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Our Ref | Your Ref | 11 December 2012

Dear Sirs

Response to Consultation on implementation of Alternative Investment Fund Managers Directive - CP60

We welcome the opportunity to comment on the revised framework for the regulation of non-UCITS investment funds, in anticipation of the implementation of the Alternative Investment Fund Managers Directive ("**AIFMD**"), drafted by the Central Bank of Ireland (the "**Central Bank**") and set out in Consultation Paper CP60 ("**CP60**").

The Asset Management and Investment Funds Group at Matheson comprises eight partners and 40 fund professionals in total. Our lawyers have legal and regulatory expertise in all aspects of Irish UCITS and non-UCITS investments funds and our client portfolio includes a number of Europe's largest hedge fund managers. We act on behalf of clients representing approximately 28 per cent by net asset value of all Irish domiciled funds as at 30 June 2011.

We support the approach adopted by the Central Bank of setting out all of the applicable rules in a single handbook (the "**Handbook**") consolidating all existing notices, guidance notes and policy documents. We also welcome the significant enhancements to the funds regime represented by the proposals to remove the promoter approval process, removal of prime broker and counterparty credit rating requirements and the provision for the fair, as opposed to equal, treatment of investors in different share classes. We regard these as very positive developments.

We have taken the opportunity you have provided for feedback to share with you our views on certain elements of the proposals which we believe could benefit from further consideration and scrutiny. We have set out in Schedule 1 our comments in relation to specific questions raised by the Central Bank in CP60 and have included in Schedule 2 our comments on specific chapters of the Handbook.

Dublin London New York Palo Alto

Chairman: Sir Anthony O'Reilly - Managing Partner: Liam Quirke - Partners: Pauline O'Donovan, Robert Heron, Patrick Sweetman, Brian Buggy, Paul Glenfield, Michael Jackson, Chris Quinn, Tim Scanlon, Helen Kelly, Sharon Daly, Ruth Hunter, Tony O'Grady, Paraic Madigan, Michael O'Connor, Tara Doyle, Anne-Marie Bohan, Patrick Spicer, Turlough Galvin, Patrick Molloy, George Brady, Bríd Munnelly, Robert O'Shea, Joseph Beashel, Deirdre-Ann Barr, John Dunne, Damien Keogh, Cara O'Hagan, Dualta Counihan, Barry Lynch, Ronan McLoughlin, Niall Horgan, Deirdre Dunne, Alistair Payne, Fergus Bolster, Christian Donagh, Bryan Dunne, Libby Garvey, Shane Hogan, Peter O'Brien, John O'Connor, Thomas Hayes, Nicola Dunleavy, Julie Murphy-O'Connor, Helen Noble, Alan Connell, Bonnie Costelloe, Brian Doran, John Gill, Alan Chiswick, Joe Duffy, Pat English, Carina Lawlor, Shay Lydon, Aidan Fahy, Niamh Counihan, Gerry Thornton, Liam Collins, Darren Maher. - Tax Principals: Anthony Walsh, Greg Lockhart, John Kelly, Catherine Galvin. - London: Stanley Watson. - New York: John Ryan. - Palo Alto: Mark O'Sullivan. Of Counsel: William Prentice, Roderic Ensor. - Consultants: Arthur Moran, Emer Hunt, Frank Nowlan, Elizabeth Grace, Michael Tyrrell, Graham Richards, James Hickey, Don McAleese, Stuart Margetson.

We have also been actively involved in the preparation of the Irish Funds Industry Association's ("**IFIA**") response to CP60 and support the detailed submissions made in that response. We have sought to highlight in this submission the elements of the proposals which we feel are most important and most in need of further review and consideration.

While we have discussed a number of the issues arising from CP60 with our clients, please note that the below comments represent our own views and do not necessarily reflect the views of our clients.

We are committed to advocating positive change at industry level, and we would be more than happy to discuss any of the points raised in this response in further detail over the phone or in person with you. In this regard, please do not hesitate to contact Shay Lydon of this office at shay.lydon@matheson.com or on +353 1 232 2735.

