.g. in the prospectus.' To reflect this requirement, an additional point (p) stating "Information on any additional relevant details regarding the valuation of assets" has been added to the "General information concerning the Qualifying Investor AIF" list set out in the Prospectus Requirements, Section 3 (ii) of Part I of Chapter 2 for Qualifying Investor AIFs.

**Proposed insertion to ii. General information concerning the Qualifying Investor AIF paragraph 1. (n), (o) and (p), page 122, AIF Rulebook March 2024.**

1. The Qualifying Investor AIF shall, at a minimum, disclose the following in its prospectus:

(n) where applicable, indication of stock exchanges or markets where the units are listed or dealt in; ~~and~~

(o) a description of the AIFM's remuneration policies and practices pursuant to Regulation 14 of the AIFM Regulations; ~~and~~

(p) any additional information relevant to the valuation of assets.

**Question 48: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

**Yes**

**No**

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

## 54. Qualifying Investor AIFs investing in other investment funds

Requirements in paragraph 3 around any liquidity mismatch arising from investment in other investment funds will be disclosed as part of the Qualifying Investor AIF's redemption policy.

**Proposed deletion to iii. Investments in other investment funds paragraph 3, page 122, AIF Rulebook March 2024.**

~~3. Where the Qualifying Investor AIF deals more frequently than quarterly, invests in other investment funds and provides for a period of 95 calendar days for the payment of redemption proceeds, it shall include a prominent statement in its prospectus highlighting the fact that while the Qualifying Investor AIF deals more frequently than quarterly, there may be times when redemption proceeds are paid on a quarterly basis.~~

**Question 49: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

**Yes**

**No**

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

## 55. Inclusion of 'subscriptions' with respect to dealing processes

This section has been updated to include that the procedures and conditions for 'subscriptions' are also included in the prospectus with respect to dealing processes.

**Proposed amendments to iv. Dealing paragraph 2, page 123, AIF Rulebook March 2024.**

2. The Qualifying Investor AIF shall disclose, in its prospectus, the procedures and conditions for **subscription**, repurchase or redemption of units, including the period

within which redemption proceeds will normally be paid or discharged to unitholders. It must also disclose the circumstances in which **subscription**, repurchase or redemption may be suspended.

**Question 50: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

**Yes**

**No**

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

## **56. Differentiation of 'in specie' and 'exchange of assets'**

Specific requirements with respect to redemption in specie as an LMT are detailed in Directive 2024/927 and its Draft Regulatory Technical Standards and Guidelines on LMTs. Where the Qualifying Investor AIF provides for the settlement of redemptions through an exchange of assets as part of its redemption policy, and this is not an LMT, the AIF Rulebook requires that the Qualifying Investor AIF disclose the terms and conditions in its prospectus under which such an arrangement will operate.

**Proposed amendments to iv. Dealing paragraph 4, page 123, AIF Rulebook March 2024.**

~~Redemption in Specie~~ **Settlement of redemptions through an exchange of assets**

4. Where the **Qualifying Investor AIF prospectus** provides for **the settlement of redemptions through an exchange of assets** ~~redemption in specie~~ **as part of its redemption policy**, the Qualifying Investor AIF shall **disclose the terms and conditions applicable in its prospectus**. ~~also provide for the following in its prospectus:~~

- ~~• redemption in specie is at the discretion of the Qualifying Investor AIF and with the consent of the redeeming unitholder;~~
- ~~• asset allocation is subject to the approval of the depositary; and~~

- ~~• a determination to provide redemption in specie may be solely at the discretion of the Qualifying Investor AIF where the redeeming unitholder requests redemption of a number of units that represent 5% or more of the NAV of the Qualifying Investor AIF. In this event the Qualifying Investor AIF will, if requested, sell the assets on behalf of the unitholder.~~

~~The cost of the sale can be charged to the unitholder.~~

**Question 51: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

## **57. Information concerning an AIFM / management company or general partner**

Amendment to include 'AIFM' when referencing 'management company'. In addition, the rule contained in paragraph 3 is deleted as under AIFMD, the AIFM is already required to maintain the necessary level of minimum regulatory capital and such capital may change over time.

**Proposed amendment to and deletion v. Information concerning a management company or general partner, paragraphs 1, 2 and 3, pages 123-124, AIF Rulebook March 2024.**

v. Information concerning **an AIFM** / management company or general partner

1. The Qualifying Investor AIF shall, in its prospectus, disclose the name, form in law, registered office and head office, if different from the registered office, of the **AIFM** /

management company or general partner. If the **AIFM** / management company or general partner is part of a group, the name of that group must be disclosed. The date of incorporation of the company and indication of duration, if limited, must also be included.

2. The Qualifying Investor AIF shall, in its prospectus, disclose the names and positions in the **AIFM** / management company or general partner of the members of the administrative, management and supervisory functions; their experience, both current and past, which is relevant to the Qualifying Investor AIF; and details of their main activities outside the **AIFM** / management company or general partner where those are of significance with respect to that **AIFM** / management company or general partner.
3. ~~The Qualifying Investor AIF shall, in its prospectus, disclose the amount of the prescribed capital of management company or general partner with an indication of the capital paid-up.~~

**Question 52: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

These paragraphs appear to be meant to apply to non-corporate structures and only refer to the management company of a contractual fund (i.e., a unit trust or a CCF) and the general partner of an ILP. Then it is understood that the next section in the AIF Rulebook (section vi - Information concerning investment managers and other service providers) would cover the key service providers, including the AIFM. Furthermore, paragraph 3 of section vi of the AIF Rulebook requires disclosure of “the other significant activities engaged in by [the] AIFM”. Therefore, we suggest the reversal of the proposed changes in paragraphs 1 and 2 as we don’t think that the AIFM should be included here. (Notwithstanding that the AIFM might be the manager/GP of the fund, it should be required to make these disclosures in its capacity as manager/GP and not as AIFM).

## 58. Clarification on the use of 'AIFM' and 'management company'

Amendment to include 'AIFM' when referencing 'management company'. In paragraph 2, for clarification purposes amendments are made to include 'management company' when referencing 'AIFM'.

Proposed amendments to vi. Information concerning investment managers and other service providers, paragraphs 2 and 3, page 124, AIF Rulebook March 2024.

vi. Information concerning ~~investment managers~~ **AIFM / management company** and other service providers

2. The Qualifying Investor AIF shall, in its prospectus, disclose the material provisions of the contracts with the **AIFM / management company**, general partner or investment company which may be relevant to the unitholders, excluding those relating to remuneration.
3. The Qualifying Investor AIF shall, in its prospectus, disclose the other significant activities engaged in by its **AIFM / management company** and any entity performing investment management functions on its behalf.

**Question 53: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

**Yes**

**No**

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

## 59. Disclosures in relation to the authorisation status of Qualifying Investors AIF

Amendment to include a reference to both committed and subscribed amounts when detailing prescribed subscription requirements in the prospectus.

**Proposed amendment to vii. Authorisation status, paragraph 1, page 124, AIF Rulebook March 2024.**

1. The Qualifying Investor AIF shall state in a prominent position in its prospectus that it has been authorised by the Central Bank for marketing solely to qualifying investors. It must specify its minimum **capital commitment and/or minimum** subscription requirements and add the following: "While this Qualifying Investor AIF is authorised by the Central Bank, the Central Bank has not set any limits or other restrictions on the investment objectives, the investment policies or on the degree of leverage which may be employed by the Qualifying Investor AIF."

**Question 54: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

**Yes**

**No**

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

## **60. Conflicts of interest**

'Unitholders', 'depository' and 'delegate or associated or group companies' will be added to the list of entities subject to the requirements under the provisions directed at 'Conflicts of Interest'.

This addition to the list of entities subject to the requirements is necessary given instances of investment funds entering into transactions with unitholders, delegates, associated or group companies.

**Proposed amendments and insertions to viii. Conflicts of interest, paragraphs 1 and 2, page 125, AIF Rulebook March 2024.**

1. The Qualifying Investor AIF shall, in its prospectus, include a description of the potential conflicts of interest which could arise between the **AIFM-Qualifying Investor AIF** and (i) **unitholders**, or (ii) the AIFM, ~~unitholder~~, **depository**, management company, general partner, ~~and investment manager (and/ or its their delegate or associated or group companies)~~, **and the Qualifying Investor AIF**, for example ~~directed brokerage services and/or the receipt of commissions by virtue of an investment in the units of another investment fund~~ with details, where applicable, of how these **conflicts might be are going to be** resolved.
2. ~~The Qualifying Investor AIF shall, in its prospectus, include~~ A **a** description of soft commission arrangements which may be entered into by a **the** Qualifying Investor AIF. ~~must also be included.~~
3. The Qualifying Investor AIF shall only enter into a transaction with, as appropriate, (i) **its unitholders** or (ii) its general partner, management company, depository, AIFM, **unitholder**, investment manager ~~(and/or its their~~ **delegate** or associated or group companies), where there has been full disclosure in the Qualifying Investor AIF's prospectus.

**New Footnote: This requirement does not apply to transactions by unitholders in relation to their units. This includes subscriptions, redemptions, conversions or dividend payments.**

**Question 55: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

Irish Funds believe targeted updates to these provisions are required to ensure compliance in practice, is possible. Specifically, and to accommodate the Central Bank's request to include "unitholders" in this section, we do not believe it is appropriate to extend these requirements

to "delegates and associated companies" of unitholders. From a practical perspective unitholders do not retain delegates in the same way as other service providers listed in this section and the community of associated companies of unitholders is not capable of ongoing definition and we do not expect this was an intended consequence of this change. Accordingly, we are suggesting paragraphs 1 & 3 in this section are updated per below (see full mark ups highlighted in yellow above):

" 1. The Qualifying Investor AIF shall, in its prospectus, include a description of the potential conflicts of interest which could arise between **the Qualifying Investor AIF and (i) unitholders or (ii) the AIFM**, depositary, management company, general partner, investment manager **(or their delegates or associated group companies)**, with details, where applicable, of how these **conflicts might be** resolved."

3. The Qualifying Investor AIF shall only enter into a transaction with, as appropriate **(i) its unitholders or (ii)** its general partner, management company, depositary, AIFM, investment manager **(or their delegate or associated or group companies)**, where there has been full disclosure in the Qualifying Investor AIF's prospectus.

## 61. Disclosure rules for Umbrella Qualifying Investor AIFs

A requirement is included in the AIF Rulebook whereby an umbrella Qualifying Investor AIF, which is an investment company, shall, in its prospectus, include the words: "*An umbrella fund with segregated liability between sub-funds*".

Additional references will now be made to Investment Limited Partnerships, Common Contractual Funds, and ICAVs to also include this disclosure in their prospectus. In addition, text is updated to reflect reference to 'sub-fund' rather than 'subfund' for consistency.

**Proposed amendments to ix. Umbrella Qualifying Investor AIFs, paragraphs 1 and 4, pages 125-126, AIF Rulebook March 2024.**

1. An umbrella Qualifying Investor AIF which is an Investment Company, **Investment Limited Partnership, unit trust or and Common Contractual Fund** shall, in its prospectus, include the words: "**An umbrella fund with segregated liability between sub-funds**". Investment Companies

constituted as umbrella Qualifying Investor AIFs which were authorised and commenced trading before 30 June 2005 and which do not have segregated liability between sub-funds must clearly disclose the potential risks to unitholders arising from the absence of the segregation of liability between sub-funds.

4. Where the Qualifying Investor AIF is an umbrella Qualifying Investor AIF it shall, in its prospectus, clearly state the charges, if any, applicable to the exchange of units in one ~~subfund~~**sub-fund** for units in another.

**Question 56: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

Irish Funds suggests the first sentence in paragraph 1 should be updated as follows:

"An umbrella Qualifying Investor AIF which is an Investment Company, Investment Limited Partnership, **unit trust** ~~and or a~~ Common Contractual Fund shall, in its prospectus, include the words: "An umbrella fund with segregated liability between sub-funds"."

Consideration should be given to whether this requirement should simply apply to all umbrella QIAIFs.

## 62. Warehousing disclosures

Requirement that disclosures in the prospectus include full details of any fees, charges or interest payable in relation to warehousing. The requirement around the Qualifying Investor AIF not paying more than the current market value for warehoused assets has been removed subject to the disclosure to investors of the terms of the warehousing arrangement. This amendment is in line with the ELTIF provisions and the obligation for the AIFM to perform valuation impartially and with all due skill, care, and diligence. Any connected party transaction will be subject to the connected party transaction rules. Additional editorial change where "fully disclosed" is replaced by "provided for".

Proposed amendments to x. Warehousing, paragraph 1, page 126, AIF Rulebook March 2024.

1. The Qualifying Investor AIF shall only acquire assets pursuant to a warehousing arrangement where the use of such arrangements is fully disclosed **provided for** in its prospectus, including details of any fees, **charges or interest** payable in relation to such arrangements. ~~The prospectus must state that the Qualifying Investor AIF will pay no more than current market value for these assets~~

**Question 57: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

- Yes**  
 **No**

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

## **63. Disclosure requirements around investing through subsidiaries**

Requirements around disclosure for investments in intermediary investment vehicles have already been provided for in the AIF Rulebook and this additional provision is no longer considered necessary.

Proposed deletion of xi. Investment through subsidiaries, paragraph 1, page 126, AIF Rulebook March 2024.

~~xi. Investment through subsidiaries~~

1. ~~The Qualifying Investor AIF may only invest through one or more subsidiaries where its prospectus discloses~~
  - ~~(a) the ability to establish wholly owned subsidiaries in accordance with the requirements of the~~  
~~Central Bank; and~~

(b) that the names of any subsidiaries will be disclosed in the annual report

**Question 58: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.

No comments. Irish Funds agrees with the proposed amendment.

## 64. Financial resources of investment companies

The requirements for AIFMs - including registered AIFMs and for an AIFM that is an internally managed AIF - are detailed in the AIFMD. These include requirements around initial capital and own funds, and retaining sufficient management resources to effectively conduct its business and otherwise comply with AIFMD. Given the requirement to appoint an AIFM, the requirements to investment companies are redundant.

**Proposed deletion to i. Financial resources of investment companies, paragraphs 1 and 2, page 127, AIF Rulebook March 2024.**

**~~i. Financial resources of investment companies~~**

- ~~1. Where the Qualifying Investor AIF is an investment company it shall have sufficient financial resources at its disposal to enable it to conduct its business effectively and meet its liabilities.~~
- ~~2. Where the Qualifying Investor AIF is an investment company which does not employ the services of a management company or an authorised AIFM it must
  - ~~(a) have a minimum paid up share capital equivalent to €125,000 within 3 months of authorisation; and~~
  - ~~(b) satisfy the Central Bank on a continuing basis that it has sufficient management resources to effectively conduct its business and otherwise comply with the~~~~

provisions of section ii of chapter 4 – AIF Management Company Requirements.

**Question 59: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

## 65. Dealing provisions

Reference to the 10% threshold of redemption proceeds that may be retained is now deleted and the relevant threshold will now be determined by the AIFM and disclosed in the Qualifying Investor AIF's redemption policy in the prospectus.

**Proposed amendments to ii. Dealing, paragraph 3, page 127, AIF Rulebook March 2024.**

3. A Qualifying Investor AIF may only retain **redemption proceeds** ~~10% or less of redemption proceeds~~ where **this is provided for in the prospectus and** reflects the redemption policy of the underlying investment fund(s) and until such time as the full redemption proceeds from the underlying investment fund(s) is received.

**Question 60: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

Irish Funds suggests this section is updated by way of a footnote to confirm that this is distinct and separate from the LMT redemption gates provided for under the Irish AIFM Regulations.

## 66. Annual and half-yearly reporting requirements

Clarifications are provided related to annual and half-yearly reporting requirements including specifying that reporting should refer to a reporting date within a specific period of time. It is also clarified that reporting to the Central Bank is required within a specific timeline.

Reference to '6' months rather than 'six' months has been inserted for consistency.

Investment Limited Partnerships can now produce separate period reports for individual sub-funds.

### **Proposed amendment to i. Publication of annual and half-yearly reports, paragraph 3, page 128, AIF Rulebook March 2024.**

3. A Qualifying Investor AIF established as a unit trust or common contractual fund must publish a half-yearly report covering the first ~~six~~ 6 months of the financial year. The information set out in this section must be incorporated into the half-yearly report.

### **Proposed amendments to i. Publication of annual and half-yearly reports, paragraphs 4 and 5, page 128, AIF Rulebook March 2024.**

4. The Qualifying Investor AIF shall prepare ~~and submit to the Central Bank~~ a set of accounts (whether an interim report or an annual report) **to a reporting date** within 12 months of the ~~launch date~~ **first issuance of units by the Qualifying Investor AIF, and** publish ~~it~~ **and submit it to the Central Bank** within 2 months if an interim report or 6 months if an annual report. The first annual reports must be **prepared to a reporting date** within 18 months of incorporation / establishment **of the Qualifying Investor AIF,** and published **and submitted to the Central Bank** within 6 months. ~~The~~ A Qualifying Investor AIF established as a unit trust or common contractual fund shall publish and submit to the Central Bank its half-yearly report within 2 months of the end of the

reporting period to which it relates.

5. The Qualifying Investor AIF shall publish and submit to the Central Bank its annual report within 6 months of the end of the financial year **period** to which it relates.

**Proposed amendments to i. Publication of annual and half-yearly reports, paragraph 7, page 128, AIF Rulebook March 2024.**

7. Where the Qualifying Investor AIF is an umbrella Qualifying Investor AIF constituted as a unit trust, common contractual fund, ~~or ICAV~~ **or investment limited partnership**, it may produce separate periodic reports for individual sub-funds. In such cases, the report of each sub-fund must name the other sub-funds and state that the reports of such sub-fund are available free of charge on request from the ~~management company~~ **or the ICAV Qualifying Investor AIF.**

**Question 61: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

**Yes**

**No**

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

## **67. Information in the annual report**

Text has been updated for consistency with changes made in earlier sections of the AIF Rulebook.

**Proposed amendment to ii. Information to be contained in the annual report, paragraphs 2(b), 2(k) and 2(l), page 129-130, AIF Rulebook March 2024.**

2. The Qualifying Investor AIF shall include the following in its annual report as well as any significant information which will enable unitholders to make an informed judgement on the development of the Qualifying Investor AIF and its results:

(b) NAV per unit, **where relevant**;

(k) the annual report must state whether:

- the Qualifying Investor AIF is satisfied that there are arrangements (evidenced by written procedures) in place, to ensure that the obligations set out in paragraph 1 of section 1.viii **Dealings by the Qualifying Investor AIF with (i) unitholders and (ii) the AIFM, depositary, management company, general partner, investment manager (or their delegates or associated group companies)** are applied to all transactions with connected parties ~~Dealings by management company, general partner, depositary, AIFM, investment manager, unitholder or by delegates or group companies of these of this Part~~ **are applied to all transactions with connected parties**; and
- the Qualifying Investor AIF is satisfied that transactions with connected parties entered into during the period complied with the obligations set out in paragraph 1 of section 1.viii **Dealings by the Qualifying Investor AIF with (i) unitholders and (ii) the AIFM, depositary, management company, general partner, investment manager (or their delegates or associated group companies)** ~~Dealings by management company, general partner, depositary, AIFM, investment manager, unitholder or by delegates or group companies of these~~ of this Part;

**New Footnote: This requirement does not apply to transactions by unitholders in relation to their units. This includes subscriptions, redemptions, conversions or dividend payments.**

(l) a report on any commissions received by the **AIFM /** management company of the Qualifying Investor AIF by virtue of an investment in the units of another investment fund where these commissions are not paid into the property of the Qualifying Investor AIF. This report must include an explanation regarding how the receipt of such commissions by the AIFM / management company is consistent with its inducements and best execution obligations; and

**Question 62: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

Further to the response in respect of Q36 and Q55 above, the bullet points appearing at paragraph 2(k) above should be updated as follows (markups are highlighted in yellow above):

- "the Qualifying Investor AIF is satisfied that there are arrangements (evidenced by written procedures) in place, to ensure that the obligations set out in paragraph 1 of section 1.viii "Dealings by the Qualifying Investor AIF with (i) unitholders and (ii) the AIFM, depositary, management company, general partner, investment manager (or their delegates or associated group companies)" are applied to all transactions with connected parties"; and
- "the Qualifying Investor AIF is satisfied that transactions with connected parties entered into during the period complied with the obligations set out in paragraph 1 of section 1.viii "Dealings by the Qualifying Investor AIF with (i) unitholders and (ii) the AIFM, depositary, management company, general partner, investment manager (or their delegates or associated group companies) of this Part;"

## 68. Information in the Half-yearly report

Text has been updated for consistency with changes made in earlier sections of the AIF Rulebook.

**Proposed amendment to iii. Information to be contained in the half-yearly report, paragraphs 3(c) and 3(l), pages 131-132, AIF Rulebook March 2024.**

3. The Qualifying Investor AIF shall include the following in its half-yearly report
  - (c) NAV per unit, **where relevant;**
  - (l) the half-yearly report must state whether:
    - the Qualifying Investor AIF is satisfied that there are arrangements (evidenced

by written procedures) in place, to ensure that the obligations set out in paragraph 1 of section 1.viii Dealings by the Qualifying Investor AIF with (i) unitholders and (ii) the AIFM, depository, management company, general partner, investment manager (or their delegates or associated group companies) Dealings by management company, general partner, depository, AIFM, investment manager, unitholder or by delegates or group companies of these of this Part are applied to all transactions with connected parties; and

- the Qualifying Investor AIF is satisfied that transactions with connected parties entered into during the period complied with the obligations set out in paragraph 1 of section 1.viii Dealings by the Qualifying Investor AIF with (i) unitholders and (ii) the AIFM, depository, management company, general partner, investment manager (or their delegates or associated group companies) Dealings by management company, general partner, depository, AIFM, investment manager, unitholder or by delegates or group companies of these of this Part; and

**New Footnote:** This requirement does not apply to transactions by unitholders in relation to their units. This includes subscriptions, redemptions, conversions or dividend payments.

**Question 63: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

As also outlined in response to Q 62, the bullet points appearing at paragraph 3(l) above should be updated as follows (markups are highlighted in yellow above):

- the Qualifying Investor AIF is satisfied that there are arrangements (evidenced by written procedures) in place, to ensure that the obligations set out in paragraph 1 of section 1.viii Dealings by the Qualifying Investor AIF with (i) unitholders and (ii) the AIFM, depository, management company, general partner, investment manager (or their delegates or associated group companies) of this Part are applied to all transactions with connected parties; and
- the Qualifying Investor AIF is satisfied that transactions with connected parties

entered into during the period complied with the obligations set out in paragraph 1 of section 1.viii Dealings by the Qualifying Investor AIF with (i) unitholders and (ii) the AIFM, depositary, management company, general partner, investment manager (or their delegates or associated group companies) of this Part;

## 69. The selection, disclosure and operation of Liquidity Management Tools

Provisions for LMTs in other parts of the AIF Rulebook have been moved to this dedicated LMT section. As such, specific requirements have been included whereby the Qualifying Investor AIF shall:

- (i) disclose in its prospectus the LMTs it has selected along with the terms and conditions under which an LMT can be activated and deactivated; and
- (ii) disclose where the Qualifying Investor AIF selects additional LMTs beyond those specified in Annex V of Directive (EU) 2011/61/EU.

To align with the Financial Stability Board (FSB) revised policy recommendations to address structural vulnerabilities from liquidity mismatch in Open Ended Funds (Revised FSB Recommendations) and the International Organization of Securities Commissions (IOSCO) final Guidance on Anti-Dilution LMTs (LMT Guidance) for the effective implementation of the Recommendations for Liquidity Risk Management for Collective Investment Schemes, it is proposed to include a recommendation that, where appropriate, the AIFM of the Qualifying Investor AIF considers selecting at least one quantitative-based LMT (redemption gate, extension of notice period) and at least one anti-dilution tool (redemption fee, swing pricing, dual pricing, anti-dilution levy).

Finally, for supervisory purposes, the Qualifying Investor AIF shall notify the Central Bank where it activates or deactivates any of the LMTs that are disclosed in its prospectus where such activation or deactivation occurs other than in the ordinary course of the Qualifying Investor AIFs business.

**Proposed insertion of a new section in relation to the Liquidity Management Tools as Liquidity Management Tools**

## Liquidity Management

### Tools General operational requirements

1. The Qualifying Investor AIF shall disclose in its governing documents the **selected** liquidity management tools (LMTs) **selected in accordance with the requirements of Article 16(2b) of AIFMD as amended (DIRECTIVE (EU) 2024/927)** and the terms and conditions under which an LMT can be activated and deactivated.
2. In selecting the two minimum mandatory LMTs per the requirements of Annex V of Directive 2011/61/EU, the Qualifying Investor AIF shall ensure that the AIFM should consider, where appropriate, selecting at least one quantitative-based LMT (redemption gate, extension of notice period) and at least one anti-dilution tool (redemption fee, swing pricing, dual pricing, anti- dilution levy, redemption in kind).
3. The Qualifying Investor AIF shall notify the Central Bank where any of the LMTs that are disclosed in its prospectus are activated or deactivated other than where such activation or deactivation occurs in the ordinary course of business.

### Side pocket

1. A Qualifying Investor AIF may establish a side pocket for assets whose economic or legal features have changed significantly or become uncertain due to exceptional circumstances through:
  - a. physical segregation; or
  - b. accounting segregation;where provided for in the Qualifying Investor AIF's governing documents and disclosed to unitholders in advance.

### Suspensions

- ~~1. Where the Qualifying Investor AIF's AIFM activates or deactivates the suspension of the calculation of the NAV, or the suspension of subscription, repurchase and redemption of its units, the Qualifying Investor AIF must inform the Central Bank immediately upon such activation or deactivation taking effect.~~
2. ~~Without prejudice to paragraph 1, and~~ In circumstances where the suspension **of**

subscriptions, repurchases and redemption of the funds units or shares has not been lifted within 21 working days of application, the Qualifying Investor AIF shall provide the Central Bank with an update on the suspension at the expiration of the 21 working days period and each subsequent period of 21 working days where the suspension continues to apply.

3. Where a competent authority of a member state under Article 46(j) of Directive 2011/61/EU requires the AIFM of the Qualifying Investor AIF to activate or deactivate the suspension of subscriptions, repurchases and redemptions, the Qualifying Investor AIF must immediately inform the Central Bank when it becomes aware of this instruction.
4. The Qualifying Investor AIF shall take all necessary steps to keep the Central Bank informed of relevant information with respect to the management of the Qualifying Investor AIF that is the subject of the exercised powers as detailed in paragraph 3 of this section.

#### Redemption Gate

1. On any dealing day that a redemption gate is activated, any request for redemption on such dealing day shall be reduced rateably and the redemption requests shall be treated as if they were received on each subsequent dealing day until all the units to which the original request related have been redeemed.

