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AIF Rulebook Consultation
Markets Policy Division
Central Bank of Ireland
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Iveagh Court
Harcourt Road
Dublin 2

24 February 2016

Dear Madam/Sir,

Re: CP99 - Consultation on amendments to AIF Rulebook

Irish Funds[1] welcomes the opportunity to comment on this Consultation Paper regarding amendments to the AIF Rulebook (the '**Consultation Paper**'). Irish Funds welcomes the changes proposed in the Consultation Paper insofar as they propose to clarify a number of ambiguities contained in the AIF Rulebook and also insofar as they propose, where appropriate, to align the requirements applicable to AIFs with those applicable to UCITS.

We have set out below our comments on the Consultation Paper. Where there is no reference to a proposal in the Consultation, we have no comment on that proposal.

Section I – Proposed policy changes

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

Irish Funds would like to point out that maintaining a register of the "number of unitholders" or calculating the "total net asset value" of an investment fund is not a service a depositary, as a regulated entity, provides. Therefore, we do not consider it appropriate for a depositary to report directly on data acquired from another regulated entity responsible for the provision of that service. The data required for prudential and statistical

[1] Irish Funds is the representative body for the international investment fund community in Ireland. Founded in 1991, we represent fund managers, administrators, depositaries, transfer agents, professional advisory firms and other specialist firms involved in the international fund services industry in Ireland. Irish Funds' 100+ members are responsible for in excess of 13,000 funds with a net asset value of €3.6 trillion. Our members manage, service and advise UCITS and AIFs spanning the complete range of assets classes and strategies.

purposes by the Central Bank of Ireland should be reported on directly by the regulated entity responsible for providing that service to the non-Irish authorised investment fund in question, i.e. the AIFM or its delegate. Furthermore, given that it is the authorised AIFM which is obliged under AIFMD to appoint a depositary, it should be the responsibility of the authorised AIFM or its delegate to disclose the regulated entity it has appointed as depositary as well as the domicile of the non-Irish authorised investment funds it manages.

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

We note that the Central Bank believes that the practice of including template reports in rulebooks is somewhat outdated given that these reports are now submitted via the Central Bank's online reporting system (the "**ONR**"). While we agree that the template reports are no longer used by those who have access to the ONR, we believe that the template reports may remain useful to those who do not have such access to the online reporting system and should therefore be retained as a source of reference. (For example, a firm considering applying for authorisation as an AIFM would not have access to the ONR but would find it very useful to be able to refer to a template report in the AIF Rulebook.)

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

We note the Central Bank's intention to align the rules between Retail Investor AIFs and UCITS. In doing so, we wish to point out that the proposed changes reflect a slight inconsistency in themselves.

Part of the proposed amendment to paragraph 3(b) on page 25 of the AIF Rulebook November 2015 includes "where a counterparty is downgraded **to A-2 or below** (or comparable rating) by the credit rating agency referred to in subparagraph (i) this shall result in a new credit assessment being conducted of the counterparty by the responsible person without delay". The similar change proposed to paragraph 5(c) on page 27 of the AIF Rulebook November 2015 includes "where an issuer is downgraded **below the two highest short-term credit ratings** by the credit rating agency referred to in (i) this shall result in a new credit assessment being conducted of the issuer by the responsible person without delay".

One implication of the proposed change to paragraph 5(c) on Page 27 is that it would not necessarily result in a new credit assessment being required to be conducted where a rating was downgraded from, for example, A-2 to A-3 or B as it is only the potential initial downgrade to below A-1 (being the second highest short-term credit rating) that triggers such a requirement. This results in an inconsistency between the response to downgrades depending on whether they relate to eligible counterparties or collateral received (or money market instruments per similar proposed changes to the AIF Rulebook on Pages 79, 81, 133 and 135). The same inconsistency is to be found between Regulation 24(11)(b) and paragraph 3(ii) in Schedule 3 of the Central Bank UCITS Regulations (S.I. No. 420 of 2015). We recommend that the AIF Rulebook use the "A-2 or below" reference for the intended amendments and that the same inconsistency in respect of the Central Bank UCITS Regulations be amended when appropriate.

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

We note the proposed deletion to paragraph 1(l)(iv) on page 122 of the AIF Rulebook November 2015. However, the proposed change renders the remaining language somewhat meaningless/superfluous. We would suggest, therefore, deleting paragraph (iv) entirely.

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

As noted when a corresponding proposal was made in relation to UCITS management companies and depositaries in CP77, we do not agree with the Central Bank's proposed approach in respect of the suggested extension of the reporting requirements for AIFMs and AIF management companies.

