



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

2013

AIF HANDBOOK

DRAFT 2

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Chapter 1 - Retail Investor AIF Requirements

TO WHOM THESE REQUIREMENTS APPLY:

These Requirements set out the conditions which the Central Bank of Ireland (“the Central Bank”) applies to alternative investment funds that are authorised by the Central Bank and that are not Qualifying Investor AIFs as defined in the Qualifying Investor AIF Requirements (hereafter “Retail Investor AIFs”). These Requirements also set out the conditions which the Central Bank applies to alternative investment funds established in other jurisdictions which propose to market to retail investors in Ireland. These Requirements are additional to requirements imposed on the persons involved in the management or fund administration of Retail Investor AIFs which are set out in separate chapters. These Requirements are imposed by the Central Bank further to the legislation governing the establishment of investment funds in Ireland.

Retail Investor AIFs may be established as:

- unit trusts, under the Unit Trusts Act 1990;
- designated investment companies (i.e. investment companies which may raise capital by promoting their shares to the public) under the Companies Act 1990, Part XIII;
- investment limited partnerships under the Investment Limited Partnerships Act 1994; and
- common contractual funds under the Investment Funds Act 2005.

These Acts are, hereafter, referred to as the investment fund legislation.

Under the investment fund legislation the Central Bank is responsible for the authorisation and supervision of unit trusts, common contractual funds, investment companies and investment limited partnerships and has the power to impose conditions on them.

The conditions which the Central Bank is imposing are contained in these Requirements which supersede all requirements on Retail Investor AIFs set out in previous Notices. These Requirements on the Retail Investor AIF must be read in conjunction with all the other requirements set out in this AIF Handbook. These Requirements must be read in conjunction with the investment fund legislation and the AIFMD Regulations which contain, *inter alia*, detailed provisions on the operation of Retail Investor AIFs. In the event of any difference or discrepancy between these Requirements and the investment fund legislation or the AIFMD Regulations, the provisions of the investment fund legislation or the AIFMD Regulations will prevail.

Retail Investor AIF must take steps to rectify any breaches of the conditions contained in these Requirements. The timeframe within which such steps must be taken will depend on factors such as the nature, cause and consequence of the breach. A Retail Investor AIF must take due account of the interests of unitholders when rectifying a breach. All material breaches of the conditions contained

in these requirements must be reported to the Central Bank immediately.

Where a condition set out in these Requirements 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.

The following points must be noted:

1. This Handbook includes a separate chapter in respect of Qualifying Investor AIFs.
2. Obligations imposed on a Retail Investor AIF under the investment fund legislation and under these Requirements are, in the case of a self-managed investment company, obligations of the investment company, in the case of unit trusts and common contractual funds, or investment companies that have appointed a management company, obligations of the management company and in the case of an investment limited partnership, obligations of the general partner.
3. The Requirements are divided as follows:
 - restrictions on the design of Retail Investor AIFs;
 - requirements relevant to applications to establish a Retail Investor AIF;
 - requirements which apply to a Retail Investor AIF to notify, seek further permission from or provide information to the Central Bank;
 - requirements in relation to the prospectus;
 - requirements as to how the Retail Investor AIF should be operated;
 - requirements specific to particular types of Retail Investor AIFs; and
 - requirements specific to the inward marketing of AIF to retail investors in Ireland.

DEFINITIONS

For the purposes of these Requirements the following interpretations and definitions shall apply:

AIF: An alternative investment fund as defined in Regulation [x] of the AIFMD Regulations.

AIF Handbook: The Central Bank's handbook in relation to AIFs which contains chapters concerning Retail Investor AIF, Qualifying Investor AIF, AIF Management Companies, Fund Administrators, Alternative Investment Fund Managers, AIF Depositories and Grandfathering Arrangements.

AIFM: An alternative investment fund manager as defined in the AIFMD.

AIFMD: Alternative Investment Fund Managers Directive (Directive 2011/61/EU) as amended.

AIFMD Level 2: Commission Delegated Regulation (EU) [x].

AIFMD Regulations: European Communities (Alternative Investment Fund Managers Directive) Regulations (SI No. [] of 2012).

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.

Base currency: The currency of denomination of the Retail Investor AIF.

Class currency: The currency of denomination of the share class.

Constitutional document: The trust deed, in the case of a unit trust, the memorandum and articles of association, in the case of an investment company, the deed of constitution, in the case of a common contractual fund and the partnership agreement, in the case of an investment limited partnership.

Credit ratings: Credit ratings referred to are Standard and Poor's. An “**equivalent rating**” for the purposes of these Requirements is one which has been provided by an internationally recognised rating agency and which is deemed equivalent to the rating stipulated in the section. An “**implied**

rating” arises where a decision on an unrated entity is made by a Retail Investor AIF on the basis of a relationship between an issuer and its rated parent, or where an issuer has a senior debt/long term rating but no short term rating.

Currency share class: A share class denominated in a currency other than the base currency.

Directed brokerage programme: An arrangement between a management company or its delegate and a broker in relation to a Retail Investor AIF pursuant to which the operator of the directed brokerage programme secures a commission or similar payment.

Establishment: The creation of a Retail Investor AIF by the initiation of marketing or any like activity which has the effect of either making investment available to potential unitholders or drawing the option of investing in the Retail Investor AIF to the attention of unitholders.

Fund Administration Services: The administration of Retail Investor AIFs, including the performance of valuation services or fund accounting services or acting as transfer agents or registration agents for such Retail Investor AIFs.

Full AIFM: An AIFM which has been authorised under the AIFMD.