Yours faithfully

Sent by email, bears no signature

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SCHEDULE 1

Question 1

Promoter regime

We support the proposal to eliminate the promoter approval process in light of the significantly enhanced prudential and supervisory requirements imposed on alternative investment fund managers ("**AIFM**") by the AIFMD. In particular, we note that the AIFMD imposes a number of requirements on the AIFM in respect of a broad range of matters relating to each alternative investment fund ("**AIF**") under management. These include procedures in respect of risk management; maximum leverage; liquidity management; disclosure to investors; detailed reporting to competent authorities; a robust authorisation process and capital adequacy requirements; the requirement to have additional own funds / insurance cover in place to cover the risks arising from professional negligence; and strict delegation provisions. The provisions relating to the depositary liability regime and depositary functions in the AIFMD provide further safeguards to ensure the protection of AIFs and their investors. We believe that these provisions provide a comprehensive framework for investor protection and the avoidance of systemic risk and obviate the need for the promoter approval process.

We also submit that the various factors outlined above would also justify a decision to remove the promoter approval requirements in the context of UCITS structures. UCITS funds are even more strictly regulated than AIFs and the UCITS regime contains a number of provisions which ensure that investor protection is paramount. Therefore, we would argue that promoter approval should no longer be required for all funds, UCITS and non-UCITS alike. In this regard we note the decision of the Luxembourg CSSF of 31 October 2012 to repeal the requirement of a promoter as from 30 June 2013 for UCITS which have designated a Chapter 15 management company or which are self-managed.

We note also the proposal to clarify the obligations of directors when an AIF gets into difficulties. In this regard, we believe that it is dangerous for requirements within the Handbook to incorporate prescriptive rules in this regard. This is on the basis that directors remain subject to substantive regulatory obligations and legal duties under company law, common law and in accordance with the provisions of any relevant corporate governance code to manage the AIF in all situations, including where the AIF "gets into difficulties". Furthermore, if the Central Bank is not satisfied with how a particular director acts in a distressed situation, the Central Bank can communicate this to the relevant board at the time and may also take this into account in future Fitness and Probity applications.

Question 2

Investment in unregulated investment funds

This is an area where we have significant concerns. The Handbook proposes to apply stricter requirements to master-feeder funds than those which apply under the AIFMD. In particular, we note that the Central Bank proposes to apply a threshold of 50% for Qualifying Investor AIFs ("**QIAIFS**") in order to be considered a feeder AIF, whereas the relevant threshold is set at 85% in the AIFMD.

We believe that applying a different threshold at a national level to that contained in the AIFMD would directly conflict with some requirements of the AIFMD, particularly in the case of those Irish AIFs which propose to invest more than 85% of their assets in a master fund (and, hence, fall under the master-feeder provisions of AIFMD). For example, Article 35 of the AIFMD provides that member states "shall ensure" that an authorised EU AIFM may market to professional investors in the Union, units or shares of non-EU AIFs that it manages and of EU feeder AIFs which have non-EU master AIFs provided a number of conditions are met. The wording of this article is mandatory and does not confer a discretion on member states. Nor does the Article contain a provision permitting member states to impose stricter requirements (as expressly provided for in Article 36(2)[1] for example). We are not aware of any other member state which has proposed to introduce additional requirements for AIFs which fall below the 85% threshold in AIFMD. We note, for example, that the Financial Services Authority ("**FSA**") in the United Kingdom in Consultation Paper CP 12/32 on Implementation of the Alternative Investment Fund Managers Directive (CP 12/32) ("**UK Consultation**") has adopted the 85% limit. We are aware of the IFIA's concern that the insertion of existing provisions of Guidance Note 1/01 on Feeder Schemes and Fund of Funds Schemes into the Handbook will send out a misleading message that Ireland is a more difficult jurisdiction in which to create a master-feeder or fund of fund structure and we are equally concerned in this regard. Accordingly, we would urge the adoption of a definition of a feeder AIF which is consistent with that in AIFMD.

We acknowledge that the Central Bank's proposals in this area are driven by a concern to ensure that Irish AIFs are not capable of being used as regulated "wrappers" for unregulated funds. Accordingly, if the Central Bank believes that it is absolutely necessary to diverge from the harmonised standards proposed in AIFMD, we believe that it may be possible to address the Central Bank's concerns by introducing safeguards other than those appearing in Guidance Note 1/01 to address concerns in relation to diversification or other factors. We note that the IFIA have proposed the procedures which the Irish Stock Exchange has successfully operated in respect of "control agreements" between a feeder and its relevant master fund as a template which it might be possible to adapt for those funds which have invested more than 50% and less than 85% of their net assets in unregulated master funds. However, we believe that any rules which are to be applied to the master funds should be proportionate and should not be more onerous than those applied under AIFMD to those funds above the 85% threshold.