**Question 64: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

As a general comment, we note that the work on the regulatory technical standards (RTS) in connection with liquidity management tools is ongoing with the European Commission and they are not in final form. We also note that the intention of AIFMD 2 is to ensure that there is greater harmonisation and alignment on the use of liquidity management tools in AIFs across the EU. Accordingly, our comments on this section target that goal of maximum harmonisation and the minimisation of any potential gold-plating.

We do however recognise that NCAs have concerns about relying on the obligation on AIFMs to report to their home competent authority on the activation/deactivation of LMTs. In that respect we would have expected there would be a regulator-to-regulator communication channel whereby the home competent authority would communicate to the host competent authority if there are funds under management by the relevant AIFM using the cross-border management passport that are the subject of an activation or deactivation.

In addition, in-scope Irish resident funds (being those non-money market funds, that are authorised by the Central Bank and have a non-zero NAV) must report on the activation and deactivation of LMTs on a daily basis in the Daily Investment Fund Return (DIFR), using binary fields to indicate whether each tool is active ('1=Yes') or not ('2=No'), and quantitative fields for the monetary or basis point impact when applicable; and any change in status must be reflected for the relevant dealing day. This should ensure the Central Bank receives clear, automated updates on the use of LMTs as they are applied or removed.

With the above in mind, Irish Funds have identified the following changes to this section:

Under "**General operational requirements**":

As a general comment, to avoid any potential ambiguity, the following confirmation should be included in this section, by way of footnote or otherwise:

***"This section only applies in respect of open-ended Qualifying Investor AIFs or open-ended Qualifying Investor AIFs with limited liquidity".***

**Paragraph 1:** Irish Funds believe the following reformulation of this paragraph will assist in clarifying, for the avoidance of doubt, that the governing document disclosure obligations are in respect of those LMTs listed in Annex V of Directive 2011/61/EU

The Qualifying Investor AIF shall disclose in its governing documents the liquidity management tools (LMTs) selected in accordance with the requirements of Article 16(2b) of AIFMD as amended (DIRECTIVE (EU) 2024/927) and the terms and conditions under which an LMT can be activated and deactivated.

**Paragraph 2:**

Irish Funds consider that paragraph 2 in this section should be deleted in its entirety. This paragraph appears to be "hard-coding" one of the ESMA LMT Guidelines, which are not finalised at this point (noting also that the categorisation of RIKs as an ADT is not aligned with these Guidelines). In the context of our earlier comments in respect of maximum harmonisation, the better approach would be to have recourse directly to the AIFMD II requirements.

**Paragraph 3:**

Irish Funds consider that paragraph 3 should be deleted in its entirety, noting that the requirements in respect of the activation/deactivation of LMTs under Annex V of AIFMD will be set down in the Irish AIFM Regulations. In addition, please see above comments in respect of the impact of the existing Daily Investment Fund Reporting obligations. It should not be necessary to make any additional provision for this type of notification in the AIF Rulebook, on that basis.

**Paragraph – Side Pockets:**

Irish Funds believes that this paragraph should be deleted in its entirety as it represents an unnecessary duplication of Article 10 of the draft RTS, which will ultimately be directly effective

**Paragraph – Suspensions:**

Irish Funds advocates that paragraph 1 should be deleted in its entirety (as highlighted in yellow above). These requirements will be addressed in the Irish regulations implementing AIFMD II in due course. We would note that reference to suspension of NAV is not under the AIFMD II LMT rules and therefore have removed this as part of the mark-up for paragraph 2.

As a consequence of the deletion of paragraph 1, paragraph 2 should be updated to remove reference to paragraph 1 and refer to the relevant suspensions being "...the suspension of

subscriptions, repurchases and redemption of the funds units or shares...”.

Finally, the reference to Article 46(j) of Directive 2011/61/EU should be updated to Article 46(2)(j) of Directive 2011/61/EU.

**Paragraph – Redemption Gate:**

Bearing in mind the overarching intention to harmonise LMT requirements across the EU and to avoid jurisdictional divergence and gold-plating from an Irish perspective, Irish Funds believes that the requirements set out in this paragraph are overly restrictive. Specifically, this paragraph is not reflective of the flexibility offered by AIFMD II, as contemplated by Article 3.3 of the RTS, which provides for alternative proportional or priority approaches to managing redemption gates but subject to the disclosure requirements set out in Article 23 (h) of Directive 2011/61/EU (see also Recital 4 of the RTS).

## **70. Deletion of the Money Market Qualifying Investor AIFs provisions**

Requirements for Money Market Funds (MMFs) are now set out under Regulation (EU) 2017/1131. The requirements detailed in the AIF Rulebook are no longer applicable and will be deleted.

**Proposed deletions of Section 1: Money market Qualifying Investor AIFs, pages 133-138, AIF Rulebook March 2024.**

1. ~~The Qualifying Investor AIF must indicate in its prospectus whether it is a Short-Term Money Market Fund or a Money Market Fund. It must also include a risk warning drawing attention to the difference between the nature of a deposit and the nature of an investment in a money market fund with particular reference to the risk that the principal invested in a money market fund is capable of fluctuation.~~
2. ~~The Qualifying Investor AIF must provide appropriate information to unitholders on the risk and reward profile of the fund so as to enable unitholders identify any specific risks linked to the investment strategy of the money market fund.~~
  - (a) ~~In the case of Money Market Funds this must take account of the longer WAM and WAL.~~
  - (b) ~~In the case of all money market funds this must take account, where relevant, of investment in new asset classes, financial instruments or investment strategies with unusual risk and reward profiles.~~

**i. Money Market Funds**

1. ~~Where the Qualifying Investor AIF is a Short-Term Money Market Fund it must have a primary investment objective of maintaining the principal of the fund and aim to provide a return in line with money market rates.~~
2. ~~Where the Qualifying Investor AIF is a Short-Term Money Market Fund it shall, in accordance with paragraph 3 below, limit investments to high quality money market instruments, as determined by the Qualifying Investor AIF, and deposits with credit institutions.~~
3. ~~To determine "high quality", the following factors must at least be taken into account:~~
  - (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). Credit quality must be monitored on an on-going basis;~~
  - (b) ~~the nature of the asset class represented by the instrument;~~
  - (c) ~~the operational and counterparty risk, in the case of structured financial instruments; and~~
  - (d) ~~the liquidity profile.~~
4. ~~Where the Qualifying Investor AIF is a Short-Term Money Market Fund it shall limit investments to securities or instruments with a residual maturity, until the legal redemption date, of less than or equal to 397 days.~~

5. ~~Where the Qualifying Investor AIF is a Short-Term Money Market Fund it must provide daily NAV and price calculations and have daily subscriptions and redemptions of units.~~
6. ~~Where the Qualifying Investor AIF is a Short-Term Money Market Fund it shall ensure that the WAM does not exceed 60 days.~~
7. ~~Where the Qualifying Investor AIF is a Short-Term Money Market Fund it shall ensure that the WAL does not exceed 120 days. When calculating the WAL for securities, including structured financial instruments, the Qualifying Investor AIF must base the maturity calculation on the residual maturity until the legal redemption of the instruments. However, when a financial instrument embeds a put option, the exercise date of the put option may be used instead of the legal residual maturity only if the following conditions are fulfilled at all times:
  - (a) ~~the put option can be freely exercised by the Qualifying Investor AIF at its exercise date;~~
  - (b) ~~the strike price of the put option remains close to the expected value of the instrument at the next exercise date; and~~
  - (c) ~~the investment strategy of the Qualifying Investor AIF implies that there is a high probability that the option will be exercised at the next exercise date.~~~~
8. ~~Where the Qualifying Investor AIF is a Short-Term Money Market Fund it shall, when calculating the WAM and WAL, take into account the impact of financial derivative instruments, deposits and efficient portfolio management techniques.~~
9. ~~Where the Qualifying Investor AIF is a Short-Term Money Market Fund it is not permitted to have direct or indirect exposure to equities or commodities, including through financial derivative instruments.~~
10. ~~Where the Qualifying Investor AIF is a Short-Term Money Market Fund, financial derivative instruments may only be used when these are in line with the money market investment strategy of the Qualifying Investor AIF. Financial derivative instruments which give exposure to foreign exchange may only be used for hedging purposes. Investment in non-base currencies is not permitted unless the exposure is fully hedged.~~
11. ~~Where the Qualifying Investor AIF is a Short-Term Money Market Fund, investment in other investment funds is not permitted unless those investment funds are also Short-Term Money Market Funds.~~
12. ~~Where the Qualifying Investor AIF is a Short-Term Money Market Fund it may have either a constant or fluctuating NAV.~~

## ~~ii. Money Market Funds~~

1. ~~Where the Qualifying Investor AIF is a Money Market Fund it must have a primary investment objective of maintaining the principal of the fund and aim to provide a return in line with money market rates.~~

2. ~~Where the Qualifying Investor AIF is a Money Market Fund it shall (in accordance with paragraph 3) limit investments to high quality money market instruments, as determined by the Qualifying Investor AIF, and deposits with credit institutions.~~
3. ~~To determine "high quality", the following factors must at least be taken into account:
  - (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). Credit quality must be monitored on an on-going basis;~~
  - (b) ~~the nature of the asset class represented by the instrument;~~
  - (c) ~~the operational and counterparty risk, in the case of structured financial instruments; and~~
  - (d) ~~the liquidity profile.~~~~
4. ~~Where the Qualifying Investor AIF is a Money Market Fund it shall limit investments to securities or instruments with a residual maturity, until the legal redemption date, of less than or equal to 2 years, provided that the time remaining until the next interest reset date is less than or equal to 397 days. Floating rate securities must reset to a money market rate or index.~~
5. ~~Where the Qualifying Investor AIF is a Money Market Fund it must provide daily NAV and price calculations and have daily subscriptions and redemptions of units.~~
6. ~~Where the Qualifying Investor AIF is a Money Market Fund it shall ensure that the WAM of the portfolio does not exceed 6 months.~~
7. ~~Where the Qualifying Investor AIF is a Money Market Fund it shall ensure that the WAL of the portfolio does not exceed 12 months. When calculating the WAL for securities, including structured financial instruments, the Qualifying Investor AIF must base the maturity calculation on the residual maturity until the legal redemption of the instruments. However, when a financial instrument embeds a put option, the exercise date of the put option may be used instead of the legal residual maturity only if the following conditions are fulfilled at all times:
  - (a) ~~the put option can be freely exercised by the Qualifying Investor AIF at its exercise date;~~
  - (b) ~~the strike price of the put option remains close to the expected value of the instrument at the next exercise date; and~~
  - (c) ~~the investment strategy of the Qualifying Investor AIF implies that there is a high probability that the option will be exercised at the next exercise date.~~~~
8. ~~Where the Qualifying Investor AIF is a Money Market Fund it shall, when calculating the WAM and WAL, take into account the impact of financial derivative instruments, deposits and efficient portfolio management techniques.~~

- ~~9. Where the Qualifying Investor AIF is a Money Market Fund it is not permitted to have direct or indirect exposure to equities or commodities, including through financial derivative instruments.~~
- ~~10. Where the Qualifying Investor AIF is a Money Market Fund it may only use financial derivative instruments which give exposure to foreign exchange for hedging purposes. Investment in non-base currencies is not permitted unless the exposure is fully hedged.~~
- ~~11. Where the Qualifying Investor AIF is a Money Market Fund it may only invest in other investment funds that are Short-Term Money Market Funds or Money Market Funds.~~
- ~~12. Where the Qualifying Investor AIF is a Money Market Fund it must have a fluctuating NAV.~~

iii. ~~Short-Term Money Market Funds – valuation on the basis of amortised cost~~

- ~~1. Where the Qualifying Investor AIF is a Short-Term Money Market Fund it is permitted to follow an amortised cost valuation methodology provided the Qualifying Investor AIF or, where relevant, its delegate has demonstrable expertise in the operations of money market funds which follow this method of valuation. Such expertise shall be demonstrable where:
  - ~~(a) the Short-Term Money Market Fund has obtained a triple-A rating from an internationally recognised credit rating agency; or~~
  - ~~(b) the management company or investment manager is engaged in the management, or has been engaged in the management, of a triple-A rated money market fund;~~  
~~or~~
  - ~~(c) in circumstances other than (a) or (b), where the Qualifying Investor AIF has demonstrated to the Central Bank (through separate application) that appropriate expertise exists in the operation of this type of money market fund.~~~~
- ~~2. The Qualifying Investor AIF shall ensure and be satisfied at all times that the persons responsible for the operation of the Short-Term Money Market Fund including under any delegation arrangements have and continue to have the necessary expertise.~~
- ~~3. The Qualifying Investor AIF must carry out a weekly review of discrepancies between the market value and the amortised cost value of the money market instruments. Escalation procedures must be in place to ensure that material discrepancies between the market value and the amortised cost value of a money market instrument are brought to the attention of personnel charged with the investment management of the Qualifying Investor AIF. In this regard:
  - ~~(a) discrepancies in excess of 0.1% between the market value and the amortised cost value of the portfolio are brought to the attention of the management company or the investment manager;~~
  - ~~(b) discrepancies in excess of 0.2% between the market value and the amortised cost value of the portfolio are brought to the attention of senior management/directors of the management company or the board of directors and the depositary.~~~~

4. ~~The Qualifying Investor AIF shall conduct a daily review where discrepancies occur in excess of 0.3% between the market value and the amortised cost value of the portfolio. The Qualifying Investor AIF must notify the Central Bank with an indication of the action, if any, which will be taken to reduce such dilution.~~
5. ~~The Qualifying Investor AIF shall, in its constitutional document, provide for the escalation procedures set out in paragraphs 3 and 4 of this section or, alternatively, provide that a review of the amortised cost valuation vis-à-vis market valuation will be carried out in accordance with the requirements of the Central Bank. Weekly reviews and any engagement of escalation procedures must be clearly documented.~~
6. ~~The Qualifying Investor AIF shall undertake and complete monthly portfolio analysis incorporating stress testing to examine portfolio returns under various market scenarios to determine if the portfolio constituents are appropriate to meet pre-determined levels of credit risk, interest rate risk, market risk and investor redemptions. The results of the periodic analysis must be available to the Central Bank on request.~~

**Question 65: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

**Yes**

**No**

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

## **71. Stress testing requirements for MMFs under Regulation (EU) 2017/1131**

A Qualifying Investor AIF that is a short term Money Market Fund or a standard Money Market Fund as defined in Article 2(14) and 2(15) of Regulation (EU) 2017/1131, must at all times comply with the requirements on stress testing as detailed under Article 28 of that Regulation.

The requirements for these stress tests are updated annually by ESMA in the form of published guidelines. The Central Bank has historically noted compliance with updates to

the guidelines through the publication of the guidelines on the Markets Section of the Central Bank's website, along with a 'Notice of Intention to Comply' statement. With this update to the AIF Rulebook, the Central Bank now intends to include provisions that require ongoing compliance by relevant Money Market Funds with the ESMA Guidelines on stress test scenarios as they are periodically updated and published by ESMA.

**Proposed insertion Section 1: Money market Qualifying Investor AIFs, AIF Rulebook March 2024.**

**i. Stress testing**

1. A Qualifying Investor AIF authorised in accordance with Regulation (EU) 2017/1131 shall, when conducting stress testing under Article 28 of Regulation (EU) 2017/1131, adhere to the guidelines establishing common reference parameters of the stress test scenarios that are issued and updated periodically by ESMA.

**Question 66: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

**Yes**

**No**

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

## 72. European Central Bank reporting

The Central Bank is proposing to align reporting requirements for Money Market Funds with general reporting requirements for AIFs.

**Proposed amendments to Section 1: Money market Qualifying Investor AIFs, iv. European Central Bank reporting requirements on pages 138-139, AIF Rulebook March 2024.**

### **ii. European Central Bank reporting requirements**

- ~~1. Each money market fund which meets the definition contained in Article 1a, of Regulation of the European Central Bank (EU) No 883/2011 of 25 August 2011 amending Regulation (EC) No 25/2009 concerning the balance sheet of the monetary financial institutions sector (ECB/2008/32) (ECB/2001/12) and domiciled within a Monetary Union Member State (MUMS) shall submit two sets of data: (a) Monthly Data – This return shall be prepared on a monthly basis and shall be received by the Central Bank within 6 working days of the end month to which it relates. Essentially it consists of aggregated and summarised balance sheet data, e.g. liabilities – NAV and borrowings; assets – cash, deposits, debt securities (money market paper and other) and equity holdings. All components of assets broken into three general issuer categories (Irish, other MUMS and the rest of the world).; and (b) Quarterly Data – This return shall be prepared on a quarterly basis end March, June, September and December and shall be received by the Central Bank within 10 working days of the end quarter to which it relates. Essentially it requires <http://www.centralbank.ie/polstats/stats/reporting/Pages/default.aspx>~~
1. Each money market fund which meets the definition contained in Article 2 of Regulation (EU) 2021/379 of the European Central Bank of 22 January 2021 on the balance sheet items of credit institutions and of the monetary financial institutions sector (recast) (ECB/2021/2) and domiciled within a Monetary Union Member State (MUMS) shall submit such periodic returns to the Central Bank as specified by the Central Bank from time to time. Those returns shall be in the form, and contain the information, specified by the Central Bank and published on the Central Bank's website.
2. The AIFs which meet the definition contained in Article 2 of Regulation (EU) 2024/1988 of the European Central Bank of 27 June 2024 concerning statistics on investment funds and repealing Decision (EU) 2015/32 (ECB/2014/62) (ECB/2024/17) (recast) and domiciled within a Monetary Union Member State (MUMS) shall submit such periodic returns to the Central Bank as specified by the Central Bank from time to time. Those

returns shall be in the form, and contain the information, specified by the Central Bank and published on the Central Bank's website.

**Question 67: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

**Yes**

**No**

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

### **73. Duration of closed-ended Qualifying Investor AIFs**

Where the Qualifying Investor AIF is closed-ended it must have a finite closed-ended period, the duration of which must be provided for in the prospectus as a part of the investment policy. Accordingly, the constitutional document must provide that on a future date, specified in either the constitutional document or the prospectus, the Qualifying Investor AIF will undertake certain actions. To provide further clarity on this requirement, the Central Bank is providing that the Qualifying Investor AIF may convert to being fully open-ended or with 'limited liquidity'.

**Proposed amendments to Section 3: Closed-ended Qualifying Investor AIFs and duration of closed- ended Qualifying Investor AIFs, i. General requirement paragraph 1(c), page 143, AIF Rulebook March 2024.**

1.(c) convert into an open-ended Qualifying Investor AIF (**whether or not with limited liquidity**), the relevant details of which must be disclosed in the prospectus; or

**Question 68: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

**Yes**

**No**

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

## **74. Operation of share classes and Closed-ended Qualifying Investor AIFs**

Updated provisions around the operation of share classes as detailed in section 34 of this Consultation Paper means that the provisions around closed ended funds issuing units other than at NAV are no longer required.

**Proposed deletion to Section 3: Closed-ended Qualifying Investor AIFs and duration of closed-ended Qualifying Investor AIFs, i. General requirement, paragraph 2, page 143, AIF Rulebook March 2024.**

- ~~2. Where the Qualifying Investor AIF is closed ended it may, with the prior approval of the Central Bank, provide for the issue of units other than at net asset value.~~

**Question 69: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

**Yes**

**No**

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

## 75. Simplification of governance rules for closed-ended Qualifying Investor AIF

It is proposed to simplify requirements related to a Qualifying Investor AIF seeking to: (i) amend the duration of the closed-ended Qualifying Investor AIF; (ii) change the investment objective or make material changes to the investment policy of the closed-ended Qualifying Investor AIF; or (iii) amend the maximum charge relating to the redemption or repurchase of units or the maximum annual fee. Requirements around voting and notifications will reflect whether unitholders can exit the Qualifying Investor AIF prior to implementation of any changes.

**Proposed deletion and insertion to Section 3: Closed-ended Qualifying Investor AIFs and duration of closed-ended Qualifying Investor AIFs, iii. Liquidity, on pages 144-145, AIF Rulebook March 2024.**

### Changes to Duration

- ~~1.— No realistic liquidity provisions: Where there is a proposed change to the duration of a closed-ended Qualifying Investor AIF with no opportunity for unitholders to redeem or otherwise exit the Qualifying Investor AIF, the Qualifying Investor AIF shall ensure that votes in favour of the change must represent at least 75% of votes cast.~~
- ~~2.— Realistic liquidity provisions: Where there is a proposed change to the duration of the Qualifying Investor AIF with an opportunity for unitholders to redeem or otherwise exit the Qualifying Investor AIF, the Qualifying Investor AIF shall ensure that votes in favour of the change must represent at least 50% of votes.~~

### ~~Changes to the investment objective or material changes to the investment policy of a Qualifying Investor AIF~~

- ~~3.— No realistic liquidity provisions: Where there is a proposed change of investment objectives and/or material change of investment policies with no opportunity for unitholders to redeem or otherwise exit the closed-ended Qualifying Investor AIF, the Qualifying Investor AIF shall ensure that votes in favour of the change must represent at least 75% of votes cast.~~
- ~~4.— Realistic liquidity provisions: Where there is a proposed change of investment objective and/or material change of investment policies with an opportunity for unitholders to redeem or otherwise exit the closed-ended Qualifying Investor AIF, the Qualifying Investor AIF shall ensure that votes in favour of the change must represent at least~~

50% of votes cast.

#### ~~Non-material changes to the investment policy of a Qualifying Investor AIF~~

- ~~5. Where the closed-ended Qualifying Investor AIF makes non-material changes to investment policies, it shall notify unitholders of these changes. Notification can be provided by means of appropriate disclosure in the next annual report.~~

#### ~~Changes to Fees or Charges~~

- ~~6. Where a closed-ended Qualifying Investor AIF proposes to amend the maximum redemption charge as disclosed in the constitutional document or prospectus, or the maximum annual fee charged by, as relevant, the AIFM, management company or general partner as disclosed in the trust deed, deed of constitution, management agreement, AIFM agreement or partnership agreement, the following approach must be adopted:~~

- ~~(a) No realistic liquidity provisions: Where there is a proposed increase in these fees or charges with no opportunity for unitholders to redeem or otherwise exit the Qualifying Investor AIF, it shall ensure that votes in favour of the increase must represent at least 75% of votes cast.~~
- ~~(b) Realistic liquidity provisions: Where there is a proposed increase in these fees or charges with an opportunity for unitholders to redeem or otherwise exit the Qualifying Investor AIF, it shall ensure that votes in favour of the increase must represent at least 50% of the votes cast.~~

~~The provisions of this paragraph are also applicable to the annual fee charged by an investment manager where this fee is paid directly out of the assets of the Qualifying Investor~~

~~AIF.~~

#### **Changes to a closed-ended Qualifying Investor AIF**

- 1. Where a closed-ended Qualifying Investor AIF proposes to:**
- (i) amend the duration of the closed-ended Qualifying Investor AIF;**
  - (ii) change the investment objective or make material changes to the investment policy of the closed-ended Qualifying Investor AIF; or**

**New Footnote: In accordance with paragraph 6 of section 3.i of Part I, "material" shall be taken to**

mean, although not exclusively: “changes which significantly alter the asset type, credit quality, borrowing or leverage limits or risk profile of the Qualifying Investor AIF.

- (iii) amend the maximum charge relating to the redemption or repurchase of units, or the maximum annual fee charged by, as relevant, the AIFM, management company or general partner of the closed-ended Qualifying Investor AIF; the following shall apply:

New Footnote: The annual fee includes any performance related fee charged by the AIFM, the management company, the general partner or the investment manager.

- if the amendment includes an opportunity for investors to redeem **or otherwise exit** from the closed-ended Qualifying Investor AIF, the proposal shall be approved by a simple majority of the votes cast.
  - if no opportunity is provided for investors to redeem **or otherwise exit** from the closed-ended Qualifying Investor AIF as part of the amendment, the proposal shall require approval by a qualified majority of 75% of the votes cast.
2. The provisions of paragraph 1(iii) are also applicable to the annual fee charged by an investment manager where this fee is paid directly out of the assets of the Qualifying Investor AIF.
3. Where the closed ended Qualifying Investor AIF makes non-material changes to investment policies, it shall notify unitholders of these changes. Notification can be provided by means of appropriate disclosure in the next annual report.

**Question 70: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

Irish Funds suggests the addition of “or otherwise exit” to the following two bullet points (as highlighted in yellow). This retains wording from the current AIF Rulebook and facilitates the use of other liquidity provisions.

- if the amendment includes an opportunity for investors to redeem **or otherwise exit** from the closed-ended Qualifying Investor AIF, the proposal shall be approved by a simple majority of the votes cast.
- if no opportunity is provided for investors to redeem **or otherwise exit** from the closed-ended Qualifying Investor AIF as part of the amendment, the proposal shall require approval by a qualified majority of 75% of the votes cast.

## 76. Amendment to loan originating requirements

The Loan Origination Chapter will be deleted in order to align fully with in the new European framework contained in Directive (EU) 2024/927.

**Proposed deletion of Section 4: Loan originating Qualifying Investor AIFs on pages 146-152, AIF Rulebook March 2024.**

~~i. General requirements~~

~~1. The loan originating Qualifying Investor AIF is not subject to the prohibition on the granting of loans set out in paragraph 7, Section 1, sub-section i in Part 1 of this Chapter.~~

~~2. The loan originating Qualifying Investor AIF shall limit its operations to the business of:~~

~~issuing loans;~~

~~participating in loans;~~

~~investment in debt/credit instruments;~~

~~participations in lending;~~

~~and to operations relating thereto, including investing in debt and equity securities of entities or groups to which the loan originating Qualifying Investor AIF lends or instruments which are held for treasury, cash management or hedging purposes.~~

~~3. The loan originating Qualifying Investor AIF is subject to the rules set out in this section in addition to the general rules for all Qualifying Investor AIFs. The rules in this section also apply where a loan originating Qualifying Investor AIF engages in loan origination as part of a syndication or club deal.~~

~~4. The loan originating Qualifying Investor AIF must have an authorised AIFM which may be the loan originating Qualifying Investor AIF.~~

~~ii. Credit granting, monitoring and management~~

~~1. The loan originating Qualifying Investor AIF shall establish and implement appropriate, documented and regularly updated procedures, policies and processes for each of the following:~~

~~• Risk appetite statement;~~

~~• The assessment, pricing and granting of credit (including criteria, governance and decision making, committee structures);~~

~~• Credit monitoring, renewal and refinancing (including criteria, governance and decision making committee structures);~~

~~• Collateral management policy;~~

~~• Concentration risk management policy;~~

~~• Valuation, including collateral valuation and impairment;~~

~~• Credit monitoring;~~

~~• Identification of problem debt management;~~

~~• Forbearance;~~

~~• Delegated authority;~~

•—Documentation and security.