We believe that such a proposal would add significantly to the current reporting burden placed on AIFMs and AIF Management Companies, particularly given that such reporting would need to take place at the same time that resources would typically be devoted to conducting the annual audit. While audited financial statements must be submitted within four months after the year end, the filing of half-yearly financial statements within two months creates an unnecessary burden in having to submit figures two months ahead of the annual audit deadline.

As indicated previously, in our response to CP77, we are unsure of the reason why the Central Bank is proposing to extend the reporting for AIFMs and AIF management companies as described. We do not agree with this proposed amendment which is excessive and unnecessary. Significant time and effort is already required within a relatively narrow period to ensure audited financial statements are available, to add an additional burden during this already challenging period, would need to be based upon a strong and compelling reason for this additional requirement.

The annual financial statements include the financial information that would be included in the management accounts for the second six month period and in respect of the entire period. Therefore, the annual financial statements contain more useful information as they have been audited.

While we reiterate the objections we expressed in our feedback to CP77, that the preparation of a second set of management accounts at the same time as the audited accounts are being prepared would not provide the Central Bank with any financial information that is not already provided to it, we also note that our feedback to CP77 was not taken into account in that instance.

<u>Section II – Proposed technical issues</u>

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

We welcome the desire to clarify the obligations applicable to QIAIFs managed by non-EU AIFMs. However, we believe that the proposed drafting requires further clarification, to reflect the distinction applied in ID1031 of the Central Bank's AIFMD Q&A between (i) QIAIFs authorised after 22 July 2013 (for which the proposed drafting makes sense and reflects the status quo) and (ii) QIAIFs authorised before 22 July 2013 (which to date have been subject to a lesser obligation of having to demonstrate "*that its management company and AIFM arrangements when considered in their entirety at least meet the standard which would have applied under the non-UCITS regime which applied in Ireland immediately prior to 22 July 2013*").

If this was deliberate rather than (as we suspect) a drafting oversight, this would not be a mere "technical change" but rather a material change of the Central Bank's policy with respect to the transitional period under ID1031, which we contend would require further consideration with the industry. Assuming, however, that this was not the intention, we believe that the inconsistency can be addressed by correcting the three proposed inclusions of "*(b) a non-EU AIFM, the Qualifying Investor AIF must*" to instead read "*(b) a non-EU AIFM (and where the Qualifying Investor AIF was authorised on or after 22 July 2013), the Qualifying Investor AIF must*".

Alternatively, if the Central Bank prefers not to include such a caveat in the AIF Rulebook, this could be addressed by revisiting and clarifying ID1031 of the AIFMD Q&A.

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

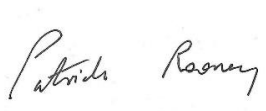
We note that the Central Bank proposes to delete paragraph 3 on page 161 of the AIF Rulebook November 2015 (which requires approval to be obtained from the Central Bank for changes in direct and indirect ownership of AIFMs). The Central Bank explained in the Consultation Paper that it feels that this paragraph is no longer necessary on the basis that Regulation 11 of the AIFM Regulations 2013 ("**Regulation 11**") requires an AIFM to notify any post-authorisation changes in ownership to the Central Bank for decision. We do not agree with this analysis as we believe there is disparity between the changes in ownership that require the approval of the Central Bank under Regulation 11 and the changes that require such approval under the current AIF Rulebook.

Regulation 11 requires an AIFM to notify the Central Bank before implementation of any proposed changes that would *materially* affect the basis on which the authorisation had been granted to it, which includes *material changes* to information provided in accordance with Regulation 8 (such as information on the identities of the AIFM's direct or indirect owners or shareholders with a qualifying holding). However, an AIFM is not required, pursuant to Regulation 11, to notify the Central Bank before implementation of changes, which are not *material* in nature, or any proposed changes that would not *materially* affect the basis on which authorisation had been granted to it. Thus, if this rule is removed from the AIF Rulebook, Central Bank approval would not be required in respect of proposed changes in direct or indirect ownership or in qualifying holdings, which are not *material*.

We do not object to this proposed amendment, and believe that such an amendment is desirable in order to more closely align the AIF Rulebook with the AIFM Regulations. However, we wish to draw the attention of the Central Bank to the different requirements under paragraph 3 on page 161 of the AIF Rulebook November 2015 and Regulation 11.

We hope you find these comments helpful, and we remain at your disposal to discuss the issues raised in this response further.

Yours sincerely,



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