We also acknowledge that some QIAIFs will not have a "Full AIFM" as defined in the Handbook. As the full safeguards for investor protection contained in the AIFMD would not apply in these situations, we accept there may be a need for national rules to address concerns which may arise in respect of those AIF.

Finally, while Question 2 refers to QIAIFs only, similar considerations may apply to Retail Investor AIFs ("**RIAIF**") marketed to professional investors, which the Handbook proposes to treat as feeder funds where they invest more than 30% of their assets in another investment fund.

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[1] Article 36(2): Member States may impose stricter rules on the AIFM in respect of the marketing of units or shares of non-EU AIFs to investors in their territory for the purpose of this Article.

Question 3

Side-pockets

We welcome the Central Bank's proposals to consider whether a QIAIF should be permitted to purchase assets and immediately place these assets in side-pockets. The IFIA have commented as to how this option might operate in practice and we fully support the IFIA approach in this regard

Question 4

Initial Offer Periods for certain Private Equity Funds and Real Estate Funds

We welcome the Central Bank's proposals to consider a longer initial offer period for certain private equity and real estate funds. It is common practice in private equity funds that units issued in the course of the initial marketing period of a private equity fund be issued at a fixed price and we should ensure that Ireland is able to offer fund sponsors and investors a solution that matches their expectations. As noted by the IFIA in its response, a number of rebalancing mechanisms have evolved over time to ensure that incoming and existing investors are treated fairly in the event of subsequent investment. These include the imposition of subscription charges for subsequent investors and / or the distribution of previous gains to existing investors (with the option to re-invest such distribution), in order to allow early investors to realise the value of any gains made since their initial investment and to ensure that the NAV per share is consistent the proposed fixed price. We agree with the IFIA that this flexibility should be available for a longer period than the two years proposed in CP60.

Question 5

Professional Investor Funds ("PIFs")

We recommend that existing PIF umbrella funds should be permitted to continue to launch new-sub funds (and not just for a limited grandfathering period).

Promoters who have spent investors' time, money and resources setting up an umbrella PIF in accordance with the Central Bank rules that applied at the time should not be required to incur further expenditure (of their own, or their investors and future investors) in launching new QIAIF or RIAIF umbrellas or converting to QIAIF or RIAIF status. Certainty of regulation is an important feature for any jurisdiction and so in the absence of a compelling reason, such as an obligation under AIFMD, promoters who have established PIF umbrella funds need to be able to continue to use their existing platforms. Existing PIFs which may launch new sub-funds in the future ought to be accommodated by including a cross reference in the Handbook to the existing body of guidance governing PIFs. It should not be necessary to incorporate the existing PIF rules into the Handbook as no new umbrella PIFs will be launched.

Questions 6 to 10

Retail Alternative Investment Funds

We welcome the introduction of the RIAIF regime and agree that it is appropriate that this regime be structured so that it occupies a place in the regulatory spectrum between UCITS and QIAIFs. In this regard, it is worth noting that the existing category of retail non-UCITS were permitted to invest in a number of instruments which were initially ineligible assets for UCITS, although developments in UCITS over time effectively meant that the retail Non-UCITS became redundant due to its relative inflexibility.

Accordingly, we believe that the RIAIF should be designed so that it will be of interest to investment managers and investors who cannot fit their investment strategy within a UCITS framework. In the context of Questions 6 to 10 of CP60, this means that we would support the ability of RIAIF to invest in such assets classes as unlisted securities, real estate, commodities, bank loans and other non-financial assets. We believe that, with proper disclosures, investors in RIAIFs would be able to understand the nature of partly paid shares or commitment agreements. We also believe that RIAIFs should be permitted to invest in financial derivative instruments ("**FDI**") and that, while the work conducted by ESMA in relation to the use of FDI and risk management procedures in the context of UCITS may provide a useful framework, the RIAIF structure should offer enhanced flexibility and ability to adapt to evolving markets than is the case for UCITS.