2.—The loan originating Qualifying Investor AIF shall ensure that:

- (a) credit granting is based on sound and well-defined criteria and that the process for approving, amending, renewing and re-financing credits is clearly established;
- (b) subject to paragraph 3 of this section, the loan originating Qualifying Investor AIF has internal methodologies that enable the loan originating Qualifying Investor AIF to assess the credit risk of exposures to individual obligors, securities or securitisation positions and credit risk at the portfolio level;
- (c) the ongoing administration and monitoring of the various credit risk bearing portfolio positions and exposures, including for identifying and managing problem credits and for making adequate value adjustments and provisions, is operated through effective systems; and
- (d) diversification of credit positions is adequate having regard to the target markets and overall credit strategy of the loan originating Qualifying Investor AIF.

3.—Internal methodologies referred to in paragraph 2(ii) above shall, in particular, not rely solely or mechanistically on external credit ratings.

4.—The loan originating Qualifying Investor AIF shall address and control the risk that credit risk mitigation techniques used by them may prove less effective than expected.

5.—The loan originating Qualifying Investor AIF shall ensure that:

- (a) the concentration risk arising from exposures to each counterparty, including
  - (i) central counterparties;
  - (ii) groups of connected counterparties; and
  - (iii) counterparties in the same economic sector, geographic region or from the same activity or commodity;is addressed; and
- (b) the application of credit risk mitigation techniques and, in particular risks associated with large indirect credit exposures such as a single collateral issuer, is addressed and controlled including through the establishment and implementation of written policies and procedures.

i.—Due diligence by investors

1.—Where the AIFM intends to provide access to its records / staff to any investor for the purposes of a due diligence process, it must ensure that such access has been made available on a non-discriminatory basis to all unitholders. Such access must not be structured so as to materially misrepresent the business of the loan originating Qualifying Investor AIF. The AIFM shall ensure that a single person within senior management is designated with responsibility to ensure that the access given has been non-discriminatory. This person must be satisfied that a reasonable person relying on the access provided would not be influenced to invest in the loan originating Qualifying Investor AIF because of lack of access to information. The AIFM shall not intentionally or

negligently conceal or fail to disclose information that a reasonable person would be likely to have considered material in considering an investment in the loan originating Qualifying Investor AIF.

iv. ~~Diversification / eligible investments~~

~~1. The loan originating Qualifying Investor AIF shall, in its prospectus, set out a risk diversification strategy which will achieve a portfolio of loans which is diversified and which will limit exposure to any one issuer or group to 25% of net assets within a specified timeframe. The loan originating Qualifying Investor AIF shall not intentionally breach this risk diversification strategy. In the event that the loan originating Qualifying Investor AIF is not able to achieve its risk diversification strategy within the time frame set out in its prospectus, for reasons beyond its control, the loan originating Qualifying Investor AIF must seek approval from the unitholders, in accordance with the procedures set out in the constitutional document, to continue to operate at the level of diversification which has been achieved. In the event that unitholders do not approve the proposal the loan originating Qualifying Investor AIF must terminate. The proposal to investors must be made within 30 days of the end of the time specified in the prospectus for meeting the risk diversification strategy.~~

~~2. The loan originating Qualifying Investor AIF shall not originate loans to any of the following:~~

~~(a) natural persons;~~

~~(b) the AIFM, management company, general partner, depository, or to delegates or group companies of these;~~

~~(c) other collective investment undertakings;~~

~~(d) financial institutions or related companies of these, except in the case where there is a bona fide treasury management purpose which is ancillary to the primary objective of the loan originating Qualifying Investor AIF;~~

~~(e) persons intending to invest in equities or other traded investments or commodities.~~

~~3. Unless a loan is purchased following an offering to multiple parties and is acquired on an arm's length basis, the loan originating Qualifying Investor AIF shall not acquire a loan from a credit institution under arrangements which involve:~~

~~(a) The retention by the credit institution or a member of its group of an exposure correlated with the performance of the loan;~~

~~(b) The provision of an administration, credit assessment or credit monitoring service in relation to the loan, whether on an individual or portfolio basis, by the credit institution or a member of its group~~

~~unless the loan originating Qualifying Investor AIF is satisfied that the requirements set out in paragraph 4 below have been fulfilled.~~

~~For the purposes of this paragraph, "acquire a loan" means any of: to purchase; take transfer of; take credit risk or part of credit risk attaching to; take other exposures to, a loan.~~

4. Prior to acquiring a loan to which paragraph 3 of this section applies, a loan originating Qualifying Investor AIF must:

(a) have in place and implement policies and procedures to:

- (i) monitor the net economic interest ["Net economic interest" has the same meaning as in Article 405 of Regulation (EU) No 575/2013 (Capital Requirements Regulation)] of the vendor over the lifetime of the loan;
- (ii) value the loan where the loan is not purchased at face value;
- (iii) prudently monitor the performance of the loan; and
- (iv) stress test the loan independently of the vendor on a regular basis and at least annually, having regard to the changing risk profile of the exposure.

(b) have received from the vendor warranties that:

- (i) the vendor, or, where within scope of banking consolidated supervision, an entity within its group, will retain, on an on-going basis, a material net economic interest of at least 5% of the nominal value of the loan as measured at origination;
- (ii) the exposure will not be subject to any credit risk mitigation techniques; and
- (iii) the loan originating Qualifying Investor AIF will have readily available access to all materially relevant data on the credit quality and performance of the underlying exposures and on cash flows relating to and collateral supporting the exposures so as to be able to conduct comprehensive and well informed stress tests on the cash flows and collateral values supporting the exposures.

4. Without prejudice to the generality of the requirements set out in section viii, Section 1 of Part I of this Chapter, any agent of, intermediary for or introducer to a loan originating Qualifying Investor AIF, or an entity which is a member of group of which those entities are a part, shall be regarded as a connected party to whom section viii shall apply in the event that such an entity sells loans to a loan originating Qualifying Investor Fund or formulates the terms and conditions of a loan to be issued by a loan originating Qualifying Investor Fund.

#### v. Stress testing

1. The loan originating Qualifying Investor AIF shall have a comprehensive stress testing programme which shall include the following:

- (a) It shall identify possible events or future changes in economic conditions that could have unfavourable effects on the loan originating Qualifying Investor AIF's credit exposures and assess the loan originating Qualifying Investor AIF's ability to withstand such changes;
- (b) The stress measures under the programme shall be compared against internal risk limits;

- ~~(c) The programme shall comprehensively capture transactions and aggregate exposures across all forms of counterparty credit risk at the level of specific counterparties in a sufficient time frame to conduct regular stress testing;~~
- ~~(d) The programme shall provide for at least monthly exposure stress testing of principal market risk factors such as interest rates, FX and credit spreads for all counterparties of the loan originating Qualifying Investor AIF in order to identify and enable the loan originating Qualifying Investor AIF when necessary to reduce outsized concentrations in specific directional risks;~~
- ~~(e) The programme shall apply at least quarterly multifactor stress testing scenarios and assess material non-directional risks including yield curve exposure and basis risks. Multiple factor stress tests shall, at a minimum, address the following scenarios in which the following occurs:
 
  - ~~(i) severe economic or market events have occurred;~~
  - ~~(ii) broad market liquidity has decreased significantly;~~
  - ~~(iii) a large financial intermediary is liquidating positions.~~~~

~~The results of the stress testing under the programme shall be reported regularly, at least on a quarterly basis, to the board of the AIFM/investment company/management company/general partner.~~

#### vi. Liquidity and distributions

- ~~4. A loan originating Qualifying Investor AIF shall be closed ended and shall be established for a finite period except that, the loan originating Qualifying Investor AIF may have discretion to invite, at dates determined at the authorisation date, or such other dates as may be approved by the board of the AIFM/investment company/management company/general partner, without commitment and on a non-preferred basis, requests for redemption of holdings from unitholders.~~
- ~~5. The loan originating Qualifying Investor AIF shall only make distributions or provide for redemptions of unitholders holdings during the life of the loan originating Qualifying Investor AIF to the extent that there is unencumbered cash or liquid assets available for distribution or redemption purposes and that such distributions or redemptions will not endanger the regulatory compliance or liquidity related obligations of the loan originating Qualifying Investor AIF. Unless the assets of the loan originating Qualifying Investor AIF are valued by reference to prevailing market prices, a redemption of unitholder holdings cannot be made without the approval of the unitholders, in accordance with the procedures set out in the constitutional document, on each occasion.~~

#### vii. Leverage

1. The loan originating Qualifying Investor AIF must not have gross assets of more than 200% of NAV, or such other limit as may be set by the Central Bank from time to time for loan originating AIF or for one or more class of loan originating AIF.
2. In the event that the loan originating Qualifying Investor AIF breaches the limit set out in paragraph 1 of this section, the loan originating Qualifying Investor AIF must, within 30 days or such longer period as the Central Bank may specify, secure the approval of the Central Bank for a formal plan to bring the loan originating Qualifying Investor AIF into compliance with the leverage ratio.

viii. Disclosure

1. The prospectus and all sales material issued or distributed in respect of a loan originating Qualifying Investor AIF must include a prominent risk warning which draws attention to the unique risks which arise from loan origination and how investment in a loan originating investment fund is not guaranteed and is subject to the possibility of investment losses and illiquidity. In addition, the prospectus must include:
  - (a) Information on the risk and reward profile to enable investors identify the specific risks linked to a loan origination strategy;
  - (b) Information on the extent to which the loan originating Qualifying Investor AIF intends to be concentrated as regards individual entities, geographical locations and sectors and risk arising from the proposed concentrations;
  - (c) Details of the credit assessment and monitoring process set out in paragraph 1 of section ii Credit granting, monitoring and management above;
  - (d) Information on whether the AIFM will provide unitholders or potential unitholders with access to records and staff for the purposes of a due diligence process together with the terms and conditions under which such access will be made available.
2. The prospectus and all sales materials issued or distributed in respect of a loan originating Qualifying Investor AIF must include a risk warning drawing attention to the fact that leverage limits and lending standards may be tightened by the Central Bank which may impact on the ability of the loan originating Qualifying Investor AIF to follow the investment strategy set out in the prospectus.
3. The prospectus and all sales materials issued or distributed in respect of a loan originating Qualifying Investor AIF must include a risk warning drawing attention to the potential implications arising from the application of the Central Bank's Code of Conduct for Business Lending to Small and Medium Enterprises where loans are issued to SMEs operating within the State.
4. The periodic reports issued by the loan originating Qualifying Investor AIF must include the following:
  - (a) A breakdown of the originated loans between senior secured debt, junior debt and mezzanine debt;

- (b) ~~— A breakdown of the originated loans between loans made with a amortising repayment schedule and loans made with bullet repayments;~~
- (c) ~~— A breakdown of the loan to value ratio for each originated loan;~~
- (d) ~~— Information in respect of:
  - ~~- non performing exposures, as defined in the Implementing Technical Standards adopted under Article 99 of Regulation EU No 575/2013, as amended from time to time; and~~
  - ~~- exposures subject to forbearance activities, as defined in the Implementing Technical Standards adopted under Article 99 of Regulation EU No 575/2013, as amended from time to time. This information may be provided on an aggregate basis in periodic reports. It must be provided in relation to each exposure to the Central Bank and submitted with the periodic report and~~~~
- (e) ~~— Material changes to the credit assessment and monitoring process set out in section ii Credit granting, monitoring and management above.~~

~~This information must also be provided to unitholders at each NAV calculation point.~~

- 5. ~~— A list of any undrawn committed credit lines must be submitted to the Central Bank with periodic reports. The Central Bank reserves the right to pass this information to national competent authorities of the bank(s) in question, wherever located.~~

**Question 71: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

Irish Funds is fully supportive of aligning loan origination undertaken by Qualifying Investor AIFs with the new European framework governing loan origination contained in Directive (EU) 2024/927 (“AIFMD II”). However, we would request that in the event that there is a time period (the “Interim Period”) between (i) the removal of the existing Loan Origination Qualifying Investor AIF Rules through the publication of the updated AIF Rulebook and (ii) the implementation of AIFMD II into Irish law (the “AIFMD II Regulations”), the Central Bank would include some provisions in the updated AIF Rulebook which would codify the basis on which Irish Qualifying Investor AIFs might engage in loan origination. Otherwise, if the updated AIF Rulebook is issued during the Interim Period without loan origination rules, then no rules will apply to any Irish Qualifying Investor AIFs engaging in loan origination until the AIFMD II Regulations are transposed.

In that regard, we would propose the following text for inclusion in the updated AIF Rulebook:

Qualifying Investor AIFs engaging in loan origination

The Central Bank is of the view that the European framework governing loan origination contained in Directive (EU) 2024/927 should be the sole regime applicable to any Irish Qualifying Investor AIFs that engage in loan origination and that no separate or additional national rules should apply to Irish Qualifying Investor AIFs engaging in loan origination activities. The European framework governing loan origination by Irish Qualifying Investor AIFs will ultimately be reflected in Irish Regulations implementing Directive (EU) 2024/927 (the “AIFMD II Regulations”). For any interim period between the date of this AIF Rulebook and the date on which the AIFMD II Regulations are signed into law (the “Interim Period”), the rules governing loan origination contained in Directive (EU) 2024/927 shall apply to any Irish Qualifying Investor AIF that engages in loan origination.

Accordingly, any new Irish Qualifying Investor AIF that is established prior to the date of the introduction of the AIFMD II Regulations may engage in loan origination provided that, as part

of its approval by the Central Bank, such Qualifying Investor AIFs complies with the relevant requirements set out in Directive (EU) 2024/927 applicable to loan origination activities.

A Qualifying Investor AIF that is already in existence prior to the date of this Rulebook which does not currently engage in loan origination may now engage in loan origination provided that Qualifying Investor AIF amends its documentation, where necessary, in order to comply with the relevant requirements applicable to loan origination activities set out in Directive (EU) 2024/927.

A Qualifying Investor AIF that is already in existence prior to the date of this Rulebook which is currently authorised by the Central Bank as a loan origination Qualifying Investor AIF may, if it chooses, elect to comply with the relevant requirements applicable to loan origination activities set out in Directive (EU) 2024/927 in place of the Central Bank's previous loan origination Qualifying Investor AIF regime, subject to that Qualifying Investor AIF amending its documentation, where necessary, in order to comply with the relevant requirements applicable to loan origination activities set out in Directive (EU) 2024/927 instead.

The above provisions shall cease to apply once the AIFMD II Regulations come into force, at which point, Irish Qualifying Investor AIFs that engage in loan origination activities will be required to comply with the relevant requirements relating to loan origination activities set out in the AIFMD II Regulations. However, as permitted under Directive (EU) 2024/927, a loan origination Qualifying Investor AIF that was established prior to 15 April 2024 may elect to continue to comply with the existing requirements to which it was subject at the time of approval until 16 April 2029, at which point, it will be required to comply with the requirements set out in the AIFMD II Regulations.

## **77. Proposed amendments to Part III in relation to non-EU AIFMs**

Under the AIFMD, Member States are not required to authorise AIFMs under a certain size. Such AIFMs are only required to register with and report annually to national competent authorities. These entities are not subject to broader regulatory requirements including organisation, capital, risk management, liquidity management and cannot avail of the AIFMD passport to manage and / or market AIFs in the EU.

It should be noted that Qualifying Investor AIFs are permitted to appoint a registered AIFM for an initial start-up period of two years. It is now proposed to extend the list of

requirements to include the following:

- (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.

It is also proposed to apply Part III of the Qualifying Investor AIF chapter of the AIF Rulebook to Qualifying Investor AIFs with non-EU AIFMs. A requirement in respect of loan originating Qualifying Investor AIFs which have a Registered AIFM or a non-EU AIFM has been included.

**Proposed amendment to the title, Part III: Additional Provisions Applicable to Qualifying Investor AIFs which have a Registered AIFM, page 153, AIF Rulebook March 2024.**

**Part III: Additional provisions applicable to Qualifying Investor AIFs which have a registered AIFM or a non-EU AIFM**

**Proposed amendments to Part III: Additional Provisions Applicable to Qualifying Investor AIFs which have a Registered AIFM, paragraphs 1, 2 and 3, page 153, AIF Rulebook March 2024.**

1. Where a Qualifying Investor AIF has :

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

(b) a non-EU AIFM,

it shall 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).

2. Where a Qualifying Investor AIF, is a loan originating AIF as defined in [AIFM Regulations]\*, has

- a) a registered AIFM; or
- b) a non-EU AIFM,

The loan originating Qualifying Investor AIF must be closed-ended and it shall comply with the provisions of [insert reference\*].

\* Reference to transposing regulations to be inserted when available

3. Where a Qualifying Investor AIF has

- a) a registered AIFM; ~~the registered AIFM must;~~ or
- b) a non-EU AIFM,

it shall ensure that a single depositary is appointed in accordance with Regulation 22(1).

4. Where a Qualifying Investor AIF has

- a) a registered AIFM, ~~the registered AIFM must;~~ or
- b) a non-EU AIFM,

it shall comply with the following provisions of AIFMD Level 2

- Article 20 Due diligence in the selection and appointment of counterparties and prime brokers
- Article 24 Inducements
- Article 27 Execution of decisions to deal on behalf of the managed AIF
- Article 28 Placing orders to deal on behalf of AIFs with other entities for execution
- Article 49 Alignment of investment strategy, liquidity profile and redemption policy
- Article 67 Policies and procedures for the valuation of the assets of the AIF

- Article 68 Use of models to value assets
- Article 69 Consistent application of valuation policies and procedures
- Article 71(1) Review of individual values of assets
- Article 72(1) Calculation of NAV per unit or share
- Article 74 Frequency of valuation of assets held by open-ended AIFs
- Article 103 General principles for the annual report
- Article 104 Content and format of the balance sheet or statement of assets and liabilities and of the income and expenditure account
- Article 105 Report on the activities of the financial year
- Article 106 Material changes

**Question 72: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

Irish Funds welcome and largely support the Central Bank's proposal to permit non-EU AIFMs to manage loan-originating QIAIFs within the updated framework. We respectfully ask the Central Bank to extend this flexibility so that non-EU AIFMs may also manage open-ended loan-originating QIAIFs, provided those AIFMs and funds fully adhere to the AIFMD Level 1 ensuring they can demonstrate to the relevant competent authorities that the AIF's liquidity risk management system aligns with its investment strategy and redemption policy.

Such an approach would be fully consistent with the consultation's objective to implement the EU framework without additional domestic overlays, while preserving robust investor protections.

It should also be noted that the appointment of a depositary for an AIF managed by a non-EU AIFM is not required under Article 42 of the AIFMD. Under the Central Bank's current guidance, QIAIFs managed by non-EU AIFMs, other than UK AIFMs, are required to comply with the applicable provisions of the AIF Rulebook that govern QIAIFs with a registered AIFM.

# Chapter 3 – Alternative Investment Fund Manager Requirements

## 78. Update to Introduction

The AIFM chapter is divided between Part A and Part B. Part A is no longer applicable as the transition timeframe has now passed and it will be deleted. All requirements for AIFMs will be consolidated under a single Chapter 4.

**Proposed amendments to Chapter 3 – Alternative Investment Fund Manager Requirements, Introduction, page 155, AIF Rulebook March 2024.**

**Chapter 4 of** the AIF Rulebook sets out the rules which apply to AIFMs which are authorised by the Central Bank.

~~Chapter 3 Part A applies to AIFMs which are authorised before or on 27 November 2023 and will apply until 27 May 2024. From 27 May 2024 on, Chapter 3 Part B will apply.~~

~~Chapter 3 B applies to AIFMs which are authorised after 27 November 2023 and to all AIFMs (including those AIFMs which were authorised before or on 27 November 2023) from 27 May 2024 on.~~

Definitive rules for each AIFM will be set out in its letter of authorisation or in other correspondence that may be sent to each AIFM by the Central Bank from time to time.

**Question 73: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

**Yes**

**No**

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

This reflects the end of the AIFMD transition period and we have no material comments; however, please see response at Q125 in relation to grandfathering provisions to allow for orderly transition by existing AIFs/AIFMs to align with revised AIF Rulebook.

## 79. Deletion of Part A - Chapter 3

Part A of Chapter 3 applies to AIFMs which are authorised before or on 27 November 2023 and applies to those AIFMs until 27 May 2024. From 27 May 2024 on, Part B will apply to all AIFMs. As such, Part A of Chapter 3 of the AIF Rulebook no longer applies to any AIFM (or other entity) and all AIFMs have been subject to Part B since 27 May 2024. The Central Bank is proposing to delete Part A of Chapter 3 accordingly.

The Central Bank further notes the AIF Rulebook states that:

*“Where a condition set out in the AIF Rulebook is amended or deleted, any legal proceedings, or any investigation, disciplinary or enforcement action in respect of any requirement may be continued, and any breach of the requirement so amended or deleted may subsequently be the subject of a legal proceeding, investigation, disciplinary or enforcement action by the Central Bank or other person, as if the requirement had not been amended or deleted”.*

**PART A**

**AIFMS WHICH ARE AUTHORISED BY THE CENTRAL BANK UNDER THE AIFM REGULATIONS BEFORE OR ON 27 NOVEMBER 2023**

This Part A applies to AIFMs which are authorised before or on 27 November 2023 and applies to those AIFM until 27 May 2024. From 27 May 2024 on, Part B will apply to those AIFMs.

**i. — Operating conditions**

The AIFM shall prepare and submit half-yearly financial and annual audited accounts of the AIFM to the Central Bank. The half-yearly accounts shall be submitted within two months of 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, 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. Internally managed Qualifying Investor AIF investment companies are not required to produce half-yearly financial accounts. Both half-yearly (if any) and annual audited accounts of an AIFM must be accompanied by the Minimum Capital Requirement Report, which (together with the Notes on Compilation thereto) forms part of this chapter and is set out in Annex I to this chapter. The Minimum Capital Requirement Report must be signed by a director or a senior manager of the AIFM. Annual audited accounts of the direct parents of the AIFM must also be submitted to the Central Bank.

**ii. — Remuneration**

1. — The AIFM's remuneration policies shall be consistent with ESMA's remuneration guidelines.

**iii. — Organisational requirements**

1. — The AIFM shall appoint a Chair to its board on a permanent basis.

2. — The board of an AIFM shall be responsible for the following managerial functions:

a) — Regulatory compliance: The board shall put in place, and ensure adherence to, procedures designed to ensure compliance with all applicable legal and regulatory requirements of the

AIFM itself and all AIFs under management. The board shall have arrangements in place to ensure that complaints from unitholders regarding matters other than distribution are addressed promptly and effectively;

- b) Fund risk management: The board shall put in place, and ensure adherence to, procedures designed to ensure that all applicable risks pertaining to the AIFs under management can be identified, monitored and managed at all times;
  - c) Operational risk management: The board shall put in place, and ensure adherence to, procedures designed to ensure that all applicable risks pertaining to the AIFM can be identified, monitored and managed at all times;
  - d) Investment management: The board shall put in place, and shall ensure adherence to, procedures to:
    - a) ensure and verify that the investment approach of each AIF is complied with; and
    - b) ensure availability of up to date information on portfolio performance;
  - e) Capital and financial management: The board shall put in place, and ensure adherence to, procedures to ensure compliance with regulatory capital requirements of the AIFM. The board shall put in place, and ensure adherence to, procedures to ensure all relevant accounting records of the AIFM and of the AIFs under management are properly maintained and are readily available, including production of annual and half-yearly financial statements. The board shall put in place, and ensure adherence to, procedures to ensure that proper accounting policies and procedures are employed in respect of the AIFM and all AIFs under management.
  - f) Distribution: The board shall put in place, and shall ensure adherence to, procedures to ensure and verify that the distribution strategy of each AIF is complied with. The board shall have arrangements in place to ensure that complaints from unitholders regarding distribution matters are addressed promptly and effectively.
- 3.— An AIFM shall ensure that:
- (a) an organisation effectiveness role shall be performed by an independent Chair or an independent board member, and
  - (b) shall not be performed by a person with responsibility in relation to any of the managerial functions specified in paragraph 2 of this section.
- 4.— Delegates to be appointed by the AIFM shall be approved by the board of the AIFM acting in good faith in the interests of the AIFs under management.
- 5.— Where an AIFM delegates activities the programme of activity shall identify the board member or other individual ("designated persons") who will, on a day to day basis, monitor and control each of the individual activities identified in paragraph 2 of this section. The board of the AIFM shall formally adopt a statement of responsibility in relation to the functions and the procedures which will apply in each case.
- 6.— Where an AIFM delegates activities, the programme of activity shall provide for the following requirements in relation to the reports to be received by the designated person and the required action, in the context of each function identified in paragraph 2 of this section:
- (a) types of reports received: A list of reports which the designated person will receive from parties who have an involvement, by delegation or otherwise, in the performance of the function and the identity of those third parties;
  - (b) frequency of the reports: The provisions relating to frequency must include procedures for immediate reporting to the designated person of all material issues which arise;

(c) ~~action carried out: Circumstances in which action by a designated person is required and procedures to be followed by the designated person in this event, including escalation to the board; and~~

(d) ~~exceptional Reporting: In addition to (a) to (c), the programme of activity must also provide for the following:~~

- ~~• delegates are required to submit exceptional reports to the designated person in accordance with thresholds / trigger events which the board will from time to time determine, details of which are provided to the Central Bank;~~
- ~~• the programme of activity should set out details of thresholds / trigger events and procedures which must be adopted on receipt of exceptional reports;~~
- ~~• reports must be maintained where they can be subject to inspection by the Central Bank.~~

~~7. An AIFM shall not designate the same person to perform the investment management managerial function and either the fund risk management managerial function or the operational risk management managerial function.~~

**iv. ~~Directors~~<sup>25</sup>**

- ~~1. Departures from the office of director and the reason for the departure must be notified to the Central Bank immediately by filing the relevant Central Bank form. In all cases where a director wishes to resign and prior to completing the relevant Central Bank form, the board or its Chair must form a view as to the impact of the resignation on the AIFM having regard to the current and prospective financial state of the AIFM and the AIFs under management. In the event that the board or, in the absence of a board meeting, the Chair forms the view that the situation is one which could create such concern on the part of the Central Bank, it shall state this on the relevant Central Bank form. The board or its Chair may consult the Central Bank in order to help it form a view on that matter.~~
- ~~2. The AIFM shall not have directors in common with the board of the depositary of the AIF under management.~~
- ~~3. The AIFM shall have a minimum of two directors that are Irish residents.~~
- ~~4. The AIFM shall only appoint directors that have disclosed to the AIFM any concurrent directorships which they hold.~~

<sup>25</sup>The provisions of footnote 1 in chapter 4 – AIF Management Company Requirements will apply mutatis mutandis to directors of AIFM which manage authorised AIF that are in distressed or failing circumstances.

**v. ~~Recordkeeping requirements~~**

- ~~1. An AIFM shall retain, in a readily accessible form, for a period of at least six years, a full record of each transaction entered into by it (whether on its own behalf or on behalf of AIF under management) and all records required to demonstrate compliance with the provisions of the AIFM Regulations, this chapter and any other conditions imposed by the Central Bank.~~
- ~~2. In the event of the termination of its authorisation by the Central Bank, an AIFM shall retain the records referred to in paragraph 1 of this section for the outstanding term of the six year period.~~

**vi. ~~Permitted activities~~**

- ~~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").

**vii. — Relationship with the Central Bank**

1. ~~The AIFM shall notify the Central Bank as soon as it becomes aware of—
  - (a) any breaches of the AIFM Regulations, AIFMD Level 2 or any of the Central Bank's requirements (including the AIF Rulebook) which are applicable to the AIFM;
  - (b) breaches of other Irish legislation which may be of prudential concern to the Central Bank or which may impact on the reputation or good standing of the AIFM;
  - (c) the commencement of any significant legal proceedings by or against the AIFM;
  - (d) any situations or events which impact, or potentially impact, on the AIFM to a significant extent;
  - (e) the imposition on the AIFM of fines by another supervisory authority; or
  - (f) a visit to the AIFM by another supervisory authority.~~
2. ~~An AIFM shall obtain the prior approval of the Central Bank in respect of a proposed change of its name. In addition, an AIFM shall notify the Central Bank promptly of any change to the AIFM's address, telephone number or facsimile number.~~
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.~~
4. ~~An AIFM shall specify, on its headed paper, that it is regulated by the Central Bank. An AIFM must ensure that any references in publicity material to the role of the Central Bank in relation to its supervision of the AIFM's activities are not misleading.~~
5. ~~Where an AIFM provides management 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 an AIFM provides administration services to AIFs not authorised by the Central Bank, it shall submit a quarterly return containing the following aggregate information within each base currency category:~~

- ~~(a) domicile of the AIF;~~
- ~~(b) number of AIF;~~
- ~~(c) number of unitholders; and~~
- ~~(d) total NAV.~~

**viii. — Financial control and management information**

1. ~~An AIFM shall maintain records that are adequate for the purposes of financial control and management information.~~
2. ~~An AIFM shall ensure that its records contain as a minimum the following:~~

*Financial*

- ~~(a) details of all money received and expended by the AIFM whether on its own behalf or on behalf of AIF under management, together with details of how such receipts and payments arose;~~
- ~~(b) a record of all income and expenditure of the AIFM explaining its nature;~~
- ~~(c) a record of all assets and liabilities of the AIFM, long and short positions and off balance sheet items, including any commitments or contingent liabilities;~~

- ~~(d) details of all purchases and sales of investment instruments by the AIFM distinguishing those which are made by the AIFM on its own account and those which are made on behalf of AIF under management;~~
- ~~(e) any working papers necessary to show the preparation of any return submitted to the Central Bank;~~
- ~~(f) management information records maintained in a manner such that they disclose, or are capable of disclosing, in a prompt and appropriate manner, the financial and business information which will enable the AIFM to:~~
- ~~• identify, quantify, control and manage the AIFM's risk exposures;~~
  - ~~• make timely and informed decisions;~~
  - ~~• monitor the performance of all aspects of the AIFM's business on an up-to-date basis; and~~
  - ~~• monitor the quality of the AIFM's assets.~~

*Company Secretarial*

- ~~(g) the share register;~~
- ~~(h) the register of directors' and secretary's interests;~~
- ~~(i) signed copies of the minutes of meetings of the board of directors; and~~
- ~~(j) other statutory documents required under the Companies Acts 1963 to 2012.~~

3. An AIFM shall notify the Central Bank in advance of any proposed change of auditor and the reasons for the proposed change to the annual fee charged by an investment manager where this fee is paid directly out of the assets of the Qualifying Investor AIF.

**Question 74: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

See comments in response to question 73 above.

In addition to the proposed changes set out in section 85 of the Consultation, we would also request that certain changes be made to paragraph 3 of section vii "Relationship with the Central Bank" in order to update the current language regarding Central Bank approval of ownership interests in an AIFM. The current paragraph vii provides that an AIFM which has "any proposed change in direct or indirect ownership or in qualifying holdings" is required to obtain the prior approval of the Central Bank. This suggests that a small increase / decrease in an entity's shareholding in an AIFM requires Central Bank approval and is inconsistent with

the requirements set out in the UCITS Regulations / MiFID Regulations. Our understanding is that any change of shareholding in an Irish AIFM should follow the approach prescribed in the UCITS Regulations / MiFID Regulations - i.e. that only changes where an entity will hold a qualifying holding (10%) or ownership interests that cross certain prescribed thresholds require approval. We believe there are two appropriate options to address the language. The first is to reflect the language (with necessary modifications) set out in Part 3, Chapter 2 of the MiFID Regulations 2017 (SI 375 of 2017) into the AIF Rulebook. The alternative is to follow the approach taken in section 21 of the UCITS Regulations 2011 (SI 352 of 2011) where a cross-reference to the requirements set out in MiFID has been included. In this respect, we would note that the cross reference contained in the UCITS Regulations 2011 would need to be updated given MiFID has been replaced by MiFID II (as have the equivalent Irish regulations).

Finally, we would note that there are no equivalent provisions in the AIFMD Regulations 2013 (SI 257/2013) and we understand that this is why the current requirements are set out in the AIF Rulebook. Additionally, this requirement to notify and obtain approval of changes where they cross a notifiable threshold is consistent with the Central Bank's ATNF form which sets out that AIFMs will be treated in the same way as UCITS management companies.

## 80. Deletion of Introduction - Part B - Chapter 3

The Chapter is divided between Part A and Part B. Part A is no longer applicable and, therefore, the Central Bank proposes to delete it. Consequently, all requirements for AIFMs will be recorded under a single AIFM chapter, Chapter 4. As such, the header of Part B is no longer required and will be deleted.

**Proposed deletion to Chapter 3 – Alternative Investment Fund Manager Requirements, Part B, page 163, AIF Rulebook March 2024.**

### **PART B**

**~~AIFMS WHICH ARE AUTHORISED BY THE CENTRAL BANK UNDER THE AIFM REGULATIONS AFTER 27 NOVEMBER 2023 AND ALL AIFMS FROM 27 MAY 2024 ON.~~**

~~This Part B applies to AIFMs which are authorised after 27 November 2023 and, from 27 May 2024 on, also to those AIFM that were authorised before or on 27 November 2023. From 27 May 2024 on, Part B will apply to all AIFMs.~~

**Question 75: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

See comments in response to question 73 above.

## 81. Update to operating conditions of AIFMs

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 will be required to produce half-yearly reports covering the second half of the financial year.

**Proposed amendments to i. Operating conditions, page 163, AIF Rulebook March 2024.**

**(i) Operating conditions**

The AIFM shall prepare and submit (i) two sets of half-yearly financial accounts covering both, the first six months and the second six months of the financial year; and (ii) annual audited accounts of the AIFM to the Central Bank at the end of the AIFM's financial year.

The half-yearly accounts shall be submitted within two months of the each 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.

~~Internally managed Qualifying Investor AIF investment companies are not required to produce half-yearly financial accounts. Both half-yearly (if any) and annual audited accounts of an AIFM~~

must be accompanied by the Minimum Capital Requirement Report as set out on the Central Bank's website and as may be amended from time to time. The Minimum Capital Requirement Report must be signed by a director or a senior manager of the AIFM. Annual audited accounts of the direct parents of the AIFM must also be submitted to the Central Bank.

The AIFM shall submit such other returns to the Central Bank as specified by the Central Bank from time to time. Those returns shall be in the form, and contain the information, specified by the Central Bank and published on the Central Bank's website.

**Question 76: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

We note that the proposed half-yearly accounts requirement would introduce an additional reporting obligation for AIFMs, aligning with the existing requirement for UCITS management companies. However, this proposal does not stem from AIFMD Level 1 or Level 2 texts and therefore risks introducing a national-level obligation that may not be harmonised across the EU.

In the context of the EU's and the Central Bank's stated commitment to regulatory simplification and proportionality, we would caution against introducing new reporting layers unless there is a demonstrable benefit in terms of investor protection or supervisory effectiveness. AIFMs already provide extensive reporting under Annex IV of AIFMD, including forward-looking risk metrics such as leverage, liquidity, and exposures, which are central to the Central Bank's supervisory focus.

Moreover, AIFMs are subject to additional event-driven disclosures not applicable to UCITS managers, such as reporting on control positions and major holdings in EU portfolio companies. Introducing half-yearly accounts risks duplicating existing disclosures (e.g., annual audited accounts and H1 management accounts) without materially enhancing the Central Bank's analytical insight.

We therefore recommend that the Central Bank reconsider this proposal in light of the broader

EU simplification agenda and the need to avoid disproportionate burdens—particularly for small and mid-sized AIFMs—where the incremental supervisory value is limited.

## 82. Organisational requirements of AIFMs

The Central Bank proposes to amend Part B (iii) on organisational requirements to include three additional requirements 8 to 11:

- Point 8: The requirements for a depositary are being updated to make it clear that the depositary is responsible for the verification of the calculation of performance fees and that to allow this, the AIFM to the AIF from which a performance fee will be paid must ensure that the depositary receives all necessary information regarding the calculation of performance fees in advance of any such fees being paid.
- Point 9: There are rules in the AIF Rulebook around investment in intermediary investment vehicles. To safeguard the assets of the AIF, the Central Bank requires the AIFM to have in place and implement policies and procedures to effectively monitor the activities of subsidiaries and co-investment vehicles to protect the assets of the Qualifying Investor AIF.
- Point 10: The AIFM of a Qualifying Investor AIF should consider selecting at least one quantitative-based LMT (redemption gate, extension of notice period) and at least one anti-dilution tool (redemption fee, swing pricing, dual pricing, anti-dilution levy, redemption in kind) when selecting the two minimum mandatory LMTs required by the requirements of Annex V of Directive 2011/61/EU.
- Point 11: Provisions will now be included providing for the return to investors of subscription proceeds in the event that the AIF does not issue units in respect of such proceeds following the closure of the initial offer period. This will enhance the protection of investor interests by ensuring they have the ability to request the return of their investment in such circumstances.

**Proposed insertion to iii. Organisational requirements, page 165, AIF Rulebook March 2024.**

**iii. Organisational requirements**

8. The depositary shall not permit performance fees payable and accrued pursuant to authorised AIF's performance fee payment cycle, to be paid by or on behalf of the authorised AIF unless ~~the calculation of the fee has been verified by the depositary or by a competent person appointed by the AIFM and approved for the purpose by the depositary;~~ the depositary or a competent person appointed by the AIFM and who is approved by the depositary, verifies that there are procedures in place to ensure that any performance fees are calculated in accordance with the constitutional document and the prospectus of the AIF. The AIFM of the authorised AIF is responsible for ensuring that the depositary or competent person receive all necessary information regarding the calculation of performance fees in advance of any such fees being paid.
9. The AIFM must have in place and implement policies and procedures as required under AIFMD to effectively monitor the activities of intermediary investment vehicles and must appoint a depositary to protect the assets of the Qualifying Investor AIF in accordance with AIFMD.
10. The AIFM of an AIF should consider selecting at least one quantitative-based LMT (redemption gate, extension of notice period) and at least one anti-dilution tool (redemption fee, swing pricing, dual pricing, anti-dilution levy, redemption in kind) when selecting the two minimum mandatory LMTs required by the requirements of Annex V of Directive 2011/61/EU.
11. Where during the initial offer period subscription proceeds are received by the AIF but the AIF does not issue units in respect of such proceeds upon the expiry of the initial offer period or where the initial offer period is extended, the investor may request the return of the subscription proceeds and the AIFM shall arrange for such return to the investor without undue delay and no later than 3 months, or as soon as is reasonably practicable, of the date of the request subject to applicable law and regulation.

**Question 77: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

With regard to paragraph 9, we would suggest amending to avoid gold-plating AIFMD requirements to provide that the policies and procedures are those prescribed under AIFMD, and that there is no conflation of the roles of AIFM and that of the depositary, the latter being responsible for the safekeeping of AIF assets, including the assets held through conduit entities or other vehicles that are subject to depositary safekeeping “look through” obligations pursuant to AIFMD. See suggested amendments below.

“The AIFM must have in place and implement policies and procedures **as required under AIFMD** to effectively monitor the activities of intermediary investment vehicles **and must appoint a depositary** to protect the assets of the Qualifying Investor **AIF in accordance with AIFMD.**”

Aligned with our response to question 64, we note that the intention of AIFMD 2 is to ensure greater harmonisation and alignment on the use of liquidity management tools in AIFs across the EU. Accordingly, Irish Funds consider that paragraph 10 in this section should be deleted in its entirety. This paragraph appears to be “hard-coding” one of the ESMA LMT Guidelines, which are not finalised at this point (noting also that the categorisation of RIKs as an ADT is not aligned with these Guidelines). In the context of our earlier comments in respect of maximum harmonisation, the better approach would be to have recourse directly to the AIFMD II requirements.

With regard to paragraph 11, we would suggest including a clarification that “...the AIFM shall arrange for such return to the investor without undue delay and no later than 3 months, **or as soon as is reasonably practicable**, of the date of the request **subject to applicable law and regulation**”, as there may be circumstances where monies cannot be returned to an investor within this timeframe, for example in the event that complete AML documentation has not been provided, sanctions rules prevent a return of monies or the investor is deceased and probate / inheritance rules prevent a return to the beneficiary within that time period.

Regarding paragraph 8, the Central Bank’s proposal has been thoroughly evaluated and considered. It should be emphasised that, under Article 94 of the AIFMD Level 2 Delegation Regulation, depositaries have well-defined duties regarding the valuation of units and have

established robust oversight programs in line with these obligations. These programs ensure comprehensive due diligence and ongoing monitoring of the Fund Administrator's operations, verifying that appropriate and consistent procedures are established for all valuation activities, including the calculation of performance fees, to meet regulatory requirements and sectoral guidance. Furthermore, they confirm that these procedures are effectively implemented and that all fees, including performance fees, are calculated in accordance with the methodology outlined in the prospectus.

With this in mind, the consensus is that the proposed amendment to the depositary verification of performance fees provision is not, in itself, of material significance. Nevertheless, it is the prevailing view that the overall provision extends beyond the scope of ESMA's guidelines on performance fees ("Guidelines") and introduces requirements that are inconsistent with established EU regulatory standards. The additional requirements imposed on depositaries or other competent persons are not aligned with ESMA's Guidelines. Eliminating these requirements will help establish a level playing field for all market participants, promote consistency, reduce unnecessary complexity, and enhance the sector's competitiveness. We strongly advocate for the Central Bank to fully align and harmonise its performance fee requirements with ESMA's Guidelines.

If the requirement is to be included, we recommend updating the wording (highlighted in yellow) as follows for greater clarity:

"The depositary shall not permit performance fees payable and accrued pursuant to authorised AIF's performance fee payment cycle, to be paid by or on behalf of the authorised AIF unless ~~the calculation of the fee has been verified by the depositary or by a competent person appointed by the AIFM and approved for the purpose by the depositary.~~ the depositary or a competent person appointed by the AIFM and who is approved by the depositary, verifies that there are procedures in place to ensure that any performance fees are calculated in accordance with the constitutional document and the prospectus of the AIF. The AIFM of the authorised AIF is responsible for ensuring that the depositary or competent person receive all necessary information regarding the calculation of performance fees in advance of any such fees being paid".

### 83. Departure of directors of an AIFM

The Central Bank proposes to amend Part B(iv)(1) to clarify the requirements in relation to

the impact of a resignation on the AIFM.

The Central Bank proposes to delete Chapter 4 of the AIF Rulebook on AIF Management Company Requirements. In light of this, footnote 26 in Chapter 3 will be deleted.

**Proposed amendments to iv. Directors, paragraph 1, pages 165-166, AIF Rulebook March 2024.**

**iv. Directors**

1. Departures from the office of director and the reason for the departure must be notified to the Central Bank immediately ~~by filing~~ **in accordance with** the relevant Central Bank ~~form~~ **processes and procedures. Such processes and procedures may be amended from time to time.** In all cases where a director wishes to resign and prior to ~~completing~~ providing the relevant Central Bank ~~form~~ **notification**, the board or its Chair must form a view as to the impact of the resignation on the AIFM having regard to the current and prospective financial state of the AIFM and the AIFs under management. In the event that the board or, in the absence of a board meeting, the Chair forms the view that the situation is one which could create such concern on the part of the Central Bank, it shall state this on the relevant Central Bank ~~form~~ **notification**. The board or its Chair may consult the Central Bank in order to help it form a view on that matter.

**Proposed deletion to iv. Directors, Footnote 26, pages 165-166, AIF Rulebook March 2024.**

~~Footnote 26 The provisions of footnote 1 in chapter 4 AIF Management Company Requirements will apply mutatis mutandis to directors of AIFM which manage authorised AIF that are in distressed or failing circumstances.~~

**Question 78: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

## 84. Permitted activities of AIFMs

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 these requirements as AIFMs are included in the scope of the Investor Money Regulations.

Proposed deletion of vi. Permitted activities, paragraph 1, page 166, AIF Rulebook March 2024.

~~vi. Permitted activities~~

- ~~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").~~

**Question 79: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

## 85. Relationship with the Central Bank

The proposed amendments to Part B(vii) of Chapter 3 seek to provide greater clarity in relation to the timing of notifications to the Central Bank of breaches, legal proceedings, situations, events, fines, and visits referred to from points 1(a) to (f) of this section.

**Proposed amendments to vii Relationship with the Central Bank, paragraph 1, pages 166-167, AIF Rulebook March 2024.**

**vii. Relationship with the Central Bank**

1. The AIFM shall notify the Central Bank **immediately** promptly/without undue delay ~~as it becomes aware of~~: –
  - (a) any breaches of the AIFM Regulations, AIFMD Level 2 or any of the Central Bank's requirements (including the AIF Rulebook) which are applicable to the AIFM;
  - (b) breaches of other Irish legislation which may be of prudential concern to the Central Bank or which may impact on the reputation or good standing of the AIFM;
  - (c) the commencement of any significant legal proceedings by or against the AIFM;
  - (d) any situations or events which impact, or potentially impact, on the AIFM to a significant extent;
  - (e) the imposition on the AIFM of fines by another supervisory authority; or
  - (f) a visit to the AIFM by another supervisory authority.

**Question 80: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

**Yes**

**No**

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

Per our response to section 43 (question 38), we recommend replacing “immediately” with a proportionate, outcomes focused notification standard (i.e. as highlighted in yellow above “...notify the Central Bank promptly or without undue delay”). Requiring AIFMs to notify the Central Bank “immediately” is not practical and risks generating high volumes of low value reports before facts are verified, potentially diluting supervisory focus.

In addition, an immediate (in other words, in real time) notification may in many cases undermine the integrity and accuracy of the information being provided to the Central Bank, especially as an AIFM may want to ascertain the scope of any particular breach or other event before reporting. We would urge the Central Bank to reconsider this requirement as the reality is that this will be impossible to comply with in practice. Reporting “promptly” or “without undue delay” allows an AIFM the requisite time to inform the Central Bank of all salient facts.

In addition, we would suggest that AIFMs only be required to notify the Central Bank of “material” breaches of the AIFM Regulations, AIFMD Level 2 or any of the Central Bank’s requirements (including the AIF Rulebook) which are applicable to the AIFM. An obligation to report all breaches, irrespective of materiality, will likely result in a high volume of reporting to the Central Bank and distract the Central Bank from a focus on material issues that are of importance for the regulated entity or of a more systemic nature. Irish Funds would advocate for the application of a materiality threshold across (i) AIFs and (ii) Irish authorised AIFMs under the AIF Rulebook and (iii) Irish UCITS management companies under Regulation 107 of the Central Bank UCITS Regulations.

## 86. Financial control and management information

The Central Bank is proposing to update Part B(viii) to include the correct citation of the relevant Act, namely the Companies Act 2014.

**Proposed amendment to viii. Financial control and management information, paragraph 2(j), page 168, AIF Rulebook March 2024.**

**viii. Financial control and management information**

2. An AIFM shall ensure that its records contain as a minimum the following:

*Company Secretarial*

(j) other statutory documents required under the ~~Companies Act 2014~~ Companies Acts 1963 to 2012.

**Question 81: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

**Yes**

**No**

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

# Chapter 4 – Alternative Investment Fund Management Company Requirements

## 87. Deletion of Chapter 4, AIF Management Company requirements

The AIF management company chapter will be deleted. Since all AIFs must appoint an AIFM — and the AIFM is the legally responsible entity under AIFMD — there is no regulatory requirement to also require an AIF management company to seek its own authorisation from the Central Bank. Requirements relating to governance and director fitness for an AIF management company are still applicable (e.g. the Central Bank's Fitness and Probity regime, and through rules and guidance). The Central Bank has already removed this requirement for ILPs and it is now proposed to align the treatment of other legal vehicles accordingly.

### **Proposed deletion of Chapter 4 to pages 178-191, AIF Rulebook March 2024.**

#### ~~Introduction:~~

~~The AIF Rulebook sets out the rules which apply to AIF management companies which are not authorised AIFMs. However, the definitive rules for each such AIF management company will be set out in its letter of approval.~~

#### ~~AIF Management Companies which are not Authorised AIFMs~~

##### ~~i. Capital requirements~~

##### ~~1. An AIF management company shall have at all times:~~

- ~~(i) initial capital of at least €125,000 ("Initial Capital Requirement"); or~~
- ~~(ii) one quarter of its total expenditure taken from the most recent annual accounts ("Expenditure Requirement"); whichever is higher ("Minimum Capital Requirement").~~

##### ~~2. An AIF management company shall:~~

- ~~(a) have financial resources, calculated in accordance with paragraph 2 of Annex I to this chapter – Minimum Capital Requirement Report, Notes on Compilation, at least equal to its Minimum Capital Requirement ("Financial Resources");~~
- ~~(b) hold its Minimum Capital Requirement in the form of Eligible Assets, as specified in paragraph 3 of Annex I to this chapter – Minimum Capital Requirement Report, Notes on Compilation;~~
- ~~(c) be in a position to demonstrate, to the Central Bank, its compliance with the Minimum Capital Requirement, as per Annex I to this chapter, throughout the reporting period; and~~

~~(d) act honestly, fairly, professionally, independently and in the interest of the AIF and the unitholders of the AIF.~~

~~ii. Organisational requirements~~

~~1. The authorised AIF and the AIF management company shall identify an individual at management level within the AIF management company, who must be located in the State, with responsibility for compliance with all legal and regulatory requirements and for cooperation and liaison with the relevant regulatory authorities. Such person is to be designated the compliance officer and must have the necessary access to systems and records. The compliance officer shall be responsible for the compliance function, even if this function is performed by a third party. The AIF management company is required to ensure that the compliance officer reports to the board of the AIF management company at each board meeting, such reports to the board to be made by the compliance officer at least quarterly.~~

~~2. An AIF management company shall, at all times:~~

~~(a) have adequate control systems and accounting procedures to facilitate effective management of the AIF management company and to ensure that the AIF management company is in compliance with the Central Bank's supervisory and reporting requirements and compliance with this chapter;~~

~~(b) have and maintain policies and systems to identify, monitor and control risk arising in respect of the AIF management company's activities, including operational risk and the risk of fraud;~~

~~(c) ensure that all relevant persons are aware of the procedures which must be followed for the proper discharge of their responsibilities;~~

~~(d) establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the AIF management company;~~

~~(e) establish, implement and maintain effective internal reporting and communication of information at all levels of the AIF management company as well as effective information flows with any third party involved;~~

~~(f) maintain adequate and orderly records of its business and internal organisation;~~

~~(g) establish, implement and maintain systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, taking into account the nature of the information in question;~~

~~(h) establish, implement and maintain an adequate business continuity policy aimed at ensuring, in the case of an interruption to its systems and procedures, the preservation of essential data and functions, and the maintenance of services and activities, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of its services and activities;~~

~~(i) establish, implement and maintain accounting policies and procedures that enables the AIF management company to deliver in a timely manner to the Central Bank financial accounts which reflect a true and fair view of its financial position and which comply with all applicable accounting standards and rules. The AIF management company shall, at all times, maintain records that contain, at a minimum, the following:-~~

~~Financial-~~

~~(i) details of all money received and expended by the AIF management company whether on its own behalf or on behalf of AIFs under management, together with details of how~~

~~such receipts and payments arose;~~

~~(ii) a record of all income and expenditure of the AIF management company explaining its nature;~~

~~(iii) a record of all assets and liabilities of the AIF management company, long and short positions and off balance sheet items, including any commitments or contingent liabilities;~~

~~(iv) details of all purchases and sales of investment instruments by the AIF management company distinguishing those which are made by the AIF management company on its own account and those which are made on behalf of AIFs under management;~~

~~(v) any working papers necessary to show the preparation of any return submitted to the Central Bank;~~

~~(vi) management information records maintained in a manner such that they disclose, or are capable of disclosing, in a prompt and appropriate manner, the financial and business information which will enable the AIF management company to:-~~

~~• identify, quantify, control and manage the AIF management company's risk exposures; • make timely and informed decisions;~~

~~• monitor the performance of all aspects of the AIF management company's business on an up-to-date basis; and~~

~~• monitor the quality of the AIF management company's assets;~~

~~Company Secretarial~~

~~(vii) the share register;~~

~~(viii) the register of directors' and secretary's interests;~~

~~(ix) signed copies of the minutes of meetings of the board of directors; and~~

~~(x) other statutory documents required under the Companies Acts;~~

~~(j) monitor and, on a regular basis, evaluate the adequacy and effectiveness of its systems, internal control mechanisms and arrangements established in accordance with this chapter and to take appropriate measures to address any deficiencies; and~~

~~(k) appropriate internal control systems to ensure that records clearly identify client funds and the assets in which they have been invested.~~

~~3 The AIF management company shall submit half-yearly financial and annual audited accounts of the AIF management company to the Central Bank. The half-yearly accounts shall be submitted within two months of the half-year end and the annual accounts within four months of the year end. Both half-yearly and annual accounts shall be accompanied by the Minimum Capital Requirement Report, which (together with the Notes on Compilation thereto) forms part of this chapter. The Minimum Capital Requirement Report must be signed by a director or a senior manager of the AIF management company. Annual audited accounts of the direct parents of the AIF management company must also be submitted.~~

~~iii. Directors of AIF management companies [Persons considering taking appointments as directors of AIF Management Companies and existing directors should be aware of their duty to act bona fide at all times in the best interests of the company. The Central Bank expects that where an AIF management company manages AIFs which are in distress that directors do not resign if this is not in the best interests of the AIF management company or, more importantly, if this is not in the interests of the unitholders of those AIFs.]~~