We agree that there should be suitable risk warnings in all RIAIF products, which take account of the retail investor base of such funds. However, we believe that the identification of relevant risks and insertion of appropriate risk warnings is a matter for the board of the AIF, in conjunction with its AIFM, investment manager (if functions are delegated) and other service providers. To require the insertion of specific risk warnings in relation to specific emerging markets or types of asset class could result in those particular asset classes receiving a greater prominence than may be warranted in light of the composition of the portfolio as a whole.

Question 11

Sub threshold AIFMs

AIFMs below the thresholds prescribed in Article 3

We do not agree that all RIAIFs and QIAIFs should be subject to all AIFMD requirements on the basis that they are authorised investment funds. The AIFMD seeks to regulate AIFM, and not AIF, and therefore it may not be appropriate to apply many of the AIFMD provisions at the level of the AIF.

In particular, the Central Bank proposes to apply the full range of AIFMD requirement to AIFMs with assets below the €100m / €500m thresholds set out in AIFMD, rather than providing that such AIFMs will be subject to the registration process contemplated in Article 3 of AIFMD. While AIFMD does allow member states to introduce stricter rules than are outlined in Article 3(3), we believe that these provisions constitute a clear recognition by European legislators that it is appropriate to exempt smaller managers from the full extent of the AIFMD. The relevant thresholds are quite low and the

provisions acknowledge that such smaller managers are unlikely to constitute a source of potential systemic risk or to have the resources to grow to a viable size if they are required to comply with the full rigours of AIFMD from launch. We believe that smaller managers ought to be facilitated in order to foster growth and competition in the industry and that it would be highly counterproductive for Ireland's position as the leading onshore domicile for alternative investment fund products to apply a regime which would effectively discourage such managers from choosing to launch their products here. Irish service providers have accumulated significant experience in the provision of administration, custody, audit, risk management and legal services to managers, ranging from start-up entities right through to the largest global investment managers and the Central Bank's acknowledged position as a leading regulator at European level in the area of asset management is also due to the depth and breadth of managers and promoters domiciling funds in Ireland. We should ensure that Ireland remains a market leader for managers at all phases of their development. To the extent that these smaller managers grow and develop to the extent that their assets under management exceed the prescribed thresholds, then the full extent of the AIFMD will apply.

In this regard, we note that Luxembourg have proposed to apply similar rules to those applicable under their current regime to SIFs and SICARs which are managed by sub-threshold AIFMs, while introducing some adjustments such as new eligibility criteria for depositaries. We submit that a similar approach ought to be adopted in Ireland.

Non-EU AIFMs managing Irish AIF

While Question 11 only refers to AIFMs falling below the thresholds specified in the AIFMD, we submit that there is a further category of AIFM to be considered, namely non-EU AIFM managing Irish AIFs, which are not marketed in Ireland or the EU (for example, a US investment manager which manages an Irish AIF which is sold only to Asian investors).

A QIF managed by such an AIFM falls entirely outside the scope of AIFMD and no additional AIFMD related requirements should apply to the Irish AIF managed by such non-EU AIFM. These AIFs should be permitted to continue to carry out their activities on the same basis as they have done to date and this could be achieved by either confirming that they will continue to remain subject to the existing QIF rules or, alternatively, confirming the provisions of the Handbook which will apply to them (and which should essentially constitute those provisions which codify the existing QIF rules). We understand that Luxembourg has expressly recognised this point by confirming that only the existing provisions of their rulebook in relation to SIFs and SICARs will apply to entities which fall outside the scope of AIFMD in this manner. We believe that the number of AIFs falling within this category to be substantial. The application of the full extent of the AIFMD rules would be entirely disproportionate and may lead to the managers of such AIFs reconsidering their activities in Ireland. This category of AIFM is considered further below in the context of our comments on Chapter 2.

Question 12

Exempt Unit Trusts

We note the comments of the IFIA in relation to this question and agree that it would be preferable for Exempt Unit Trusts to remain outside the scope of the current regulatory regime.

Question 13

Calculation of Performance Fees

We support the proposal that the verification of performance fees may be conducted by an entity other than the depositary. We believe that there may be a number of entities with sufficient expertise to perform this function, including third party entities providing administration, consulting, valuation or audit services, provided always that there is no conflict of interest in their provision of services to the relevant AIF.

Question 14

Inclusion of Portfolio Statements in Periodic Reports

We support the proposal to permit the inclusion of a condensed portfolio statement in periodic reports for QIAIFs and believe that this should also be extended to RIAIFs.

Question 15

Provisions in relation to publication of Net Asset Value

We note the response of the IFIA in relation to this query and, in particular the reference to the oversight, control and management functions set in Chapter 5, Annex II of the Handbook.

Question 16

Are there any other initiatives, options or changes ought to be considered?

There are a number of matters which we have identified in this regard, and we recommend that the following should be considered:

- ***Inward marketing rules***

  Inward marketing rules should be included in the Handbook to address scenarios where inward marketing on a private placement basis may arise eg, EU AIFM managing non-EU AIF marketing into Ireland.

- ***Authorisation Procedures***

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The authorisation procedures ought to be finalised as soon as possible, in consultation with industry, in order to determine how the authorisation procedures can be streamlined to the fullest extent possible. In particular, consideration ought to be given to retaining the material aspects of the current fast-track / self-certification process applicable to Qualifying Investor Funds. This may involve standard checklists, application documents and “programme of activity” / business plan templates in order to ensure that the authorisation process is as efficient as possible and that AIFMs can receive authorisation as soon as possible following implementation of AIFMD in July 2013.

- ***Closed-ended Funds***

  The provisions of Article 61(3) and 61(4) which permit AIFMs of certain closed ended funds to continue to manage such AIFs without authorisation have not been addressed in CP60.

- ***Self-managed AIF***

  Given that we expect a significant number of Irish AIFs to be constituted as self-managed / internally-managed AIFs, it would be worthwhile to have the AIF Handbook address this category either throughout the relevant sections of the Handbook or in a dedicated section which explains those provisions which are inapplicable or amended in the case of a self-managed AIF.

- ***Central Bank definition of “Qualifying Investors” v AIFMD definition of “Professional Investors”***

  The AIF Handbook provides that a unitholder in a QIAIF must be:

  (a) an investor who is a professional client within the meaning of Annex II of Directive 2004/39/EC (Markets in Financial Instruments Directive); or

  (b) an investor who 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 QIAIF; or

  (c) an investor who 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 QIAIF.

In the AIFMD, “professional investor” is defined as “an investor which is considered to be a professional client or may, on request, be treated as a professional client within the meaning of Annex II to Directive 2004/39/EC.” The availability of the passport under the AIFMD only applies where the AIF is marked to professional investors in the EU. The ability to market to

investors in QIAIFs that fall into categories (b) and (c) will depend on private placement rules as applied under Article 43 of the AIFMD – Marketing to Retail Investors. We would ask that the Central Bank to confirms its position on this point and at the very least confirm that QIAIFs may be marketed to investors in categories (b) and (c) on a private placement basis and that the introduction of the new rules will not impact marketing to existing investors

- ***Origination of Loans***

  We welcome the confirmation by the Central Bank that it proposes to revisit the question of the origination of loans and lending by QIAIFs in 2013. We have a number of clients with existing Irish collective investment schemes and a positive view of Ireland as a fund domicile who have launched their bank loan funds elsewhere due to the Central Bank's existing restriction on the origination of loans. We believe that the ability to originate loans would offer Irish collective investment schemes additional protections (in terms of privity of contract and the ability to ensure appropriate representations and covenants) over and above those which would apply where loans are acquired on the secondary market. Accordingly, we believe that this restriction, which is derived from the provisions of the UCITS Directive, should be disapplied for QIAIFs.

- ***Issuance of Debt Securities***

  We also support the proposal by the IFIA that the Central Bank revisit the ability of AIFs to issue debt securities and will be happy to work with industry and the Central Bank in relation to this particular point.

Question 17

Transitional Issues

We note that the Central Bank has confirmed that the AIFM must be identified in the case of each AIF and consideration given to the need to update AIF documentation, including any changes necessary to reflect changes to contractual arrangements.

Final deadline for Transition

CP60 asks whether there are any transitional measures that the Central Bank should consider in order to facilitate an orderly transition for existing non-UCITS investment funds into the new regime.