~~In difficult or stressed situations, the Central Bank will seek to work with the directors of the AIF management company to resolve the issues facing the AIF management company and the AIFs under management. For that reason, the Central Bank will want to see that directors continue in their positions, to work for the company and with the Central Bank, to seek the best resolution. The Central Bank would remind directors, importantly, that resignation based on a mere entitlement to resign would not in the opinion of the Central Bank satisfy the fulfilment by the director of his or her duty to the AIF management company and the unitholders of the AIFs under management, where resignation goes against the ability of the AIF management company and/or the Central Bank to resolve prevailing issues. Where a director is unable to continue in his or her role for substantial personal or, other, unavoidable reasons which make their continuation of the role impractical, the Central Bank will, of course, not seek the continued service of that director.~~

~~The Central Bank will expect, in addition to the separate requirement on the board to complete procedures around a resignation, that the resigning director will set out his/her reasons for resigning, and the intention to resign, to the Central Bank in order to permit the director, the board and the Central Bank to prepare a solution.~~

~~The fulfilment, or otherwise, by a person of his or her duties in a previous role, and the overall performance by a person in a previous role, are matters relevant to the fitness and probity of that person, and hence will be taken into account by the Central Bank when assessments are being made in the future of a person's fitness for a future role or of that person's probity. It is also important to note that the Central Bank shares information concerning such matters with other regulators in accordance with its legal mandate and powers and its arrangements for cooperation it has with other regulators.]~~

- ~~1. Departures from the office of director and the reason for the departure must be notified to the Central Bank immediately by filing the relevant Central Bank form which is available on the Central Bank's website. In all cases where a director wishes to resign and prior to completing the relevant Central Bank form, the board or its Chair must form a view as to the impact of the resignation on the AIF management company having regard to the current and prospective financial state of the AIF management company and the AIFs under management. In the event that the board or, in the absence of a board meeting, the Chair forms the view that the situation is one which could create such concern on the part of the Central Bank, it must state this on the relevant Central Bank form. The board or its Chair may consult with the Central Bank in order to help it form a view on that matter.~~
- ~~2. The AIF management company shall not have directors in common with the board of the depositary of the AIFs under management.~~
- ~~3. The AIF management company shall have a minimum of two directors that are Irish residents.~~
- ~~4. The AIF management company shall only appoint directors that have disclosed to the AIF management company any concurrent directorships which they hold.~~

#### ~~iv. Resources~~

##### ~~1. An AIF management company shall:~~

- ~~(a) satisfy the Central Bank, on a continuing basis, that it has adequate management resources to conduct its activities effectively; and~~
- ~~(b) employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them.~~

#### ~~v. Relationship with the Central Bank~~

~~1. In addition to the provisions of the investment fund legislation, an AIF management company shall consult with the Central Bank prior to—~~

~~(a) engaging in any significant new activities; or~~

~~(b) establishing new branches, offices or subsidiaries.~~

~~2. The AIF management company shall notify the Central Bank immediately where the AIF management company becomes aware of, or those acting on its behalf inform it of:~~

~~(a) any breaches of investment fund legislation or of the Central Bank's requirements (including this chapter) which are applicable to the authorised AIF or AIF management company;~~

~~(b) breaches of other Irish legislation which may be of prudential concern to the Central Bank or which may impact on the reputation or good standing of the authorised AIF or AIF management company;~~

~~(c) the commencement of any significant legal proceedings by or against the authorised AIF or AIF management company;~~

~~(d) any situations or events which impact, or potentially impact, on the authorised AIF or AIF management company to a significant extent;~~

~~(e) the imposition on the authorised AIF or AIF management company of fines by another supervisory authority; or~~

~~(f) a visit to the authorised AIF or AIF management company by another supervisory authority.~~

~~3. An AIF management company may only change its name with the prior approval of the Central Bank. In addition, an AIF management company shall inform, in writing, the Central Bank promptly of any change to the AIF management company's address, telephone number or facsimile number.~~

~~4. The AIF management company shall specify, on its headed paper, that it is regulated by the Central Bank. The AIF management company shall not include, in any material or documents issued, any references to the role of the Central Bank, in relation to its supervision of the AIF management company, that are misleading.~~

~~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 shareholding of 10 % or more of an AIF management company.~~

~~6. Where an AIF management company provides management services to AIFs not authorised by the Central Bank, it must be satisfied that the prospectus issued by the AIFs does not imply, in any way, that the AIF is regulated by the Central Bank.~~

~~Where an AIF management company provides fund administration services to such AIFs, it shall submit a quarterly return containing the following aggregate information within each base currency category:~~

~~(a) domicile of the AIFs~~

~~(b) number of AIFs~~

~~(c) number of unitholders~~

~~(d) total NAV.~~

~~7. An AIF management company shall notify the Central Bank in advance of any proposed change of auditor and the reasons for the proposed change.~~

#### ~~Annex I~~

#### ~~Minimum Capital Requirement Report – Notes on Compilation~~

#### ~~1. Expenditure Requirement~~

~~1.1 The Expenditure Requirement is calculated as one quarter of an AIF management company's total expenditure taken from the most recent annual accounts.~~

~~1.2 Total expenditure includes all expenditure incurred by an AIF management company. The following may be deducted from the expenditure figure:-~~

~~(a) Depreciation;~~

~~(b) Profit shares, bonuses etc.;~~

~~(c) Net losses arising in the translation of foreign currency balances;~~

~~(d) Shared commissions paid (other than to officers and staff of the AIF management company) that have been previously agreed with the Central Bank; and~~

~~(e) Exceptional and extraordinary non-recurring expense items which have been previously agreed with the Central Bank.~~

~~1.3 All deductions from the total expenditure figure should be either clearly identified in the most recent annual audited accounts or supported with a letter from the auditors confirming the figures.~~

#### ~~2. Financial Resources~~

~~2.1 An AIF management company is required to have Financial Resources at least equal to its Minimum Capital Requirement.~~

~~2.2 Financial Resources for an AIF management company will be based on the half yearly accounts or the annual audited accounts, whichever is most recent.~~

~~2.3 Financial Resources are calculated as the aggregate of:-~~

~~• Fully paid up equity capital;~~

~~• Perpetual non-cumulative preference shares;~~

~~• Eligible Capital Contribution (see 2.4 below);~~

~~• Qualifying Subordinated Loan Capital (see 2.4 below);~~

~~• Share premium account;~~

~~• Disclosed revenue and capital reserves (excluding revaluation reserves);~~

~~• Interim net profits (may only be included if they have been audited); and~~

~~• Other reserves. Less~~

~~• Current year losses not included in disclosed revenue and capital reserves above.~~

~~2.4 Conditions for Eligible Capital Contributions and Subordinated Loan Capital~~The following conditions apply to Eligible Capital Contributions and to Subordinated Loan Capital (both perpetual and redeemable):

~~(a) The prior approval of the Central Bank must be obtained in respect of the inclusion of the Eligible Capital Contribution or Subordinated Loan Capital in the Financial Resources for capital adequacy purposes. Subordinated Loan Capital may not be incorporated in the calculation of the Initial Capital Requirement.~~

~~(b) The Central Bank must be provided with documentary evidence that the Eligible Capital Contribution or Subordinated Loan Capital has been received by the AIF management company.~~

~~(c) The AIF management company must use the Capital Contribution Agreement, Perpetual Loan Subordination Agreement or the Loan Subordination Agreement (for redeemable Subordinated Loan Capital), without amendment. These documents are available on the Central Bank's website.~~

~~The following additional conditions apply to the use of redeemable Subordinated Loan Capital:-~~

~~(a) The extent to which such loans rank as Financial Resources will be reduced on a straight-line basis over the last five years before repayment date.~~

~~(b) The qualifying amount of redeemable subordinated debt is calculated as follows:-~~

~~Remaining term to maturity~~

~~Gross Amount~~

~~Less Amortisations~~

~~= Qualifying Amount~~

### ~~3. Eligible Assets~~

~~3.1 An AIF management company shall hold the higher of the Expenditure Requirement or the Initial Capital Requirement in the form of Eligible Assets. Eligible Assets must be easily accessible and free from any liens or charges and maintained outside the AIF management company's group.~~

~~3.2 The Central Bank requires Eligible Assets to be held in an account that is separate to the account(s) used by an AIF management company for the day-to-day running of its business. 3.3 Eligible Assets are calculated as follows:~~

~~Total Assets (Non-current Assets plus Current Assets)~~

~~Less the following ineligible assets-~~

~~▪ Fixed assets~~

~~▪ Intangible assets~~

~~▪ Cash or cash equivalents held with group companies~~

~~▪ Debtors~~

~~▪ Bad debt provisions~~

~~▪ Prepayments~~

~~▪ Intercompany amounts (gross)~~

- ~~Loans~~
- ~~Investment funds which are not daily dealing (see 3.4 below)~~
- ~~Any other assets which are not easily accessible not included above.~~

~~3.4 When an AIF management company invests all or part of its capital in one or more investment funds, the Central Bank will review the relationships linking the investment funds and the AIF management company. It is the Central Bank's view that it is likely that where the AIF management company invests in investment funds promoted by other group companies or to which other group companies provide services, its access to those investment funds is likely to be restricted, in the event that the related AIF management company gets into difficulty. Accordingly, investments in such investment funds will not rank as Eligible Assets for the purposes of satisfying the AIF management company's Minimum Capital Requirement.~~

~~4. An AIF management company must be in a position to demonstrate its on-going compliance with the capital adequacy requirements outlined in this document. Where an AIF management company's financial position changes materially at any time between reporting dates, which would impact on its compliance with its capital adequacy requirements, it must notify the Central Bank immediately and take any necessary steps to rectify its position.~~

**Note- Screenshots of Minimum Capital Requirement Report for AIF Management Company deleted**

**Question 82: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

We agree that the additional regulatory requirements for AIF management companies should be removed.

Can the Central Bank clarify where its governance and director fitness requirements (e.g. on Fitness & Probity) for AIF management companies will be set out in future?

Additionally, in the case of AIF management companies appointed in respect of unit trusts, can the Central Bank clarify whether it will require any such management companies to meet specific financial resources requirements in light of the following provision of Section 4 of the Unit Trust Act 1990 or is it construing reference to "management company" as highlighted in yellow below as being satisfied where the AIF management company in question has

appointed an Irish/EU AIFM?

*“where the **management company** under the scheme is not authorised by the Bank under Part 2 of the European Union (Alternative Investment Fund Managers) Regulations 2013 or by the competent authority in its home Member State in accordance with Chapter II of Directive 2011/61/EC of the European Parliament and of the Council of 8 June 2011 or in its Member State of reference in accordance with that Chapter II:*

*(i) the Bank is satisfied that the competence of the management company in respect of matters of the kind with which it would be concerned in relation to a unit trust scheme and its probity are such as to render it suitable to act as management company under the scheme, and*

***(ii) the management company under the scheme is a body corporate that is incorporated under the law of the State and has, in the opinion of the Bank, sufficient financial resources at its disposal to enable it to conduct its business effectively and meet its liabilities.”***

## Chapter 5 – AIF Depository Requirements

### 88. Update to Introduction

The Central Bank is proposing an amendment to the ‘Introduction’ of Chapter 5 to clarify that reference is to AIFs (plural) rather than AIF (singular).

**Proposed amendment to Introduction of Chapter 5, page 193, AIF Rulebook March 2024.**

The AIF Rulebook sets out the rules which apply to depositaries of:

- AIFs that have an authorised AIFM;

**Question 83: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

**Yes**

**No**

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

### 89. Reporting requirements for depositaries

In addition to the depositary preparing and submitting half-yearly financial and annual audited accounts, the proposed amendments will require the submission of annual accounts within one month of the calendar year-end. The Central Bank does not require any Minimum Capital Requirement Report with this submission.

Reporting requirements for depositaries have been updated and can now be found on the Central Bank’s website, along with instructions for their completion. The amendments to the AIF Rulebook also include provisions to ensure depositaries are aware that these requirements may change from time to time.

**Proposed insertion to ii. Conditions applicable to depositaries which fall within Regulation 22(3)(a)(iii) of the AIFM Regulations, paragraph 1(f), page 195, AIF Rulebook March 2024.**

(ii) Conditions applicable to depositaries which fall within Regulation 22(3)(a)(iii) of the AIFM Regulations

1. A depositary which falls within Regulation 22(3)(a)(iii) of the AIFM Regulations shall comply with the following:

~~(f) The depositary shall prepare and submit half-yearly financial and annual audited accounts of the company to the Central Bank. The half-yearly accounts must be submitted within two months of the half-year end and the annual accounts within four months of the financial year end. Both half-yearly and annual audited accounts shall be accompanied by the Minimum Capital Compliance Report, which (together with the Notes on Compilation thereto) forms part of this chapter. The Minimum Capital Requirement Report must be signed by a director or a senior manager of the depositary. Annual audited accounts of the corporate shareholder(s) of the company must also be submitted.~~

**(f) The depositary shall prepare and submit to the Central Bank the following reports:**

- Management/interim accounts which shall be delivered 2 months after the depositary's reporting half-year end;
- Management/annual accounts which shall be delivered 1 month after the depositary's reporting year end; and
- Annual audited accounts which shall be delivered 4 months after the depositary's reporting year end;

Both management/interim accounts and the annual audited accounts shall be accompanied by the Minimum Capital Requirement Report (MCR), which (together with the Notes on Compilation thereto) forms part of this chapter.

The MCR must be signed by a director or a senior manager of the depositary. In relation to the above referred management/annual accounts no MCR report is required. Annual audited accounts of the corporate shareholder(s) of the company must also be submitted.

The depositary shall submit such other returns to the Central Bank as specified by the Central Bank from time to time. Those returns shall be in the form, and contain the information, specified by the Central Bank and published on the Central Bank's website.

**Question 84: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

**Yes**

**No**

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

## **90. Depositary tasks with respect to Qualifying Investor AIFs**

Deletion of the requirements for the tasks that a depositary has to undertake in respect of a Qualifying Investor AIF which proposes to invest more than 50% of net assets in another investment fund. These obligations are retained in the case of a Retail Investor AIF where the Retail Investor AIF proposes to invest more than 30% of net asset value into another investment fund.

**Proposed deletion to iii. Depositary tasks, paragraph 3, page 196, AIF Rulebook March 2024.**

iii. Depositary tasks

2. Where a Retail Investor AIF ~~or Qualifying Investor AIF~~ proposes to invest more than 30% ~~or 50%~~ of net assets respectively in another investment fund, the depositary shall, prior to the investment being made, (i) confirm in writing to the Central Bank that the authorised AIF has procedures in place to ensure that the underlying investment fund meets the requirements imposed by the Central Bank; and (ii) confirm that the depositary will regularly review the operation of these procedures to ensure that the underlying investment fund continues to meet the requirements imposed by the Central Bank.

**Question 85: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

However, it should be noted that these depositary tasks are not required under the AIFMD. Removing these requirements entirely would assist in establishing a level playing field for all market participants, promote consistency, alleviate unnecessary complexity, and enhance the sector's competitiveness.

## 91. Depositary obligations with respect to performance fees

The AIF Rulebook is being updated to make it clear that an AIFM must provide depositaries with access to all necessary information to allow them to verify the calculation of performance fees.

**Proposed amendments to iv. Operating conditions, paragraph 5, page 197, AIF Rulebook March 2024.**

iv. Operating conditions

5. The depositary shall not permit performance fees payable and accrued pursuant to authorised AIF's performance fee payment cycle, to be paid by or on behalf of the authorised AIF unless ~~the calculation of the fee has been verified by the depositary or by a competent person appointed by the AIFM and approved for the purpose by the depositary.~~ the depositary or a competent person appointed by the AIFM and who is approved by the depositary, verifies that there are procedures in place to ensure that any performance fees are calculated in accordance with the constitutional document and the prospectus of the AIF.

The AIFM of the authorised AIF is responsible for ensuring that the depositary or competent person receives all necessary information regarding the calculation of

performance fees in advance of any such fees being paid.

**Question 86: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

The Central Bank's proposal has been thoroughly evaluated and considered. It should be emphasised that, under Article 94 of the AIFMD Level 2 Delegation Regulation, depositaries have well-defined duties regarding the valuation of units and have established robust oversight programs in line with these obligations. These programs ensure comprehensive due diligence and ongoing monitoring of the Fund Administrator's operations, verifying that appropriate and consistent procedures are established for all valuation activities, including the calculation of performance fees, to meet regulatory requirements and sectoral guidance. Furthermore, they confirm that these procedures are effectively implemented and that all fees, including performance fees, are calculated in accordance with the methodology outlined in the prospectus.

With this in mind, the consensus is that the proposed amendment to the depositary verification of performance fees provision is not, in itself, of material significance. Nevertheless, it is the prevailing view that the overall provision extends beyond the scope of ESMA's guidelines on performance fees ("Guidelines") and introduces requirements that are inconsistent with established EU regulatory standards. The additional requirements imposed on depositaries or other competent persons are not aligned with ESMA's Guidelines. Eliminating these requirements will help establish a level playing field for all market participants, promote consistency, reduce unnecessary complexity, and enhance the sector's competitiveness. We strongly advocate for the Central Bank to fully align and harmonise its performance fee requirements with ESMA's Guidelines.

If the requirement is to be retained, we recommend updating the wording (highlighted in yellow) as follows for greater clarity:

"The depositary shall not permit performance fees payable and accrued pursuant to authorised AIF's performance fee payment cycle, to be paid by or on behalf of the authorised AIF unless the calculation of the fee has been verified by the depositary or by a competent person appointed by the AIFM and approved for the purpose by the depositary. the depositary or a competent person appointed by the AIFM and who is approved by the depositary, verifies that there are procedures in place to ensure that any performance fees are calculated in accordance with the constitutional document and the prospectus of the AIF. The AIFM of the authorised AIF is responsible for ensuring that the depositary or competent person receive all necessary information regarding the calculation of performance fees in advance of any such fees being paid".

Although captured in our proposed updated text, the reference to competent person, as highlighted in yellow, is not captured in the consultation's draft language.

"The Qualifying Investor AIF shall ensure that its AIFM provides the depositary or competent person with all necessary information regarding the calculation of the performance fee in advance of any such fees being paid".

## 92. Reporting exclusions for depositaries

In order to ensure the collection of comprehensive sectoral data, the Central Bank is proposing to delete references to the current reporting exclusions in the current AIF Rulebook.

**Proposed amendment to vii. Relationship with the Central Bank, paragraph 1 page 199, AIF Rulebook March 2024.**

vii. Relationship with the Central Bank

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 NAV.

~~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.~~

**Question 87: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

### **93. Depositaries for AIFs under Regulation 22(3)(b) of the AIFM Regulations**

Following the Notice of Intention issued by the Central Bank on 19 November 2018 (Notice) and responses received in relation to the Notice, the Central Bank is proposing to make provision within the AIF Rulebook for entities to act as a depositary as set out under Regulation 22(3) (b) of the AIFM Regulations. The AIF Rulebook will be updated to set out the Central Bank's requirements for firms seeking authorisation as a DAoFI in accordance with the previously published guidance.

**Proposed insertion of Chapter 5, page 199, AIF Rulebook March 2024.**

viii. **Depositories of Assets other than Financial Instruments (DAoFI)**

**Depositories for AIFs under Regulation 22(3)(b) of the AIFM Regulations - (“Depositories of Assets other than Financial Instruments” or “DAoFI”)**

**1. Applications**

**An applicant to become an DAoFI must:**

- a. be a company incorporated in Ireland which is authorised as an investment business firm under the Investment Intermediaries Act 1995; and**
- b. in addition to satisfying the Central Bank in relation to its suitability (including the fitness and probity and expertise of its staff), must demonstrate to the Central Bank: (i) its capacity and ability to meet safekeeping and oversight obligations as provided for under the AIFM Regulations; (ii) it has effective policies and procedures to ensure the depositary oversight role is carried out; and (iii) how it has the necessary systems access to effectively oversee the AIFM and any of its delegates, particularly those which are appointed to carry out fund administration or portfolio management.**

**2. Applicable AIF Rulebook requirements**

**A DAoFI must comply with the following requirements of chapter 5 of the AIF Rulebook: a. section (i); b. section (ii), paragraph 1(b) – (g); c. section (iii), paragraphs 1 and 2; d. section (iv), paragraphs 1, 4 and 5; e. section (v); and f. section (vii).**

**3. Capital**

- a. A DAoFI must meet the capital requirements set out in chapter 5, section (ii), paragraph (1)(a) of the AIF Rulebook; and**
- b. Where the AIF in respect of which a DAoFI is appointed invests in financial instruments the Central Bank expects the DAoFI will seek to delegate custody of those instruments. Where it does not, the DAoFI may elect either to: (i) put in place a guarantee similar to that required by Regulation 22(3)(a)(iii) of the AIFM Regulations 2013 (i.e. a guarantee of liabilities of the DAoFI by an institution with paid up share capital not less than the limits specified in Section 9E of the Central Bank Act 1971); or (ii) hold sufficient financial resources (as calculated in accordance with Section 2.3 of Annex I of**

chapter 5 of the AIF Rulebook) to cover the value of financial instruments in custody.

#### 4. Professional indemnity cover

A DAoFI may elect to cover potential risks of professional liability by either: (a) additional own funds (calculated in the same manner as provided for AIFMs in Article 14 of Commission Delegated Regulation 231/2013); or (b) appropriate professional indemnity insurance (calculated in the same manner as provided for AIFMs in Article 15 of Commission Delegated Regulation 231/2013). The adequacy of coverage through additional own funds or professional indemnity insurance should be reviewed at least once a year by the DAoFI.

#### 5. Financial instruments

Where an AIF in respect of which a DAoFI is appointed invests in financial instruments which are the subject of custody obligations the DAoFI may either: (a) appoint a sub-custodian to custody these assets and concurrently discharge its liability to the AIF in respect of these assets; or (b) hold additional capital (as set out at paragraph 3(b)).

#### 6. Assets other than financial instruments

A DAoFI must demonstrate to the Central Bank its capacity to safe-keep and provide ongoing monitoring of assets for which it will provide services, including that: (i) the AIF has a clear title of ownership to the assets that is properly registered and documented; (ii) the AIF's ownership of the assets can be verified and confirmed on an ongoing basis; (iii) the assets are safeguarded in order to preserve them; and (iv) risks to safeguarding of assets are identified, managed, monitored and mitigated.

#### 7. Disclosure

A DAoFI must ensure the AIF in respect of which it is appointed clearly discloses to investors the regulatory status of the DAoFI, the more limited nature of the DAoFI's activities (when compared to the requirements of a depositary which provides so-called "full scope" activities) and the standard of liability which applies to the DAoFI.

**Question 88: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

**Yes**

**No**

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

# Chapter 6 – European Long-Term Investment Fund Requirements

## 94. Introduction

Updated to reflect definition of ELTIFs in the definitions section.

**Proposed amendment to Chapter 6, Introduction, page 207, AIF Rulebook March 2024.**

The AIF Rulebook sets out the rules which apply to ~~European Long Term Investment Funds~~ **ELTIFs**. However, the definitive rules for each ~~European Long Term Investment Fund~~ **ELTIF** will be set out in its letter of authorisation.

**Question 89: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

**Yes**

**No**

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

## 95. Replacement of the term ‘notes’ with ‘debt securities’

The AIF Rulebook allows an ELTIF to issue notes on a private basis to a lending institution to facilitate financing arrangements. However, there is a lack of clarity in the subsequent derogation that refers to ‘notes’ instead of ‘debt securities’. The text will be amended to confirm the consistent application of the exemption.

**Proposed amendments to i. General restrictions, paragraph 1, page 208, AIF Rulebook March 2024.**

1. The ELTIF shall not raise capital from the public through the issue of debt securities. This restriction does not operate to prevent the issue of ~~notes~~ **debt securities** by ELTIFs, on a private basis, to a lending institution to facilitate financing arrangements. **and where** ~~Details of the note issued must be clearly~~ **debt securities are** provided in the prospectus.

**Question 90: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

The ELTIF Regulation does not place restrictions on raising capital through debt securities and therefore we would suggest removing to avoid gold-plating of the ELTIF Regulation.

Should this provision be retained, contrary to the ELTIF Regulation, we would advocate that the term “debt instruments” instead of or in addition to “debt securities” should be inserted. This is a broader term and avoids potential uncertainty caused by having to determine whether an instrument is a security or not.

## **96. ELTIF obligations with respect to performance fees**

The AIF Rulebook is being updated to make it clear that an ELTIF must ensure that its AIFM provides depositaries access to all necessary information to allow them to verify the calculation of the performance fee.

Proposed amendments to i. General restrictions, paragraph 2, page 208, AIF Rulebook March 2024.

2. The ELTIF shall ensure that ~~the calculation of performance fees must be verified by~~ the depositary or a competent person appointed by the AIFM and approved for the purpose by the depositary ~~verifies that there are procedures in place to ensure that any performance fees payable and accrued pursuant to ELTIF performance fee payment cycle, are calculated in accordance with the constitutional document and the prospectus of the ELTIF.~~ **The ELTIF shall ensure that its manager provides the depositary or competent person with all necessary information regarding the calculation of the performance fee in advance of any such fees being paid.**

**Question 91: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

The above amendment to paragraph 2 refers to manager but this is an undefined term, our understanding is that it is referring to the manager of the ELTIF per the definition of Article 2(12) of Regulation (EU) 2015/760 - 'manager of the ELTIF' means the authorised EU AIFM approved to manage an ELTIF, or the internally managed ELTIF where the legal form of the ELTIF permits internal management and where no external AIFM has been appointed;

For the avoidance of doubt, any reference to the manager of the ELTIF should also be revised to refer to the definition per Article 2(12) of Regulation (EU) 2015/760 - 'manager of the ELTIF' means the authorised EU AIFM approved to manage an ELTIF, or the internally managed ELTIF where the legal form of the ELTIF permits internal management and where no external AIFM has been appointed.

These comments apply for other references to "manager" or "manager of the ELTIF" elsewhere within this section of the AIF Rulebook and we have not repeated the comment.

Additionally, the Central Bank's proposal in paragraph 2 has been thoroughly evaluated and considered. It should be emphasised that, under Article 94 of the AIFMD Level 2 Delegation

Regulation, depositaries have well-defined duties regarding the valuation of units and have established robust oversight programs in line with these obligations. These programs ensure comprehensive due diligence and ongoing monitoring of the Fund Administrator's operations, verifying that appropriate and consistent procedures are established for all valuation activities, including the calculation of performance fees, to meet regulatory requirements and sectoral guidance. Furthermore, they confirm that these procedures are effectively implemented and that all fees, including performance fees, are calculated in accordance with the methodology outlined in the prospectus.

With this in mind, the consensus is that the proposed amendment to the depositary verification of performance fees provision is not, in itself, of material significance. Nevertheless, it is the prevailing view that the overall provision extends beyond the scope of ESMA's guidelines on performance fees ("Guidelines") and introduces requirements that are inconsistent with established EU regulatory standards. The additional requirements imposed on depositaries or other competent persons are not aligned with ESMA's Guidelines. Eliminating these requirements will help establish a level playing field for all market participants, promote consistency, reduce unnecessary complexity, and enhance the sector's competitiveness. We strongly advocate for the Central Bank to fully align and harmonise its performance fee requirements with ESMA's Guidelines.

If the requirement is to be retained, we recommend updating (as highlighted in yellow) the wording as follows for greater clarity:

"The ELTIF shall ensure ~~that the calculation of performance fees must be verified by~~ the depositary or a competent person appointed by the AIFM and approved for the purpose by the depositary **verifies that there are procedures in place to ensure that any performance fees payable and accrued pursuant to ELTIF performance fee payment cycle, are calculated in accordance with the constitutional document and the prospectus of the ELTIF**. The ELTIF shall ensure that its manager provides the depositary **or competent person** with all necessary information regarding the calculation of the performance fee in advance of any such fees being paid."

Although captured in our proposed updated text, the reference to competent person, as highlighted in yellow, is not captured in the consultation's draft language.

"The Qualifying Investor AIF shall ensure that its AIFM provides the depositary **or competent person** with all necessary information regarding the calculation of the performance fee in advance of any such fees being paid".

## 97. Changing the maximum annual fee

The AIF Rulebook is amended to clarify the reference to 'limited partnership agreement' as distinct from the current wording.

The AIF Rulebook will provide for the ELTIF, when changing the maximum annual fee charged, to do so either by: (i) approval on the basis of a simple majority of votes cast or (ii) in accordance with the voting procedures / requirements of the ELTIF's governing documents. (This can allow for a written resolution of the relevant unitholders where provided for in relevant regulation of that fund's legal structure). Per obligations under the AIFMD, proposed changes to matters related to the management of the ELTIF should at all times be undertaken in the full interest of investors.

### Proposed amendments to i. General restrictions, paragraph 3, page 208, AIF Rulebook March 2024.

3. The ELTIF shall specify, in its ~~trust deed, deed of constitution~~ **constitutional document**, management agreement, AIFM agreement **or limited partnership agreement**, the maximum annual fee charged by, as relevant, an AIFM, a management company and/or a general partner of the ELTIF. The maximum annual fee shall not be increased without approval on the basis of **the following**:

- (i) **if the amendment includes an opportunity for investors to redeem from the ELTIF, the proposal shall be approved by a simple majority of the votes cast.**
- (ii) **if no opportunity is provided for investors to redeem from the ELTIF, the proposal shall require approval by a qualified majority of 75% of the votes cast.**

**at least 75% of votes cast at general meeting.**

In the event of an increase in **the** such **maximum** annual fee **charged to an ELTIF**, and **unitholders are provided with the opportunity to redeem**, a reasonable notification period must be provided by the ELTIF to enable unitholders redeem their units prior to the implementation of the increase. The provisions of this paragraph are also applicable to the annual fee charged by an investment manager where this fee is paid directly out of the assets of the ELTIF.

**Question 92: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

In line with our response to Section 17 / question 12 we suggest the deletion (highlighted in yellow) of the reference to “limited partnership agreement” from the first line of paragraph 3 (“...AIFM agreement ~~or limited partnership agreement~~, the maximum annual...”). This is covered by the term “constitutional document” in the context of an ILP.

For clarity, in the last paragraph, "such maximum annual fee" should be referenced (highlighted in yellow) in place of the annual fee charged to an ELTIF (“In the event of an increase in ~~the~~ such ~~maximum~~ annual fee ~~charged to an ELTIF, and unitholders...~~”).

## 98. Remuneration of related parties

Clarification is being provided to the process in relation to providing for remuneration and the parties that are empowered to charge fees. The AIF Rulebook is further amended to remove reference to ‘the articles of association’ in favour of a singular reference to constitutional document.

**Proposed amendments to ii. Constitutional documents, paragraph 3, page 209, AIF Rulebook March 2024.**

3. The ELTIF shall, in its constitutional document ~~prescribe~~ **provide for** the remuneration and the expenditure which the manager of the ELTIF and depositary are empowered to charge to a unit trust, common contractual fund or investment limited partnership ~~the~~ **ELTIF** and the method of calculation of such remuneration; and, the costs to be borne by the unit trust, common contractual fund or investment limited partnership ~~ELTIF~~.

~~The ELTIF shall, in the articles of association prescribe the nature of the costs to be borne by the investment company.~~

**Question 93: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

Irish Funds agrees with the proposed amendment subject to definition of 'manager of the ELTIF' being defined per response to question 91.

## **99. Changing the maximum redemption charge**

Clarifications have been made to the processes for voting on amendments to maximum redemption or repurchase charges. Certain amendments to this section are being made to clarify requirements around the operation of redemption / repurchase mechanisms. In paragraph 5, 'withdrawal' is changed to 'withdrawals'. The term 'partners' is replaced by the term 'unitholders' as defined in the Definitions section of the AIF Rulebook.

**Proposed amendments to ii. Constitutional documents, paragraphs 4 and 5, page 209, AIF Rulebook March 2024.**

4. The ELTIF shall specify, in its constitutional document, the maximum charge relating to the redemption or repurchase of units. The maximum charge relating to the redemption or repurchase of units shall not be increased without approval on the basis of **the following:**
  - (i) **if the amendment includes an opportunity for investors to redeem from the ELTIF, the proposal shall be approved by a simple majority of the votes cast.**
  - (ii) **if no opportunity is provided for investors to redeem from the ELTIF, the proposal shall require approval by a qualified majority of 75% of the votes cast.**  
**at least 75% of votes cast at general meeting.**

In the event of, an increase in the ~~redemption or repurchase~~ charge, **and unitholders are**

provided with the opportunity to redeem, a reasonable notification period must be provided by the ELTIF to enable unitholders redeem their units prior to the implementation of the increase.

5. The ELTIF shall establish in its constitutional document conditions for the creation and cancellation of units or for contributions and withdrawals of contributions of partners' unitholders' capital, as appropriate.

**Question 94: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

## 100. Replacement of the manager and depositary

The AIFMD sets out requirements of the AIFM to act in the best interests of the AIF and its investors at all times. The current requirement to specify the procedure to be followed with respect to the replacement of the manager and the depositary in the constitutional documents is not appropriate within the constitutional document given these broader obligations to investors. The Central Bank is therefore proposing to remove this specific element of the requirement. Clarification is also included that the approval of the Central Bank must be given prior to any appointment of a depositary.

**Proposed amendments to ii. Constitutional documents, paragraphs 7 and 8, page 209, AIF Rulebook March 2024.**

7. The ELTIF shall, where relevant, specify, in its ~~constitutional~~ **governing** documents the circumstances under which there may be effected, ~~and the procedure to be followed with respect to,~~ the replacement of the manager of the ELTIF with another manager (including such a replacement by the Central Bank) and shall contain provisions to ensure the protection of unitholders in the event of any such replacement. **The manager of an ELTIF may not be replaced without the prior approval of the Central Bank.**
  
8. The depositary of an ELTIF may not be replaced without the **prior** approval of the Central Bank. The ELTIF shall specify, in its ~~constitutional~~ **governing** documents, the conditions under which there may be effected, ~~and the procedure to be followed with respect to,~~ the replacement of the depositary of the ELTIF with another depositary (including such a replacement by the Central Bank) and shall contain provisions to ensure the protection of unitholders in the event of any such replacement.

**Question 95: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

**Yes**

**No**

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

## 101. Investors' voting rights

Clarity has been brought to requirements around investors' rights to include voting rights.

**Proposed amendments to ii. Constitutional documents, paragraph 9, page 210 of AIF Rulebook March 2024.**

9. The ELTIF may only issue registered certificates where such activity is permitted by its constitutional document.

The ELTIF shall attach rights in proportion to the fraction of the ~~a~~-units held except for voting rights which can only be exercised by whole units. The ELTIF shall ensure that the certificates are signed by the depositary. This signature may be reproduced mechanically.

**Question 96: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

## 102. Rules governing share classes

Provisions with regards to share classes are amended to align with requirements in other parts of the AIF Rulebook. Provisions in relation to side pockets are updated to reflect requirements as per Directive (EU) 2024/927.

**Proposed amendments to v. Share Classes, paragraphs 1, 2, 3, 4, 5, 6, 7 and 8, pages 210-213, AIF Rulebook March 2024.**

1. **Subject to paragraph 2 below**, **A**an ELTIF shall only create one or more share classes within the ELTIF, or within a sub-fund of an umbrella ELTIF, where the following requirements are

satisfied:

(a) the constitutional document of the ELTIF must provide for the creation of share classes. In the case of an umbrella ELTIF 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 ELTIF or sub-fund thereof must consist of a single pool of assets;

(c) ~~unitholders in a share class must be treated equally; and~~

(d) where more than one share class exists, all the unitholders in the different share classes must be treated fairly; **and**

**d) no unitholder in an ELTIF or sub-fund thereof, whether in the same or different share classes, shall obtain preferential treatment, unless the granting of such preferential treatment is disclosed in the prospectus, including a description of how the ELTIF ensures the fair treatment of investors. Where a unitholder in an ELTIF or sub-fund thereof, whether in the same or different share classes, obtains such preferential treatment, it shall not result in a material disadvantage to other unitholders in the ELTIF or relevant sub-fund.**

Share classes may be established which may be differentiated on the basis of subscription/redemption procedures, distribution policies or charging structure, asset exposure or other criteria clearly disclosed in the prospectus and permitted by the constitutional document.

2. Subject to paragraphs 3 to 8,

**(i)** the ELTIF may allocate assets to individual share classes where the arrangement:

- is not made for the purpose of pursuing a separate investment objective by the share class;
- does not result in a share class operating de facto as a separate sub-fund; or
- is not created in order to circumvent the requirements set out in paragraph 1 of this section.

**(ii)** The ELTIF shall distribute and/or accrue capital gains/losses and income from the above to each unitholder relative to their participation in the relevant share class provided that:

(a) there is prominent disclosure in the prospectus of the ability to establish such share classes and the attendant risks;

(b) there is clear authority in the constitutional document to create such share classes;

(c) the constitutional document contains unambiguous valuation and allocation provisions; and

(d) to the extent possible under the investment fund legislation and applicable law, the constitutional document contains provisions aimed at achieving segregation of liability between such share classes and the share classes participating in the single pool of assets of the ELTIF or sub-fund **thereof**. Where it is not possible to ensure such segregation of liability, this shall be prominently disclosed **in bold text** in the prospectus.

3. Without prejudice to the generality of paragraphs 1 and 2, Sshare classes may be used to operationalise the capital commitment or subscription made by an investor a unitholder or the participation of the investment management function in the ELTIF. These share classes may, subject to the requirements set out in paragraph 4 to paragraph 8, provide for: (i) allocation of the returns of specific assets to the share class; and/or (ii) participation by a share class in the ELTIF other than on a pro rata basis. Establishment of share classes which provide for such differentiated participation will be permissible to reflect:

- (a) issue the issuance of shares units at a price other than net asset value NAV without prior approval of the Central Bank;
- (b) excuse and exclude provisions;
- (c) stage investing; and
- (d) management participation.

4. In order for an ELTIF to provide for a share class with one or more of the features noted in paragraph

3(a) – (d) and to allocate the returns of a specific asset to that share class the following general conditions apply:

- (a) the ability to establish share classes providing for the features outlined in paragraph 3(a) – (d) has been provided for in the ELTIF’s constitutional governing documents and has been disclosed to unitholders in advance;
- (b) the ELTIF’s prospectus permits establishment of share classes which provide for different levels of participation in the ELTIF;
- (c) the unitholder’s interest in an ELTIF is proportionate to:
  - the capital it has paid into the ELTIF at a particular point in time; and/or
  - the predetermined flow of capital returns to the share class; and/or
  - the extent to which the share class held by the unitholder participates in the assets of the ELTIF.
- (d) where the investor has subscribed in the ELTIF is on the basis of a capital commitment and periodic drawdowns from the investor the ELTIF maintains records on a per-investor basis to enable it to clearly identify commitments paid and commitments outstanding for each investor (“capital accounting”), and
- (e) the capital accounting methodology is consistent with the requirements of Commission Delegated Regulation (EU) 231/2013 which require the AIFM manager to establish, implement and maintain accounting policies and procedures to ensure that the calculation of the net asset value NAV is carried out as required by that Delegated Regulation and the AIFM Regulations.

5. An ELTIF may provide for the issue of shares at a price other than net asset value without prior approval of the Central Bank. Where an ELTIF issues new units at a price below NAV, this shall not result in a material disadvantage to other unitholders in the ELTIF.

This may be necessary to recognise the capital commitment made by an investor to the ELTIF and

~~that portions of this fixed amount will be periodically drawn down from the investor.~~

6. An ELTIF may facilitate excuse provisions (which enable an investor to be excused from an investment that the ELTIF proposes to make) and/or exclude provisions (which permits the ELTIF to exclude an investor from a proposed investment that the ELTIF proposes to make) provided that:

(a) the excuse and/or exclude provisions are predetermined and documented by the ELTIF (in respect of excuse provisions by way of a written document between the ELTIF and the investor prior to an investment being made in the ELTIF and, in respect of exclude provisions, by providing for the circumstances in which this may occur in the ~~prospectus and/or constitutional document~~ governing documents of the ELTIF); and

in each case unless the written document agreed with the investor or the [governing documents] provide otherwise,

(b) a ~~formal~~ notification legal opinion must be provided by the unitholder or ELTIF (depending on the party invoking the provision) outlining the basis on which the excuse or exclude provision is being invoked;

~~e) the board of the ELTIF and AIFM manager must document:~~

- ~~• whether or not it accepts the formal notification legal opinion so provided, and~~
- ~~• the consequences of accepting or disagreeing with such opinion notification unless already disclosed in the governing documents~~

7. An ELTIF may, at a later stage in the life cycle of the ELTIF, permit new investors to acquire ~~shares~~ units

in the ELTIF. The purchase of ~~shares~~ units by way of transfer from an existing unitholder or the subscription for new ~~shares~~ units in the ELTIF may be facilitated by the ELTIF by way of establishment of a new share class which provides for participation in (i) one or more existing investments, (ii) one or more existing and future investments, (iii) one or more future investments of the ELTIF only and provided that:

(a) upon acquisition by way of transfer of ~~shares~~ units, the terms of investment by the new investor is clearly documented;

(b) upon the issue of new ~~shares~~, units, a new share class is established for the investor; and

(c) the commitments paid and commitments outstanding for each investor are accounted for using a capital accounting methodology.

8. An ELTIF may establish management share classes which permit ~~persons designated by the manager of the ELTIF as entitled portfolio managers of an ELTIF~~ to participate in investments of the ELTIF. Such share classes may participate in the ~~ELTIF~~ ELTIF on the basis of conditions which differentiate the share class from other share classes in the ELTIF. This is subject to:

- the conditions applicable to ~~management~~ such share classes being provided for

in the prospectus; and

- capital payments (both committed capital and preferred returns) being allocated to relevant investor share classes **and in priority to management share classes in accordance with the ELTIF's governing documents.**

**Question 97: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

Minor Typo updates:

- Paragraph 3, where “investor” has been changed to “unitholder”, change “an” to “a”.
- Paragraph 4(e), delete the words “net asset value” before “NAV”

Irish Funds suggests (highlighted in yellow) a formatting change to paragraph 2 to ensure that the reference to paragraphs 3 to 8 in the opening paragraph of this paragraph applies equally to the provisions relating to the distribution of capital gains/losses to each unitholder relative to their participation. (“(i) the ELTIF may allocate...” and “(ii) The ELTIF shall distribute...”)

Suggested amendment to paragraph 3 (highlighted in yellow) – “share classes may be used to operationalise the capital commitment **or subscription...**” is to clarify that the provisions that follow can be adopted in a share class which operates on a fully funded model.

Irish Funds' members do not believe that paragraph 6(c) is necessary and suggest its deletion. A fund should have a record of everything it does and not just excuse/exclude activities. Therefore, the notification requirement under 6(b) should be sufficient (noting the suggested mark-up highlighted in yellow “a **formal** notification...” and the suggested amendment in 6(a) highlighted in yellow above – “**and in each case unless the written document agreed with the investor or the [governing documents] provide(s) otherwise**”.

Irish Funds would also highlight that it will have been clearly agreed and predetermined in

advance when an excuse or exclude provision will be triggered (as the Central Bank requires), which may be automatic and objective in many cases (for example if a state pension fund cannot be exposed to fossil fuels for binding legal reasons). Unless these predetermined contractual provisions provide otherwise, it is sufficient for transparency and governance reasons thereafter that the triggering party notifies the other it is triggering pre-agreed/pre-disclosed contractual rights. This is in line with best practice in the market.

For paragraph 7 we suggest updating as highlighted in yellow below to make clear that it is possible for an investor to participate in one or more existing investments (without being required to participate in future investments) or in one or more future investments (without being required to participate in all future investments).

“...for participation in (i) one or more existing investments, (ii) one or more existing and future investments, (iii) one or more future investments of the ELTIF ~~or in future investments~~ only”.

Finally, paragraph 1(d) will need to be revised to reflect Article 30(5) of the ELTIF Regulation (EU) 2023/606 that requires equal treatment in a class where the ELTIF is marketed to retail investors.

### 103. Side pocket share classes

Provisions in relation to side pockets updated to reflect requirements as per Directive (EU) 2024/927.

**Proposed amendments to v. Share Classes, paragraphs 9, 10, 11, 12, 13 and 14, page 214, AIF Rulebook March 2024.**

9. An ELTIF may establish a side pocket ~~share classes into which~~ for assets whose economic or legal features have changed significantly or become uncertain due to exceptional circumstances ~~which have become impaired, illiquid or difficult to value may be placed~~ through:

- a. physical segregation; or
- b. accounting segregation;

~~provided that the ability to establish these share classes has been~~ where provided for in the ELTIF's constitutional governing documents and ~~has been~~ disclosed to unitholders in advance.

~~10. The ELTIF must, in its constitutional document, prescribe the parameters which will apply to~~

~~the creation of side pocket share classes.~~

~~11. The ELTIF shall, at all times, be able to demonstrate that any assets placed in side pocket share classes comply with the approved parameters.~~

~~12. The ELTIF shall report to the Central Bank on an annual basis confirming whether or not the parameters continue to be respected and outlining the prospects and/or plans for the side-pocketed assets.~~

~~13. The ELTIF must specify in its prospectus a clear and unambiguous description of the proposed side pocket arrangements and information on the action which will be taken in the event that the assets within the side pockets are not re-admitted to trading or otherwise increase in value and/or liquidity as anticipated.~~

~~14. The ELTIF shall, in advance of establishing a side pocket share class, provide in conjunction with its depositary written confirmation to the Central Bank that the proposed establishment is in accordance with the ELTIF's constitutional document and takes into account the interests of all unitholders.~~

**Question 98: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

Per our response to Question 64, Irish Funds believes that this paragraph (9) should be deleted in its entirety as it represents an unnecessary duplication of Article 10 of the draft RTS, which will ultimately be directly effective.

## 104. Charity share classes

The 49<sup>th</sup> Edition of the Central Bank's AIFMD Q&A, ID 1144 provides for the possibility of establishing an AIF that has a share class that makes distributions to a charity provided a number of requirements are met. It is proposed to now include this Q&A in the AIF Rulebook as part of the general share class provisions. As a result, ID 1144 in the AIFMD Q&A will be deleted.

**Proposed insertion v. Share classes - 'Charity Share Classes', page 214, AIF Rulebook March 2024.**

An ELTIF may establish a share class that makes distributions to charity, subject to the following requirements:

- The investor must elect to subscribe to such a share class and cannot be automatically invested in such a share class;
- distributions should only be paid to a charity that is approved / authorised / registered in the relevant jurisdictions. Details of the charity and evidence of their approval / authorisation / registration status should be provided on request to the Central Bank;
- The prospectus / supplement must clearly set out:
  - The implications of such a share class – that the relevant charity and not the investor will benefit financially from distributions from the ELTIF;
  - Details of the charity to which the distributions are being made and the circumstances under which such
  - distributions will take place; and
  - That such distributions will not be paid out of the capital of the ELTIF.
- Periodic reporting to investors (for example, in the annual reports) must include details of the amounts that have been distributed to charity.

**Question 99: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

**Yes**

**No**

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

## 105. Disclosure rules for Umbrella ELTIFs

Amendment to clarify that an umbrella ELTIF, which is an investment company, shall, in its prospectus, include the words: "*An umbrella fund with segregated liability between sub-funds*". Additional references will now be made to Investment Limited Partnerships, Common Contractual Funds and ICAVs to also include this disclosure in their prospectus.

**Proposed amendment to vi. Umbrella AIFs, paragraphs 2, 4 and 5, pages 214 and 215, AIF Rulebook March 2024.**

2. A Retail Investor AIF umbrella shall only establish a Retail Investor ELTIF sub-fund. A Qualifying Investor AIF umbrella shall only establish a Professional Investor ELTIF sub-fund or Qualified **ying** Investor ELTIF sub-fund.
4. An umbrella ELTIF shall only be comprised of either (i) Retail Investor ELTIF sub-funds or (ii) Qualified **ying** Investor ELTIF sub-funds and/or Professional Investor ELTIF sub-funds.
5. An umbrella ELTIF which is an **investment C**ompany, **Investment Limited Partnership, Common Contractual Fund, unit trust** or ICAV shall, in its prospectus, include the words: "**An umbrella fund with segregated liability between sub-funds**".

**Question 100: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

The first sentence in paragraph 5 should be updated as follows (highlighted in yellow):

"An umbrella ELTIF which is an investment company, Investment Limited Partnership, Common Contractual Fund, unit trust or ICAV shall, in its prospectus, include the words: **"An umbrella fund with segregated liability between sub-funds"**."

Consideration should be given to whether this requirement should simply apply to all umbrella ELTIFs.

## **106. Parties to whom dealing rules apply**

'Unitholders' will be added to the list of entities subject to the requirements under the provisions directed at 'Dealings by management company, general partner, depositary, AIFM, investment manager or by delegates or group companies of these'. This addition has been identified by the Central Bank as necessary given instances of investment funds entering into transactions with unitholders (i.e. investors). This will protect the interests of all unitholders in a relevant fund where such transactions take place.

Proposed amendment to vii. Dealings by management company, general partner, depositary, AIFM, investment manager or by delegates, par or group companies of these, Header and paragraph 1, page 216, AIF Rulebook March 2024.

Dealings by management company, general partner, depositary, AIFM, investment manager, **unitholder** or by delegates or group companies of these

1. The ELTIF shall only enter into a transaction with **(i) unitholders and (ii) the AIFM, depositary, management company, general partner, investment manager (or their delegates or associated group companies** ~~a management company, general partner, depositary, AIFM, investment manager, unitholder or by delegates or group companies of these~~ where it is negotiated at arm's length. Transactions must be in the best interests of the unitholders.

**New Footnote: This requirement does not apply to transactions by unitholders in relation to their units. This includes subscriptions, redemptions, conversions or dividend payments.**

**Question 101: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

Per our response to Q36, regarding “unitholders” we would propose the wording be revised to make clear that the “delegate or group companies” requirements does not extend to transactions with unitholders, the heading of this section should be updated to read:

“Dealings by the ELTIF with (i) unitholders and (ii) the AIFM, depositary, management company, general partner, investment manager (or their delegates or associated group companies)” along with corresponding updates to the wording in paragraph 1:

“The ELTIF shall only enter into a transaction with **(i) unitholders and (ii) the AIFM, depositary, management company, general partner, investment manager (or their delegates or associated group companies** where it is negotiated at arm's length. Transactions must be in the best interests of the unitholders.”

Please also see related suggested mark-ups to Section 124 (question 119), Section 128

(question 123) and Section 129 (question 124).

## 107. Requirements in relation to 'transfer for consideration'

Requirement to notify the Central Bank where an ELTIF invests in the units of another sub-fund within the same umbrella, by way of transfer for consideration is no longer required as reporting is redundant.

**Proposed deletion to i. General conditions, paragraph 4, page 217, AIF Rulebook March 2024.**

~~4. An umbrella AIF or umbrella ELTIF shall not permit a sub-fund to invest in the units of another sub-fund within the same umbrella, by way of transfer for consideration, without prior notification to the Central Bank.~~

**Question 102: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

**Yes**

**No**

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

## 108. Timeline for reporting to the Central Bank

Amendment to provide greater clarity on requirements related to the communication of breaches and errors to the Central Bank.

**Proposed amendments to i. General conditions, paragraph 5, page 217, AIF Rulebook March 2024.**

5. The ELTIF shall notify the Central Bank ~~promptly~~ **immediately** of any material breach of the investment fund legislation, the requirements imposed on it by the Central Bank or provisions of its

prospectus.

**Question 103: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

Per our response to section 43 (question 38) Irish Funds does not agree with the amendment made. On becoming aware of a material breach, "promptly" denotes that action must be taken as soon as reasonably possible in the circumstances, and at the least without unnecessary delay. On identifying the breach the ELTIF will likely require some coordination between its board and the manager of the ELTIF (or other key delegates) to prepare a notification for the Central Bank without delay. The term immediately could denote no time can be taken to gather preliminary facts. Therefore, Irish Funds strongly advocates for the term 'promptly' to be re-inserted.

Irish Funds would advocate for the application of a materiality threshold across (i) AIFs and (ii) Irish authorised AIFMs under the AIF Rulebook and (iii) Irish UCITS management companies under Regulation 107 of the Central Bank UCITS Regulations.

## **109. Minimum subscription limits and derogations**

The AIF Rulebook limits the exemption for the minimum subscription to certain defined entities and persons. The AIF Rulebook will now provide to grant an exemption from the minimum subscription requirement to include: (i) the AIFM or other legal entity within the AIFM's group; and (ii) those that provide advice (both discretionary and non-discretionary).

These parties are related to these additional entities with relevant expertise and knowledge to make an assessment of the investment objectives, strategy and potential risks that investing in the Qualifying Investor ELTIF would bring, while allowing greater management participation and alignment of interests. The requirement will continue to be

limited to: (i) those directly involved in the investment activities of the Qualifying Investor ELTIF; or (ii) senior employee/partners/consultants/secondees of the management/investment/advisory company that have experience in the provision of investment management services.

**Proposed amendment to i. General conditions, paragraphs 6 and 7, page 218, AIF Rulebook March 2024.**

6. Where an ELTIF provides for a minimum **capital commitment** or subscription of €100,000 and only accepts subscriptions from an investor who meets the criteria set out in the definition of a **Qualified** Investor ELTIF, it may avail of the Central Bank QIAIF authorisation process and market itself as a **Qualified** Investor ELTIF.