In terms of transitional arrangements, CP60 refers to the "date on which the new regime is applicable". However, there is still significant uncertainty as to when AIFM will have to comply with the provisions of the AIFMD, particularly in the case of existing AIFMs and AIFs. Given the amount of work to be undertaken and the volume of changes to be processed in order to comply with the AIFMD requirements, we believe that the Central Bank should allow existing AIFMs and AIFs as much time as is possible within the framework of AIFMD to comply with the new regime.

In this regard, we believe that the intent of Article 61 is to allow all existing AIFMs and AIFs until 22 July 2014 to complete their application for authorisation and comply in full with the provisions of AIFMD. This approach is consistent with the approach taken by the FSA in the UK Consultation[2] and we would request that the Central Bank issues similar clarification in the context of the Handbook. We understand that the Central Bank is awaiting guidance at European level on the interpretation of Article 61 and would encourage the Central Bank, through ESMA, to seek consensus on this interpretation in order to allow an orderly transition to AIFMD by existing AIFMs, AIFs and their service providers.

CP60 does not include a section dealing with transitional arrangements and we believe that this should be specifically addressed, either as a separate section of the Handbook or in the introduction to relevant Chapters of the Handbook. In practice, this may mean retaining the existing non-UCITS Notices and Guidance Notes in place for the duration of the one-year transitional period. We also believe that existing AIFs which are structured as umbrella QIFs should be permitted to continue to launch additional sub-funds over the transitional period without having to make a formal AIFM application and that these funds will be able to continue to avail of private placement when marketing.

Twin-track Transitional Measures

We are also conscious that there are some managers who will wish to be “early movers” on AIFMD and to comply immediately with the new requirements in order to avail of the passport. Accordingly, we submit that the transitional measures should facilitate both “early movers” and “late movers”. To this end, we advocate a parallel / twin track approach to allow AIFM who wish to do so to comply and apply immediately for authorisation in order to avail of the AIFMD passport while also permitting existing AIFM to avail of the full twelve-month transitional period. In particular, we submit that any early movers should be permitted to apply for authorisation in advance of 22 July 2013 so that they can avail of the marketing passport immediately. They should not have to wait until the expiration of the three month period beginning on 22 July 2013. This accommodation of early movers would enable Ireland to reap the maximum benefit of being “AIFMD ready”.

CP60 enhancements which are not contingent on AIFMD

CP60 and the Handbook introduce some additional flexibility in terms of the ability to have differing treatment of share classes and other concepts, some of which are not necessarily contingent on the existence of an authorised AIFMD in the structure. We submit that AIFs should be able to avail of these enhancements, either generally or on a case-by-case basis, in advance of 22 July 2013 in order to encourage product development in the first half of 2013.

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2. Chapter 2, section 5 of the UK Consultation, dealing with transitional arrangements, states that the AIFMD “*allows firms that are already managing or marketing AIFMs, before 22 July 2013, a transitional period of twelve months to comply with the relevant laws and regulations and to apply for authorisation. The Treasury regulations propose that a firm carrying on the activity of managing one or more AIFs as at 22 July 2013 will be permitted to continue its collective portfolio management activities, subject to the Handbook rules applying immediately before that date. A firm which currently carries on business as an AIFM without needing a Part IV permission –for example, an internally managed investment company – will be able to benefit from this transitional period. All these firms, however, must be AIFMD-compliant and have submitted an application for authorisation by the end of that 12 month period*”.

SCHEDULE 2

Chapter 1

Retail Investor AIF Requirements

We note and support the comments of the IFIA on this Chapter. As noted in our responses on Questions 6 to 10 of CP60, we believe that the RIAIF should be positioned so that it offers genuine flexibility when compared to UCITS structures.

Chapter 2

Qualifying Investor AIF Requirements

Self-managed AIF

As noted earlier, we believe that the Handbook should address itself to the specific requirements of self-managed AIF. This could be done by inserting provisions, where required, into Chapters 1 and 2 in respect of RIAIF and QIAIF. However, the most straightforward method of achieving this may be to introduce a specific section of the Handbook which deals with self-managed AIF and, in particular, the application of the principle of proportionality to such entities.