7. The **Qualified** Investor ELTIF may grant an exemption from the minimum **capital commitment** or subscription requirement to the following:

- (a) the management company or general partner;
- (b) **the AIFM/manager or a company or other legal entity within the AIFM/manager's group;**
- (c) a company **or other legal entity** appointed to provide investment management or advisory services **(whether discretionary or otherwise) to or in respect of** the **Qualified** Investor ELTIF;
- (d) a director **(or equivalent)** of the **AIFM**, management company, investment company or general partner or a director **(or equivalent)** of a company **or other legal entity** appointed to provide investment management or advisory services **(whether discretionary or otherwise) to or in respect of** the **Qualified** Investor ELTIF; and
- (e) an employee, **consultant to, secondee to** ~~of the management company, investment company or general partner,~~ or an employee of a company appointed to provide investment management or advisory services to the **Qualified** Investor ELTIF, **or partner of any of the entities mentioned in (a), (b) or (c),** where the employee, **consultant, secondee or partner;**
  - **holds a formal agreement or employment contract with any of the entities mentioned in (a), (b) or (c);**

- is directly involved in the investment activities of the Qualifiedying Investor ELTIF,;or
- is a senior employee of the company or other legal entity appointed to provide investment management or advisory services (whether discretionary or otherwise) and has experience in the provision of investment management services

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

**Question 104: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

Irish Funds suggest adding a provision (e.g. in a footnote) for vehicles through which such “Knowledgeable Persons” invest (as such persons don’t typically invest in the Fund in their personal capacity, they may invest through a carry vehicle for example which does not itself fit into any of these categories).

For the purposes of paragraph 6, in line with our response to question 5 in Section 10, we suggest a footnote is added after €100,000 - “the aggregate of an investor’s investments and/or capital commitments in the sub-funds of an umbrella can be taken into account for the purposes of determining this. The amounts of subsequent subscriptions or capital commitments from unitholders who have already subscribed/committed to the minimum subscription of €100,000 are unrestricted”.

At the end of paragraph 7 the following clarification (highlighted in yellow) should be included (per section 11, question 6):

“The Qualified ~~ying~~ Investor ELTIF must ensure that, where relevant, ~~investing employees~~ prospective unitholders must certify...”

## 110. Director departures from an investment company

The AIF Rulebook currently refers to the impact on the AIF Management Company where there is a resignation at the board level of an ELTIF investment company. Update to clarify that the requirement more accurately reflects the impact of a resignation on the ELTIF itself.

Footnote 31 is amended to now include the provisions of footnote 1 in chapter 4 - AIF Management Company Requirements. Chapter 4 - AIF Management Company Requirements has been deleted in this update to the AIF Rulebook.

**Proposed deletion and amendments to ii. Directors of ELTIF’s investment companies, Footnote 31 and proposed and amendments to ii. Directors of ELTIF’s investment companies, paragraph 1, pages 218- 219, AIF Rulebook March 2024.**

~~Footnote 31 [The provisions of footnote 1 in chapter 4 AIF Management Company Requirements will apply mutatis mutandis to directors of ELTIF investment companies which are in distressed or failing circumstances.]~~

1. Where the ELTIF is an investment company, departures from the office of director and the reason for the departure must be notified to the Central Bank immediately ~~by filing the relevant~~ **in accordance with** Central Bank **processes and procedures**. **Such processes and procedures may be amended from time to time** ~~form~~. In all cases where a director wishes to resign and prior to ~~completing~~ **providing** the relevant Central Bank ~~form~~ **notification**, the ELTIF (at Board or its Chair level) must form a view as to the impact of the resignation on the ~~manager of the ELTIF~~ having regard to the current and prospective financial state of the ~~manager of the ELTIF~~ ~~and the funds under management~~. In the event that the Board or, in the absence of a Board meeting, the Chair forms the view that the situation is one which could create such concern on the part of the Central Bank, it shall state this on the relevant Central Bank ~~form~~ **notification**. The Board or its Chair may consult the Central Bank in order to help it form a view on that matter.

**Question 105: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

**Yes**

**No**

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

## **111. Suspension requirements**

Specific requirements within the AIF Rulebook with respect to suspensions as referenced in Directive (EU) 2024/927 have been included within the ELTIF chapter to align with requirements elsewhere.

Proposed amendment and insertion to iii. Suspensions, paragraph 1, page 219, AIF Rulebook March 2024.

~~1. Where the manager of the ELTIF activates or deactivates the temporarily suspensions of the calculation of the net asset value NAV and or the suspension of subscription, repurchase or redemption of its units, it the ELTIF must inform the Central Bank immediately, and in any event within the working day on which such suspension activation or deactivation took effect upon such activation or deactivation taking effect.~~

2. ~~Without prejudice to paragraph 1, and in~~ In circumstances where the suspension of subscriptions, repurchases and redemption of the funds units or shares has not been lifted within 21 working days of application, the ELTIF shall provide the Central Bank with an update on the suspension at the expiration of the 21 working day period and each subsequent period of 21 working days where the suspension continues to apply.

3. Where a competent authority of a member state under Article 46(j) of Directive 2011/61/EU requires the manager of the ELTIF to activate or deactivate the suspension of subscription, repurchase and redemption, the ELTIF must immediately inform the Central Bank when it becomes aware of this instruction.

4. The ELTIF shall take all necessary steps to keep the Central Bank informed of relevant information with respect to the management of the ELTIF that is the subject of the exercised powers as detailed in paragraph 3 of this section.

**Question 106: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

Irish Funds advocates that paragraph 1 should be deleted in its entirety (as highlighted in yellow above). These requirements will be addressed in the Irish regulations implementing AIFMD II in due course. We would note that reference to suspension of NAV is not under the AIFMD II LMT rules and therefore have removed this as part of the mark-up for paragraph 2.

As a consequence of the deletion of paragraph 1, paragraph 2 should be updated to remove

reference to paragraph 1 (highlighted in yellow above) and refer to the relevant suspensions being “...the suspension of subscriptions, repurchases and redemption of the funds units or shares...”.

(Suggested opening for paragraph 2 - “In circumstances where the suspension of subscriptions, repurchases and redemption of the funds units or shares has not been...”).

Finally, the reference to Article 46(j) of Directive 2011/61/EU should be updated to Article 46(2)(j) of Directive 2011/61/EU.

## 112. The selection, disclosure and operation of Liquidity Management Tools

Specific requirements have been included in the AIF Rulebook whereby the ELTIF shall:

- (i) disclose in its prospectus the LMTs it has selected along with the terms and conditions under which an LMT can be activated and deactivated; and
- (ii) disclose where the ELTIF selects additional LMTs beyond those specified in Directive (EU) 2024/927 Annex V.

To align with the Financial Stability Board (FSB) revised policy recommendations to address structural vulnerabilities from liquidity mismatch in Open Ended Funds (Revised FSB Recommendations) and the International Organization of Securities Commissions (IOSCO) final Guidance on Anti-Dilution LMTs (LMT Guidance) for the effective implementation of the Recommendations for Liquidity Risk Management for Collective Investment Schemes, it is proposed to include a requirement, where appropriate, that the AIFM of the ELTIF considers selecting at least one quantitative-based LMT (redemption gate, extension of notice period) and at least one anti-dilution tool (i.e.: redemption fee, swing pricing, dual pricing, anti-dilution levy).

Finally, for supervisory purposes, the ELTIF shall notify the Central Bank where it activates or deactivates any of the LMTs that are disclosed in its prospectus where such activation or deactivation occurs other than in the ordinary course of the ELTIFs business.

Proposed insertion, Liquidity Management Tool requirements, page 219, AIF Rulebook March 2024.

### General operational requirements

1. The ELTIF shall disclose in its governing documents the **selected** liquidity management tools (LMTs) **selected in accordance with the requirements of Article 16(2b) of AIFMD as amended (DIRECTIVE (EU) 2024/927** and the terms and conditions under which an LMT can be activated and deactivated.
2. In selecting the two minimum mandatory LMTs per the requirements of Annex V of Directive 2011/61/EU, the ELTIF shall ensure that the manager should consider, where appropriate, selecting at least one quantitative-based LMT (redemption gate, extension of notice period) and at least one anti-dilution tool (redemption fee, swing pricing, dual pricing, anti-dilution levy, redemption in kind).
3. The ELTIF shall notify the Central Bank where it activates or deactivates any of the LMTs that are disclosed in its prospectus where such activation or deactivation occurs other than in the ordinary course of the ELTIF's business.

**Question 107: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

Per Irish Funds response to Q64, Irish Funds note that the work on the regulatory technical standards (RTS) in connection with liquidity management tools is ongoing with the European Commission and they are not in final form. We also note that the intention of AIFMD 2 is to ensure that there is greater harmonisation and alignment on the use of liquidity management tools in AIFs across the EU. Accordingly, our comments on this section target that goal of maximum harmonisation and the minimisation of any potential gold-plating.

Irish Funds do however recognise that NCAs have concerns about relying on the obligation on managers of the ELTIF to report to their home competent authority on the activation/deactivation of LMTs. In that respect we would have expected there would be a

regulator-to-regulator communication channel whereby the home competent authority would communicate to the host competent authority if there are funds under management using the cross-border management passport that are the subject of an activation or deactivation.

In addition, in-scope Irish resident funds (being those non-money market funds, that are authorised by the Central Bank and have a non-zero NAV) must report on the activation and deactivation of LMTs on a daily basis in the Daily Investment Fund Return (DIFR), using binary fields to indicate whether each tool is active ('1=Yes') or not ('2=No'), and quantitative fields for the monetary or basis point impact when applicable; and any change in status must be reflected for the relevant dealing day. This should ensure the Central Bank receives clear, automated updates on the use of LMTs as they are applied or removed.

With the above in mind, Irish Funds have identified the following changes to this section:

Under "**General operational requirements**":

As a general comment, to avoid any potential ambiguity, the following confirmation should be included in this section, by way of footnote or otherwise:

*"This section only applies in respect of open-ended ELTIFs or open-ended ELTIFs with limited liquidity'."*

**Paragraph 1:** Irish Funds believe the following reformulation of this paragraph will assist in clarifying, for the avoidance of doubt, that the governing document disclosure obligations are in respect of those LMTs listed in Annex V of Directive 2011/61/EU

1. The ELTIF shall disclose in its governing documents the liquidity management tools (LMTs) selected in accordance with the requirements of Article 16(2b) of AIFMD as amended (DIRECTIVE (EU) 2024/927 and the terms and conditions under which such LMT can be activated and deactivated.

**Paragraph 2:** Irish Funds consider that paragraph 2 in this section should be deleted in its entirety. This paragraph appears to be "hard-coding" one of the ESMA LMT Guidelines, which are not finalised at this point (noting also that the categorisation of RIKs as an ADT is not aligned with these Guidelines). In the context of our earlier comments in respect of maximum harmonisation, the better approach would be to have recourse directly to the AIFMD II requirements.

**Paragraph 3:** Irish Funds consider that paragraph 3 should be deleted in its entirety, noting that the requirements in respect of the activation/deactivation of LMTs under Annex V of AIFMD will be set down in the Irish AIFM Regulations. In addition, please see above comments in respect of the impact of the existing Daily Investment Fund Reporting obligations. It should not be necessary to make any additional provision for this type of notification in the AIF Rulebook, on that basis.

## 113. Gating

Update to include a requirement related to the operation of redemption gates to ensure the fair treatment of all investors in the event of a redemption gate being activated.

**Proposed insertion, Liquidity Management Tool requirements, page 219, AIF Rulebook March 2024.**

1. On any dealing day that a redemption gate is activated, any request for redemption on such dealing day shall be reduced rateably and the redemption requests shall be treated as if they were received on each subsequent dealing day until all the units to which the original request related have been redeemed.

**Question 108: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

Per our response to Q64 and bearing in mind the overarching intention to harmonise LMT requirements across the EU and to avoid jurisdictional divergence and gold-plating from an Irish perspective, Irish Funds believes that the requirements set out in this paragraph are overly restrictive. Specifically, this paragraph is not reflective of the flexibility offered by AIFMD II, as contemplated by Article 3.3 of the RTS, which provides for alternative proportional or priority approaches to managing redemption gates but subject to the disclosure requirements set out in Article 23 (h) of Directive 2011/61/EU (see also Recital 4 of the RTS). This section

also gold-plates the ELTIF Regulation (Article 18(2)(e)) which already expressly deals with how redemption requests must be dealt with where requests exceed permitted amounts and the fund needs to gate.

## 114. Replacement of depositary

Update for clarification purposes to include 'AIFM' when referencing 'management company' and 'general partner'. Reference to specific fund legal structures has been deleted for editorial purposes.

### Proposed amendment iv. Replacement of depositary, paragraph 1, page 219, AIF Rulebook March 2024.

1. The Central Bank requires that the procedures to be followed in relation to the replacement of a depositary must be approved by the board of the investment company, the **AIFM** / management company ~~of a unit trust scheme or common contractual fund~~ or the general partner ~~of an investment limited partnership~~. Where the ELTIF replaces its depositary, the ELTIF must ensure that the Central Bank receives, as required, confirmation from both the retiring depositary and new depositary that they are satisfied with the transfer of assets.

### Question 109: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?

- Yes  
 No

If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.

No comments. Irish Funds agrees with the proposed amendment.

## 115. Third parties contracted to AIFM/management company/general partner

Update for clarification purposes to include 'AIFM' and "general partner" when referencing 'management company'. A list of relevant parties where the rule is applicable will also be provided.

Proposed amendment v. Replacement of management company, general partner or third party, paragraph 2, page 220, AIF Rulebook March 2024.

2. The Central Bank must be notified in advance of any proposal to replace **the following** third parties which have contracted (directly or indirectly) with the **investment company / AIFM / management company / general partner**. **These third parties are:** ~~in the case of a unit trust or common contractual fund, investment company or investment limited partnership to carry out services~~
- a. **depository;**
  - b. **investment manager;**
  - c. **auditor; and**
  - d. **fund administrator.**

The Central Bank may object to the proposals and replacements objected to by the Central Bank may not proceed.

**Question 110: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

Per our response to question 45, Irish Funds suggest the following edit in yellow to include reference to "investment company" given that in the case of an externally managed fund, the appointment of the depository must be made by the investment company itself; "...with the **investment company**/AIFM / management company...".

## 116. Reporting requirements

Requirements related to reporting have been amended to provide for the current requirements as set out on the Central Bank's website.

Proposed amendment to vi. Monthly and quarterly returns, paragraph 1, 2 and 3, pages 220-221, AIF Rulebook March 2024.

~~Monthly and quarterly returns~~ Reporting requirements

1. The ELTIF must ~~submit a monthly return to the Statistics Division of the Central Bank using the Central Bank~~ **shall** ~~such periodic returns to the Central Bank as specified by the Central Bank from time to time.~~ Those returns shall be in the form, and contain the information, specified by the Central Bank and published on the Central Bank's website.

~~The contents of the monthly return are set out below in paragraph 2 of this section.~~

2. ~~The following information must be included in the monthly returns:~~
  - a. ~~the Central Bank code issued to the sub-fund of the ELTIF;~~
  - b. ~~the base currency of the ELTIF (the return must be denominated in the base currency of the ELTIF);~~
  - c. ~~the NAV type (designated as estimate or final);~~
  - d. ~~the ELTIF type (designated by investment strategy);~~
  - e. ~~total gross asset value of the ELTIF at end-month;~~
  - f. ~~total NAV of the ELTIF at end-month;~~
  - g. ~~number of units in circulation at end-month;~~
  - h. ~~NAV per unit at end-month;~~
  - i. ~~payments received from the issues of units during month;~~
  - j. ~~payments made for the repurchase of units during month;~~

**Question 111: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

While Irish Funds agrees in principle with the proposed update, any amendments to the periodic returns and supervisory records required, as outlined on the Central Bank's website, should be subject to appropriate industry engagement. This required industry engagement should be appropriately reflected in any update to this section of the AIF Rulebook. This is necessary to assess the potential impact of proposed changes and to ensure that sufficient notice is provided to allow firms to implement new or updated reporting requirements in an orderly manner.

In our view, it would not be acceptable for the Central Bank to publish changes on its website without prior consultation and engagement with industry regarding any proposed changes before they occur and again this section of the AIF Rulebook should be updated to reflect this.

## 117. Changes to the duration of the ELTIF

Amendment to simplify requirements pertaining to requirements around changes to the ELTIF to align with other chapters in the AIF Rulebook.

**Proposed amendment to viii. Changes to the life of the ELTIF, paragraph 1, 2, 3, 4, 5 and 6, pages 221-222, AIF Rulebook March 2024.**

~~Changes to the life of the ELTIF~~

- ~~1. Where there is a proposed change to the duration of a closed-ended ELTIF with no opportunity for unitholders to redeem or otherwise exit the ELTIF, the ELTIF shall ensure that votes in favour of the change must represent at least 75% of votes cast.~~
- ~~2. Where there is a proposed change to the duration of the ELTIF which is open-ended with limited liquidity with an opportunity for unitholders to redeem or otherwise exit the ELTIF, the ELTIF shall ensure that votes in favour of the change must represent at least 50% of~~

votes cast.

~~Changes to the investment objective or material~~

~~[In accordance with paragraph 5 of section 3.i, "material" shall be taken to mean, although not exclusively: "changes which significantly alter the asset type, credit quality, borrowing or leverage limits or risk profile of the ELTIF".]changes to the investment policy of an ELTIF~~

- ~~3. Where there is a proposed change of investment objectives and/or material change of investment policies with no opportunity for unitholders to redeem or otherwise exit the closed ended ELTIF, the ELTIF shall ensure that votes in favour of the change must represent at least 75% of votes cast.~~
- ~~4. Where there is a proposed change of investment objective and/or material change of investment policies with an opportunity for unitholders to redeem or otherwise exit the open ended with limited liquidity ELTIF, the ELTIF shall ensure that votes in favour of the change must represent at least 50% of votes cast.~~

~~Non-material changes to the investment policy of an ELTIF~~

- ~~5. Where the closed ended ELTIF makes non-material changes to investment policies, it shall notify unitholders of these changes. Notification can be provided by means of appropriate disclosure in the next annual report.~~

~~Changes to Fees or Charges~~

- ~~6. Where a closed ended ELTIF proposes to amend the maximum redemption charge as disclosed in the constitutional document or prospectus, or the maximum annual fee [The annual fee includes any performance related fee charged by the AIFM, the management company, the general partner or the investment manager.] charged by, as relevant, the AIFM, management company or general partner as disclosed in the trust deed, deed of constitution, management agreement, AIFM agreement or partnership agreement, with no opportunity for unitholders to redeem or otherwise exit the ELTIF, it shall ensure that votes in favour of the increase must represent at least 75% of votes cast.~~

**Where an ELTIF proposes to:**

- (i) amend the duration of the ELTIF;**
- (ii) change the investment objective or make material changes to the investment**

policy of the ELTIF; or

New Footnote: In accordance with paragraph 5 of section 3.i, “material” shall be taken to mean, although not exclusively: “changes which significantly alter the asset type, credit quality, borrowing or leverage limits or risk profile of the **ELTIF Qualifying Investor AIF**.”

- (iii) amend the maximum charge relating to the redemption or repurchase of units or the maximum annual fee charged by, as relevant, the AIFM, management company or general partner of the ELTIF;

New Footnote: The annual fee includes any performance related fee charged by the AIFM, the management company, the general partner or the investment manager.

the following shall apply:

- if the amendment includes an opportunity for investors to redeem **or otherwise exit** from the ELTIF, the proposal shall be approved by a simple majority of the votes cast.
- if no opportunity is provided for investors to redeem **or otherwise exit** from the ELTIF as part of the amendment, the proposal shall require approval by a qualified majority of 75% of the votes cast.

The provisions of paragraph 1(iii) are also applicable to the annual fee charged by an investment manager where this fee is paid directly out of the assets of the ELTIF.

2. Where the ELTIF makes non-material changes to investment policies, it shall notify unitholders of these changes. Notification can be provided by means of appropriate disclosure in the next annual report.

**Question 112: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

In order to be consistent with section 118, the following wording should be included: “In the event unitholders are provided with the opportunity to redeem, the ELTIF must provide a reasonable notification period to enable unitholders redeem their units prior to implementation of these changes.”

In addition, there also appears to be a typo reference to Qualifying Investor AIF instead of ELTIF (update highlighted in yellow): “New Footnote: In accordance with paragraph 5 of section 3.i , “material” shall be taken to mean, although not exclusively: “changes which significantly alter the asset type, credit quality, borrowing or leverage limits or risk profile of the **ELTIF Qualifying Investor AIF.**”

In line with our response to section 75 /Question 70 Irish Funds suggests the addition of “or otherwise exit” to the following two bullet points (as highlighted in yellow). This retains wording from the current AIF Rulebook and facilitates the use of other liquidity provisions.

- if the amendment includes an opportunity for investors to redeem **or otherwise exit** from the ELTIF, the proposal shall be approved by a simple majority of the votes cast.
- if no opportunity is provided for investors to redeem **or otherwise exit** from the ELTIF as part of the amendment, the proposal shall require approval by a qualified majority of 75% of the votes cast.

## 118. Prospectus update requirements

Amendment to simplify requirements pertaining to voting requirements around changes to the ELTIF to align with other chapters in the AIF Rulebook.

**Proposed amendment to i. General requirements, paragraph 5, page 223, AIF Rulebook March 2024.**

5. The ELTIF shall not change its investment objectives or effect a material change to its investment policies, as disclosed in the prospectus without:

- if the amendment includes an opportunity for investors to redeem from the ELTIF, the proposal shall be approved by a simple majority of the votes cast.
- if no opportunity is provided for investors to redeem from the ELTIF as part of the amendment, the proposal shall require approval by a qualified majority of 75% of the votes cast.

~~the prior written approval of at least 75% of votes cast at general meeting.~~ "Material" shall be taken to mean, although not exclusively: "changes which significantly alter the asset type, credit quality, borrowing or leverage limits or risk profile of the ELTIF".

In the event ~~unitholders are provided with the opportunity to redeem~~ of a change of investment objectives and/or investment policy, on the basis of at least 75% of votes cast at a general meeting, the ELTIF must provide a reasonable notification period to enable unitholders redeem their units prior to implementation of these changes.

**Question 113: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

**Yes**

**No**

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

## 119. General information concerning the ELTIF

Paragraph 1 of section 1.iii (Valuation) of Part I of the ELTIF chapter requires that ELTIFs specify in their constitutional document the rules for the valuation of assets. Additional details regarding the valuation of an ELTIF may be set out elsewhere e.g. in the prospectus. To capture this, an additional point (l) stating “Information on any additional relevant details regarding the valuation of assets” has been added to the “General information concerning the ELTIF” list set out in the Prospectus Requirements, Section 3 (ii) of Part I of the ELTIF chapter.

**Proposed insertion to ii. General information concerning the ELTIF, paragraph 1 (j), (k) and (l), page 224, AIF Rulebook March 2024.**

1. The ELTIF shall, at a minimum, disclose the following in its prospectus:
  - (j) Where applicable, indication of stock exchanges or markets where the units are listed or dealt in; ~~and~~
  - (k) A description of the AIFM’s remuneration policies and practices pursuant to Regulation 14 of the AIFM Regulations; ~~and~~
  - (l) Information on any additional relevant details regarding the valuation of assets.

**Question 114: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

**Yes**

**No**

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

## 120. Proposed amendment and insertion to dealing processes

Updated to include that the procedures and conditions for 'subscriptions' are also included in the prospectus. Specific requirements with respect to redemption in specie as an LMT are detailed in Directive 2024/927 and its RTS and Guidelines. Where the ELTIF provides for the settlement of redemptions through an exchange of assets as part of its redemption policy and this is not an LMT, the AIF Rulebook requires that the ELTIF disclose the terms and conditions in its prospectus under which such an arrangement will operate.

**Proposed amendment and insertion to iii. Dealing, paragraph 2, page 225, AIF Rulebook March 2024.**

2. ~~Where the ELTIF provides for the possibility of redemptions from the ELTIF, t~~The ELTIF shall disclose, in its prospectus, the procedures and conditions for **subscription**, repurchase or redemption of units, including the period within which redemption proceeds will normally be paid or discharged to unitholders. It must also disclose the circumstances in which **subscription**, repurchase or redemption may be suspended.
4. **Where the ELTIF provides for the settlement of redemptions through an exchange of assets as part of its redemption policy, the ELTIF shall disclose the terms and conditions applicable in its prospectus.**

**Question 115: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

**Yes**

**No**

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

## 121. Information concerning an AIFM, management company or general partner

Update for clarification purposes to include 'AIFM' when referencing 'management company'. In addition, the rule contained in paragraph 3 is deleted as under AIFMD, the AIFM is already required to maintain the necessary level of minimum regulatory capital and such capital may change over time.

**Proposed amendment iv. Information concerning a management company or general partner, paragraphs 1 and 2, page 225, AIF Rulebook March 2024.**

### **iv. Information concerning an AIFM, management company or general partner**

1. The ELTIF shall, in its prospectus, disclose the name, form in law, registered office and head office, if different from the registered office, of the AIFM, management company or general partner. If the AIFM, management company or general partner is part of a group, the name of that group must be disclosed. The date of incorporation of the company and indication of duration, if limited, must also be included.
2. The ELTIF shall, in its prospectus, disclose the names and positions in the AIFM, management company or general partner of the members of the administrative, management and supervisory functions; their experience, both current and past, which is relevant to the ELTIF; and details of their main activities outside the AIFM, management company or general partner where those are of significance with respect to that AIFM, management company or general partner.
- ~~3. The ELTIF shall, in its prospectus, disclose the amount of the prescribed capital of the management company or general partner with an indication of the capital paid-up.~~

**Question 116: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

These paragraphs appear to be meant to apply to non-corporate structures and only refer to the management company of a contractual fund (i.e., a unit trust or a CCF) and the general partner of an ILP. Then it is understood that the next section in the AIF Rulebook (section v - Information concerning investment managers and other service providers) would cover the key service providers, including the AIFM. Furthermore, paragraph 3 of section v of the AIF Rulebook requires disclosure of *“the other significant activities engaged in by [the] AIFM”*. Therefore, we suggest the reversal of the proposed changes in paragraphs 1 and 2 as we don't think that the AIFM should be included here. (Notwithstanding that the AIFM might be the manager/GP of the fund, it should be required to make these disclosures in its capacity as manager/GP and not as AIFM).

## **122. Information concerning investment managers and other services providers**

Update for clarification purposes to include 'AIFM' when referencing 'management company'. Additionally, update for clarification purposes to include 'management company' when referencing an 'AIFM'.

**Proposed amendment to v. Information concerning investment managers and other service providers, paragraphs 2 and 3, page 226, AIF Rulebook March 2024.**

2. The ELTIF shall, in its prospectus, disclose the material provisions of the contracts with the **AIFM**, management company, general partner or investment company which may be relevant to the unitholders, excluding those relating to remuneration.
3. The ELTIF shall, in its prospectus, disclose the other significant activities engaged in by its **AIFM / management company** and any entity performing investment management

functions on its behalf.

**Question 117: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

**Yes**

**No**

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

## 123. Risk disclosures

Update for references to note warning are included in bold text.

**Proposed amendment to vii. Risk disclosures, paragraph 2, page 226, AIF Rulebook March 2024.**

2. The ELTIF shall, where relevant, contain in its prospectus a prominent risk warning **in bold text** which will make specific reference to the following:
- (a) any potential for above average risk involved; and
  - (b) the suitability of this type of investment with the potential for above average risk only for people who are in a position to take such a risk.

**Question 118: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

## 124. Conflicts of interest

'Unitholders', 'depository' and 'delegate or associated or group companies' will be added to the list of entities subject to the requirements under the provisions directed at 'Conflicts of Interest'.

This addition to the list of entities subject to the requirements is necessary given instances of investment funds entering into transactions with unitholders, delegates, associated or group companies.

This will safeguard the interests of all unitholders in a relevant fund.

**Proposed amendment to viii. Conflicts of interest, paragraphs 1 and 2, page 227, AIF Rulebook March 2024.**

1. The ELTIF shall, in its prospectus, include a description of the potential conflicts of interest which could arise between the AIFM ELTIF and (i) unitholders or (ii) the AIFM, management company, general partner, unitholder, depository and investment manager, ~~and/or its delegates or associated or group companies~~ and the ELTIF with details, where applicable, of how these conflicts might be ~~are going to be~~ resolved.
2. ~~The ELTIF shall, in its prospectus include~~ Aa description of soft commission arrangements which may be entered into by ~~an the ELTIF must also be included.~~
3. The ELTIF shall only enter into a transaction with, as appropriate, (i) its unitholders or (ii) its general partner, management company, depository, AIFM, unitholder, investment

manager, ~~and/or its~~ their delegate or associated or group companies), where there has been full disclosure in the ELTIF's prospectus.

**New Footnote: This requirement does not apply to transactions by unitholders in relation to their units. This includes subscriptions, redemptions, conversions or dividend payments.**

**Question 119: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

Irish Funds believe targeted updates to these provisions are required to ensure compliance in practice, is possible. Specifically, and to accommodate the Central Bank's request to include "unitholders" in this section, we do not believe it is appropriate to extend these requirements to "delegates and associated companies" of unitholders. From a practical perspective unitholders do not retain delegates in the same way as other service providers listed in this section and the community of associated companies of unitholders is not capable of ongoing definition and we do not expect this was an intended consequence of this change. Accordingly, we are suggesting the following changes to paragraphs 1 & 3 in this section are updated per below (see full mark-ups highlighted in yellow above):

" 1. The ELTIF shall, in its prospectus, include a description of the potential conflicts of interest which could arise between **the ELTIF and (i) unitholders or (ii) the AIFM**, depositary, management company, general partner, investment manager **(or their** delegates or associated group companies), with details, where applicable, of how these **conflicts might be** resolved."

"3. The ELTIF shall only enter into a transaction with, as appropriate **(i) its unitholders or (ii) its** general partner, management company, depositary, AIFM, investment manager **(or their** delegate or associated or group companies), where there has been full disclosure in the ELTIF's prospectus."

## 125. Warehousing disclosures

Amendment to require that disclosures in the prospectus include details around any fees, charges, or interest payable in relation warehousing. Additional editorial change where “fully disclosed” is replaced by “provided for”.

**Proposed amendment to ix. Warehousing, paragraph 1, page 227, AIF Rulebook March 2024.**

1. The ELTIF shall only acquire assets pursuant to a warehousing arrangement where the use of such arrangements is ~~fully disclosed~~ **provided for** in its prospectus, including details of any fees, **charges or interest** payable in relation to such arrangements.

**Question 120: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

**Yes**

**No**

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

## 126. Financial resources of investment companies

The requirements for AIFMs - including registered AIFMs and for an AIFM that is an internally managed AIF - are detailed in the AIFMD. These include requirements around initial capital and own funds, and around having sufficient management resources to effectively conduct its business and otherwise comply with AIFMD. Further clarification on these matters is no longer required and relevant provisions in the AIF Rulebook will be deleted.

Proposed deletion to i. Financial resources of investment companies, paragraphs 1 and 2, page 228, AIF Rulebook March 2024.

1. ~~Where the ELTIF is an investment company it shall have sufficient financial resources at its disposal to enable it to conduct its business effectively and meet its liabilities~~
2. ~~Where the ELTIF is an investment company which does not employ the services of a management company or an authorised AIFM it must:~~
  - a. ~~have a minimum paid up share capital equivalent to €125,000 within 3 months of authorisation; and,~~
  - b. ~~satisfy the Central Bank on a continuing basis that it has sufficient management resources to effectively conduct its business. and otherwise comply with the provisions of Section ii of Chapter 4 – AIF Management Company Requirements~~

**Question 121: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

**Yes**

**No**

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

## 127. Publication of annual and half-yearly reports

Clarifications are included in the current AIF Rulebook requirements around annual / half-yearly reports to align with other chapters in the AIF Rulebook. More precisely, text has been added to specify that reporting should refer to a reporting date within a specific period of time. Also clarification that reporting to the Central Bank is required within a specific timeline. 'Period' has replaced 'year' to reflect the fact that reporting is not always to a specific financial year. Update to reflect that an ICAV and Investment Limited

Partnership can now produce separate period reports for individual sub-funds.

**Proposed amendment to i. Publication of annual and half-yearly reports, paragraphs 4, 5 and 7, page 229, AIF Rulebook March 2024**

4. The ELTIF shall prepare ~~and submit to the Central Bank~~ a set of accounts (whether an interim report or an annual report) **to a reporting date** within 12 months of the ~~launch date~~ **first issuance of units by the ELTIF**, and publish it ~~and submit to the Central Bank~~ within 2 months if an interim report or 6 months if an annual report. The first annual reports must be **prepared to a reporting date** within 18 months of incorporation/establishment **of the ELTIF** and published **and submitted to the Central Bank** within 6 months. ~~The~~ **An** ELTIF established as a unit trust or common contractual fund shall publish and submit to the Central Bank its half-yearly report within 2 months of the end of the reporting period to which it relates.
5. The ELTIF shall publish and submit to the Central Bank its annual report within 6 months of the end of the financial ~~year~~ **period** to which it relates.
7. Where the ELTIF is an umbrella ELTIF constituted as a unit trust, ~~or~~ common contractual fund, **ICAV or ILP** it may produce separate periodic reports for individual sub-funds. In such cases, the report of each sub-fund must name the other sub-funds and state that the reports of such sub-fund are available free of charge on request from ~~the manager of the ELTIF~~.

**Question 122: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

- Yes  
 No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

No comments. Irish Funds agrees with the proposed amendment.

## 128. Annual report

Text has been updated for consistency with changes made in earlier sections of the AIF Rulebook.

**Proposed deletion to ii. Information to be contained in the annual report, paragraphs 2(a) and 2(j), pages 230-231, AIF Rulebook March 2024**

2. The ELTIF shall include the following in its annual report as well as any significant information which will enable unitholders to make an informed judgement on the development of the ELTIF and its results:

(a) ~~net asset value~~ NAV per unit, where relevant;

(j) the annual report must state whether:

- the ELTIF is satisfied that there are arrangements (evidenced by written procedures) in place, to ensure that the obligations set out in paragraph 1 of section 1.vii ~~Dealings by management company, general partner, depositary, AIFM, investment manager, unitholder or by delegates or group companies of these of this Part~~ Dealings by the ELTIF with (i) unitholders and (ii) the AIFM, depositary, management company, general partner, investment manager (or their delegates or associated group companies) are applied to all transactions with connected parties; and
- the ELTIF is satisfied that transactions with connected parties entered into during the period complied with the obligations set out in paragraph 1 of section 1.vii Dealings by the ELTIF with (i) unitholders and (ii) the AIFM, depositary, management company, general partner, investment manager (or their delegates or associated group companies) ~~Dealings by management company, general partner, depositary, AIFM, investment manager, unitholder or by delegates or group companies of these of this Part~~ Dealings by management company, general partner, depositary, AIFM, investment manager, unitholder or by delegates or group companies of these of this Part;

**New Footnote: This requirement does not apply to transactions by unitholders in relation to their units. This includes subscriptions, redemptions, conversions or dividend payments.**

**Question 123: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

Yes

No

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

Further to the response in respect of Q101 above, the bullet points appearing at paragraph 2(j) above should be updated as follows (full mark ups highlighted in yellow above):

- "the ELTIF is satisfied that there are arrangements (evidenced by written procedures) in place, to ensure that the obligations set out in paragraph 1 of section 1.vii "**Dealings by the ELTIF with (i) unitholders and (ii) the AIFM, depositary, management company, general partner, investment manager (or their delegates or associated group companies)**" are applied to all **transactions with connected parties**"; and
- "the ELTIF is satisfied that transactions with connected parties entered into during the period complied with the obligations set out in paragraph 1 of section 1.vii "**Dealings by the ELTIF with (i) unitholders and (ii) the AIFM, depositary, management company, general partner, investment manager (or their delegates or associated group companies)**;"

## 129. Half-yearly report

Text has been updated for consistency with changes made in earlier sections of the AIF Rulebook.

**Proposed deletion to iii. Information to be contained in the half-yearly report, paragraphs 1(c), 1(k) and 1(l), page 233, AIF Rulebook March 2024.**

1. The ELTIF shall include the following in its half-yearly report:

C. ~~net asset value~~ NAV per unit, **where relevant;**

k. where an ELTIF has paid or proposes to pay an interim dividend, the half-yearly report must indicate the results after tax for the half-year concerned and the interim dividend paid or proposed; **and**

l. the half-yearly report must state whether:

- the ELTIF is satisfied that there are arrangements (evidenced by written procedures) in place, to ensure that the obligations set out in paragraph 1 of section 1.vii **Dealings by the ELTIF with (i) unitholders and (ii) the AIFM, depositary, management company, general partner, investment manager (or their delegates or associated group companies)** ~~Dealings by management company, general partner, depositary, AIFM, investment manager, unitholder~~ **or by delegates or group companies of these of this Part** are applied to all transactions with connected parties; and
- the ELTIF is satisfied that transactions with connected parties entered into during the period complied with the obligations set out in paragraph 1 of section 1.vii **Dealings by the ELTIF with (i) unitholders and (ii) the AIFM, depositary, management company, general partner, investment manager (or their delegates or associated group companies)** ~~Dealings by management company, general partner, depositary, AIFM, investment manager, unitholder~~ **or by delegates or group companies of these of this Part**; and

**New Footnote: This requirement does not apply to transactions by unitholders in relation to their units. This includes subscriptions, redemptions, conversions or dividend payments.**

**Question 124: Do you agree with the above proposal to the relevant section of the Central Bank AIF Rulebook - March 2024?**

**Yes**

**No**

**If you have further comments, please provide with reference to the specific provision of the Central Bank AIF Rulebook - March 2024, and provide reasons for your answer.**

As also outlined in response to question 123, the bullet points appearing at paragraph 1(l) above should be updated as follows (full markups are highlighted in yellow above):

- the ELTIF is satisfied that there are arrangements (evidenced by written procedures) in place, to ensure that the obligations set out in paragraph 1 of section 1.vii Dealings by the ELTIF with (i) unitholders and (ii) the AIFM, depositary, management company, general partner, investment manager (or their delegates or associated group companies) are applied to all transactions with connected parties; and
- the ELTIF is satisfied that transactions with connected parties entered into during the period complied with the obligations set out in paragraph 1 of section 1.vii Dealings by the ELTIF with (i) unitholders and (ii) the AIFM, depositary, management company, general partner, investment manager (or their delegates or associated group companies) of this Part;

# Other Feedback

## 130. Other Feedback Question

**Question 125: Please provide any other feedback you may have on the AIF Rulebook.**

### **AIFM AIFMD II Transition Guidance**

To minimise disruption and provide supervisory certainty, we respectfully request early guidance, from the post-authorisation team responsible for AIFMs within the Central Bank - clarifying the process and timelines for Irish authorised AIFMs to transition to the new regime under AIFMD II. In particular, we ask the Central Bank to confirm that a streamlined filing process will apply to AIFMs that already manage loan-originating QIAIFs and that now need to add to their permission the new Annex I activity: “originating loans on behalf of an AIF.”

A significant cohort of Irish authorised AIFMs already perform loan-origination activity in accordance with approved programmes of activity and existing AIF Rulebook provisions (e.g., LO-QIAIF framework). This existing practice is recognised by Recital 5 of the amending directive (2024/927), “In order to enhance legal certainty, it should be clarified that the management of AIFs can also comprise the activities of originating loans on behalf of an AIF and of servicing securitisation special purpose entities”. For these AIFMs, the required change is a technical regularisation of permissions to mirror the new taxonomy in Annex I to AIFMD —not a change in business model or risk profile. A proportionate, streamlined path would therefore be consistent with regulatory continuity and supervisory efficiency.

We would welcome the Central Bank, at the earliest opportunity and ideally before the end of 2025 to allow firms to prepare, guidance confirming the following streamlined filing process for in-scope AIFMs, namely Irish authorised AIFMs that:

- (i) are already authorised and, where relevant, currently originate loans through one or more LO-QIAIFs under their approved programme of activity, and
- (ii) seek only to add one or more specific AIFMD Annex I activity/ies added by AIFMD II such as “originating loans on behalf of an AIF” (and any other changes related to AIFMD II and the updated AIF Rulebook) without material changes to their operating model.

The filing with the Central Bank would include:

- 1) Redlined programme of activity showing only the incremental Annex I/AIFMD II insertions;

2) A senior management attestation confirming that the changes to the programme of activity are limited to those related to AIFMD II and the updated AIF Rulebook.

The Central Bank could note the relevant changes and, where applicable, confirm existing activities will remain permitted ahead of relevant deadlines. This will avoid any “gap risk” of an AIFM not being in a position to continue existing activities (e.g., managing an existing AIF that engages in loan origination), which would ultimately not be in the interests of investors. It would also be helpful for the Central Bank to note that there will not be a requirement for any subsequent filings to be made once AIFMD II is transposed into law.

### **Transitional Period**

We would propose an orderly transition window, with optional early adoption for AIFs that are in existence prior to the publication of the final revised AIF Rulebook. To ensure an orderly transition to the updated AIF Rulebook once finalised, we respectfully request that the Central Bank provide a 12-month transitional/grandfathering period for existing Irish-authorized AIFs to align with the new requirements. During this period, AIFs could choose to early-opt-in (on a per-fund basis) via the standard post-authorisation filing process with a short attestation by the AIFM that all applicable new requirements have been implemented. This would enable time-critical initiatives to move promptly, while allowing other AIFs to complete necessary governance and investor engagement steps, where required, in an orderly manner (e.g., constitutional amendments, prospectus updates, depositary/administration agreement updates, and policy rewrites). We recognise the Central Bank may wish to designate a limited subset of changes as “day-one” to promote consistent supervisory outcomes (e.g., clarificatory items that are operational and do not require constitutional or investor approval). Certain other measures are permissive measures that provide for additional flexibility or clarity and may not necessitate any immediate amendments to fund documents except to the extent that AIFs wish to avail of such additional flexibility (e.g., amendments to the management exemption from minimum subscription limits; clarification of provisions around capital commitment and drawdown arrangements; removal of the restriction on QIAIFs granting loans and acting as guarantor). All other measures that may necessitate governance processes (e.g., updates to prospectus or constitutional documents, which may require engagement with and/or approval of unitholders, or changes to policies and procedures) should be phase-in eligible for the 12-month window, without undermining prudential oversight or investor protection, provided that they adhere to existing AIF Rulebook requirements during that window. This approach mirrors the pragmatic transitional arrangements used when the Central Bank migrated from the Non-UCITS Notices to the AIF Rulebook at the first AIFMD iteration, when

grandfathering and Q&A/guidance were employed to facilitate an orderly migration of legacy funds to the new regime without disruption to investors.

Examples of the measures that we suggest should be subject to an orderly transition window are as follows:

1. amendments to the governing documents to reflect the requirements of the revised AIF Rulebook;
2. the inclusion of disclosure in prospectuses regarding the use and purpose of intermediary investment vehicles and the introduction of documented policies and procedures related to due diligence, oversight and active monitoring of intermediary investment vehicles;
3. removal of provision for bearer securities in QIAIF constitutional documents, to the extent currently provided for;
4. removal of limitations on temporary suspension for ILPs;
5. inclusion of “any additional information relevant to the valuation of assets” in the prospectus;
6. amendments to the conflicts of interest disclosures in prospectuses;
7. amendments to the disclosures in prospectuses regarding preferential treatment;
8. amendments to prospectuses to include the language “an umbrella fund with segregated liability between sub-funds” in the prospectus of an ILP, ICAV, unit trust or common contractual fund; and
9. amendments to prospectuses to include disclosure regarding charges or interest payable in respect of warehousing arrangements.

Irish Funds would request the Central Bank consider that the aforementioned revisions could be incorporated as part of any revisions to the constitutional documents/prospectus required to address the AIFMD II LMT provisions in line with applicable transitional periods provided for in such legislation, regulatory technical standards and guidelines. so as to avoid documentation being updated twice within a short time frame.

We further request that existing Irish-authorized AIFs that are closed to new investors and/or are dormant or in wind-down be permitted to avail of a permanent grandfathering arrangement such that they would not be required to incur expense in making updates to

their constitutional documents or prospectuses.

### **Outsourcing**

Article 20(6a) (as inserted into AIFMD by AIFMD II) provides as follows:

*“6a. By way of derogation from paragraphs 1 to 6 of this Article, where the marketing function referred to in Annex I, point 2(b), is performed by one or several distributors which are acting on their own behalf and which market the AIF in accordance with Directive 2014/65/EU or through insurance-based investment products in accordance with Directive (EU) 2016/97 of the European Parliament and of the Council\*, such function shall not be considered to be a delegation subject to the requirements of paragraphs 1 to 6 of this Article irrespective of any distribution agreement between the AIFM and the distributor.”*

To avoid a potential mismatch between EU and domestic law we would suggest that the Central Bank issue an addendum/clarification in respect of its outsourcing guidance to clarify that the arrangements referred to in Article 20(6a) would equally not be considered to be an outsourcing within the meaning of the guidance.

### **Qualifying Investor AIFs which invest more than 50% of net assets in another investment fund**

We note the proposal to update the definitions section of the AIF Rulebook, and in particular the definition of Category 1 investment fund (to reference certain funds based in Hong Kong) and we agree with this update. However, in this respect, we note that the defined term of Category 1 investment fund is limited to use in Chapter 1 (Retail Investor AIF Requirements) and would note that a similar amendment should be made to the list of Category 1 funds in Chapter 2 (Qualifying Investor AIF Requirements), Part II, Section 2, paragraph 3.

In addition, we request the following changes in relation to the aforementioned section of the AIF Rulebook:

The AIF Rulebook currently requires certain criteria to be complied with where a QIAIF wants to invest more than 50% of its assets into another investment fund. The 50% threshold set out within the AIF Rulebook is inconsistent with the definition of “Feeder AIF” within the AIFMD (where the threshold is set at 85%) and accordingly, can lead to queries as to why there are two different sets of feeder fund rules in Ireland (i.e. applying an 85% threshold and a separate 50% threshold). The current 50% threshold can also lead to challenges in a

fund of funds model, in particular in the initial ramp up phase for such fund or funds, where the fund can breach the 50% limit temporarily. This can lead to overly complicated disclosures where the fund is both a feeder fund (initially) and then a fund of funds (in due course), even though in practice it is a fund of funds. We believe that the feeder fund threshold of 85% set out in the AIFMD is more appropriate and would provide certain private asset sponsors with additional flexibility in structuring future fund of funds. Accordingly, we request that the current threshold of 50% set out in the AIF Rulebook be increased to 85%.

The same section of the AIF Rulebook also provides a list of eligible Category 1 and Category 2 funds into which a QIAIF may currently invest more than 50% of its assets, subject to compliance with certain criteria. The current list of Category 1 funds in the aforementioned section, captures EU-based funds which are (i) UCITS and (ii) authorised AIFs. We also request that the last item in the current list of Category 1 funds, being “*authorised AIFs*”, be updated to read “*authorised AIFs and EU AIFs with an EU-authorised AIFM*”. In this respect, we note that EU AIFs which are required to appoint an EU AIFM, are subject to materially similar investor protection requirements (in terms of transparency, risk management, liquidity management and valuation and the appointment of a depositary etc) to those AIFs which are authorised / regulated by an EU regulator. In light of this, we would request that the change outlined above is made.

However, it is important to clarify that we do not believe that the category restrictions for QIAIFs investing more than 50% in any one underlying are necessary or proportionate for QIAIFs which are by their nature restricted to sophisticated investors subscribing or committing a minimum of €100,000 each. Such investors can be assumed to understand the risks of investing in a QIAIF which invests more than 50% in an underlying fund which does not meet the Category 1 or Category 2 criteria of the current AIF Rulebook. The offering document for any such QIAIF would by necessity disclose all relevant details and risks in relation to the underlying fund, including its domicile, regulatory status and the appointment (or not) by it of an independent depositary (or equivalent). From a safekeeping/verification of assets perspective, we would note that AIFMD requires the depositary of a feeder QIAIF (or fund or funds) to look through to the assets of any underlying master fund which has not appointed its own depositary, so the issue of safekeeping of assets is already addressed by AIFMD. In addition, QIAIF funds can invest directly without diversification or regulatory leverage limits in almost any asset class or strategy which an unregulated master fund could invest (with a few obvious exceptions), so it is unclear what purpose this rule is serving in terms of investor protection, as investors in a QIAIF can get exposure to such assets and strategies in this manner.

With respect to paragraph 8 of the aforementioned section of the AIF Rulebook, the AIF Rulebook currently restricts a QIAIF from investing in another fund which itself invests more than 50% of its assets in another investment fund (which applies, for example, even if all three funds are regulated by the Central Bank or another EU regulator). Private asset structures have grown in recent years, and often now include funds with different corporate and tax features (e.g. partnerships and corporate fund structures) in order to optimise the structure for different types of investors who may invest in the fund. Prior to establishing a new fund, private asset sponsors will spend considerable time in analysing the available options and determining the optimal structure and it is very common for an overall fund structure to include more than two layers of master/feeder entities. The current restriction in paragraph 8 limits the options available to private asset sponsors wishing to establish fund structures in Ireland with any clear benefits. The addition of a further entity / intermediate fund vehicle within a structure, will not materially prejudice the interests of investors, and if included within the structure will generally improve the economic benefits to investors within the fund. The Depositary's safekeeping and asset verification obligations will continue to apply, in accordance with the AIFMD Level 2 Regulation, throughout the relevant fund structure, and each AIF within the structure will be subject to the applicable investor protection requirements set out in AIFMD.

While there is currently a restriction set out in Chapter 2 (Qualifying Investor AIF Requirements), Part II, Section 2, paragraph 8, as outlined above, there is a contradictory provision in Chapter 2 (Qualifying Investor AIF Requirements), Part I, Section 3, paragraph iii, 2 (Investments in other investment funds) which provides that "*Where the Qualifying Investor AIF is a fund of funds it may only invest in another investment fund which itself invests more than 50% of net assets in other investment funds where the Qualifying Investment AIF has made clear disclosure regarding increased costs and lack of transparency concerning the ultimate exposure. Any such investments must not be made for the purpose of duplicating management and/or investment management fees.*" This provision clearly permits a QIAIF investing in another fund which itself invests more than 50% of net assets in other funds, provided that there is appropriate disclosure regarding the costs and expenses of such structures, and there is no duplication of management fees. This is an appropriate requirement and accordingly, we request the aforementioned contradictory paragraph 8 be deleted.

Irish Funds would also propose that the following change (highlighted in yellow) be incorporated into paragraph 7 of the section "Qualifying Investor AIFs which invest more than 50% of net assets in another investment fund".

*Paragraph 2 of this section does not apply in circumstances where:*

- the Qualifying Investor AIF has a minimum subscription limit of €500,000 or its equivalent in other currencies. The aggregate of an investor's investments in the sub-funds of an umbrella Qualifying Investor AIF cannot be taken into account for the purposes of determining this requirement. The amounts of subsequent subscriptions from unitholders who have already subscribed the minimum subscription of €500,000 are unrestricted. Institutions may not group amounts of less than €500,000 for individual investors; and*
- the prospectus for the Qualifying Investor AIF contains a detailed and prominent disclosure which identifies on an item-by-item basis those obligations and conditions which apply to the Qualifying Investor AIF and its AIFM but which do not apply to the underlying **unregulated** investment fund and its management company.*

The rationale for this amendment is that the derogation from the provisions of paragraph 2 (and related paragraphs 3, 4 and 5) may be availed of where the underlying fund in which the QIAIF invests constitutes a "Category 1" investment fund or a "Category 2" investment fund provided that in each case, the QIAIF complies with the minimum subscription of €500,000 and the additional "item-by-item" disclosure obligations detailed in paragraph 7 above.

Subject to satisfying the requirements set down in paragraph 7, this flexibility should be afforded to a QIAIF investing in any type of underlying fund, whether that is (i) a Category 1 investment fund, (ii) a Category 2 investment fund or (iii) a fund which does not constitute a Category 1 or a Category 2 investment fund.

Finally, the restrictions in paragraphs 6 & 9 of the Rulebook in relation to attaching the periodic reports of the master fund should be removed. Compliance with the relevant legislative requirements and the chosen accounting framework will ensure that the standalone financial statements of the feeder fund provide the investors with all the necessary information in order for them to have a true and fair view of the performance and financial position of the feeder fund.

Further to the above Q&A ID 1095 should also be deleted.

### **Retail Investor AIF (RIAIF)**

Irish Funds' position to date has been to seek certain targeted amendments to the RIAIF

chapter as part of the implementation of AIFMD (and CP 162). However, we understand that the Central Bank's preference is for a broader review of the RIAIF chapter and while Irish Funds welcomes this, we would urge the Central Bank not to delay commencing this review and implementing much-needed reforms to the RIAIF product. Further development of the RIAIF will not only complement the growth of the European Long-Term Investment Fund (ELTIF 2.0) for retail investors in Europe, but will also help to support the Savings and Investment Union (SIU) initiative. We believe the asset classes which an amended RIAIF and retail ELTIF regime offers present significant potential for growth and a key means of delivering on SIU's aims to channel European savings as effectively as possible to strategic investments to grow household wealth and plan for retirement, offer more alternative sources of financing to European businesses and drive greater competitiveness and productivity.

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