Inclusion of Valuation Rules in the Constitutional Document

AIFMD permits valuation to be conducted in accordance with rules set out in the law of the country where the AIF is established and/or the rules or instruments of incorporation. As the Handbook does not incorporate the valuation provisions previously set out in Guidance Note 1/00, the only option available in the case Irish AIFs may become the provisions of its constitutional documentation. Given that Irish company law requires a special resolution of shareholders to amend any provision of the memorandum and articles of any collective investment scheme incorporated as an investment company, we would propose that CP60 clarify that the constitutional document may set out high-level rules in relation to valuation, which are then supplemented by more detailed provisions in the prospectus or other documentation.

Changes to Fund Documentation

We believe that the provisions of Chapter 2, Part I, section 3 are too onerous insofar as they require pre-approval by the Central Bank of certain changes to fund documentation and material contracts. These provisions are not required under AIFMD or existing Central Bank policy. Similar considerations apply in relation to proposals regarding circumstances where an AIFM or an AIF proposes to replace a third party service provider.

Prospectus requirements

As a general principle, we would argue against the retention of rules of the existing regime which are not reflected in the AIFMD and which do not serve a clear investor protection concern.

An example of one of these rules is the requirement that advance unitholder approval be obtained in respect of material changes to investment policies, as set out in Section 5 Part (i) (5). Advance notification to unitholders in respect of material changes to investment policies should be sufficient. We therefore request that Section 5 Part (i) (5) should be amended to provide that unitholder approval is required for a change to investment objectives and advance notification is required for a material change to investment policies of a QIAIF. The commercial reality is that in practice, investor apathy results in non-receipt of investor proxies and this in turn leads to situations where proposed changes to fund documentation, which are being suggested for the benefit of investors, cannot be effected. In addition, the requirement that advance notification, rather than approval, should be provided in respect of material changes to investment policies is consistent the requirements in place in other jurisdictions and the current wording in Section 5 Part (i) (5) arguably puts Ireland at a competitive disadvantage.

Provisions of AIFM requirements applicable to Qualifying Investor AIF Requirements which do not have a Full AIFM

We have assumed that Chapter 2, Part III is intended to refer to those QIAIFs whose AIFM is not required, by virtue of Article 3 AIFMD, to be authorised (ie, to be a Full AIFM) and which will instead be registered under AIFMD.

There is, however, another category of QIAIF without Full AIFMDs, namely QIAIFs with non-EU AIFMs which are not marketed in the EU or which are marketed to professional investors on a private placement basis pursuant to Article 42. These non-EU AIFMs will not be authorised pursuant to AIFMD (or indeed registered) and so will not be Full AIFMs. On the face of it, Chapter 2, Part III of the AIF Handbook appears to apply to these QIAIFs, however we would assume that this could not be the case given that it would be inappropriate to apply these AIFMD requirements in the context where AIFMD itself sets out the limited AIFMD requirements which are applicable (and also therefore those which do not apply ie, the vast majority). From a supervisory and enforcement perspective, it would be extremely difficult for the Central Bank to apply these rules to a non-EU AIFM, particularly rules relating to remuneration, organisation and general principles. It would perhaps be appropriate for a separate Chapter 2, Part IV to be prepared to cover these QIAIFs.

Chapter 3

Alternative Investment Fund Manager Requirements

We note that the IFIA had provided detailed comments in relation to the proposed contents of this Chapter at the drafting stage of CP60. We note that many of the comments which had been raised by the IFIA had not been included in the final draft of CP60 and we would request that these be considered and included in advance of the publication of the final Handbook. In particular, we believe that further amendments are required to this Chapter in relation to self-managed AIFs, proportionality, disciplinary procedures and enforcement actions, information to be included in constitutional documents, suitability and due diligence requirements for qualifying shareholders, ongoing monitoring requirements and valuation requirements.

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Chapter 4

AIF Management Company Requirements

We support the view of the IFIA that additional operating conditions and organisational requirements, drawn from the UCITS IV management company and AIFMD Chapter III requirements, should not be required where the Irish AIF management company is not the authorised AIFM of a given AIF. We believe that this would impose additional operating costs and organisational requirements on fund structures, which duplicate provisions of AIFMD without any obvious benefit accruing to investors. It should be sufficient to ensure that the AIFM is subject to, and complies with, the relevant requirements.