Group companies: Member companies of a group of associated or related companies.

Hedged currency share class: A currency share class in respect of which the Retail Investor AIF will conduct currency hedging transactions, the benefit and cost of which will accrue solely to the unitholders in that class.

Investment adviser: An entity which provides investment advice only and does not have discretionary powers over any of the assets of the Retail Investor AIF.

Investment Funds Act 2005: Investment Funds, Companies and Miscellaneous Provisions Act 2005.

Investment manager: An entity which is appointed either directly by the Retail Investor AIF or the management company of a Retail Investor AIF, or indirectly, as sub-investment manager by an investment manager, to manage assets of a Retail Investor AIF on a discretionary basis.

Investment objectives/Investment policy: Investment objective means the purpose for which the Retail Investor AIF was established. Investment policy is the means through which the objective

will be achieved.

Liquid: Money market instruments/transferable securities are regarded as being liquid where they can be repurchased, redeemed or sold at limited cost, in terms of low fees and narrow bid/offer spread, and with very short settlement delay.

Merging AIF: An AIF or a sub-fund thereof which transfers its net assets to another sub-fund or to another investment fund or a sub-fund thereof (“receiving investment fund”).

MiFID: Markets in Financial Instruments Directive (Directive 2004/39/EC) as amended.

Related company: This term has the same meaning as in the Companies Act 1990, section 140(5). 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.

Relevant institutions: Those institutions specified in sub-paragraphs (a), (b) and (c) of paragraph 9 of section 1.ii of Part I.

Retail investor: An investor who is not eligible to invest in a Qualifying Investor AIF.

Share class: Classes of units or shares created within a Retail Investor AIF.

Structured Retail Investor AIF: A Retail Investor AIF which provides unitholders, at certain predetermined dates, with algorithm-based payoffs that are linked to the performance, or to the realisation of price changes or other conditions, of financial assets, indices or reference portfolios or a Retail Investor AIF with similar features.

Underlying investment funds: This term refers to the underlying investment funds which form the assets of both fund of fund Retail Investor AIFs and Retail Investor AIFs which invest more than 30% of net assets another investment fund.

Unhedged currency share class: A currency share class where, typically, shares may be subscribed for, and the redemption proceeds can be obtained in, the class currency rather than the base currency. However, currency conversion will be conducted at prevailing spot currency exchange rates.

Unitholder: A shareholder in the case of an investment company, a limited partner in the case of an investment limited partnership and unitholder in the case of a unit trust or common contractual fund.

Units: Shares of an investment company, interests of the partners in an investment limited partnership and units of a unit trust or common contractual fund.

Part I: GENERAL RULES

Obligations are derived directly from provisions of the investment fund legislation, or are conditions imposed by the Central Bank under powers given to the Central Bank under that legislation.

Section 1:

Retail Investor AIF restrictions

i. General restrictions

1. An investment company, or a management company or general partner acting in connection with all of the investment funds which it manages, may not acquire any shares carrying voting rights which would enable it to exercise significant influence over the management of an issuing body.
2. The Central Bank may authorise a Retail Investor AIF to wholly own the shares of a limited company which would, in turn, invest in investments which are permitted in this chapter for reasons which the Central Bank is satisfied are justified as being in the interests of unitholders. Requirements applicable to subsidiary companies are set out the section headed 'Investment through subsidiary companies' in section 1.xi.
3. Retail Investor AIFs may not grant loans or act as a guarantor on behalf of third parties. This is without prejudice to the right of a Retail Investor AIF to acquire debt securities. It will not prevent Retail Investor AIFs from acquiring securities which are not fully paid.
4. Retail Investor AIFs may not raise capital from the public through the issue of debt securities.
5. Where a Retail Investor AIF proposes to track or gain exposure to an index, the index must:
 - (a) not be structured in a manner which makes it incomprehensible to a reasonable unitholder in a Retail Investor AIF;
 - (b) not be structured in a manner which disadvantages unitholders in a Retail Investor AIF;
 - (c) not be structured or operate so that it circumvents rules to which a Retail Investor AIF is subject; and
 - (d) publish or make available on demand sufficient information so that a unitholder in a Retail Investor AIF could replicate the index.

6. 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.

ii. Investment restrictions

1. The investment restrictions set out in this section apply to all Retail Investor AIF except where they are disapplied by the “Specific Fund-Type Requirements” section.
2. A Retail Investor AIF may derogate from the investment restrictions contained in this chapter for six months following the date of their launch provided they observe the principle of risk spreading.
3. The limits on investments contained in this chapter are deemed to apply at the time of purchase of the investments and continue to apply thereafter. If the limits laid down in this chapter are subsequently exceeded for reasons beyond the control of a Retail Investor AIF or as a result of the exercise of subscription rights, the Retail Investor AIF must adopt as a priority objective the remedying of that situation, taking due account of the interests of its unitholders.
4. Related companies/institutions are regarded as a single issuer for the purposes of paragraphs 6, 7 and 9 of this section.

Securities

5. A Retail Investor AIF may not invest more than 20% of its net assets in securities which are not traded in or dealt on a regulated market which operates regularly and is recognised and open to the public.

For the purposes of this paragraph, the following guidance is designed to assist a Retail Investor AIF in its assessment of whether a proposed stock exchange or market (hereinafter “market”) meets with the regulatory criteria i.e. the market must be regulated, operate regularly, be recognised and open to the public.

- (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(ies) 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 depositary must be satisfied that it can provide for the safe-keeping of the assets of a Retail Investor AIF in accordance with the conditions set down in the Alternative Investment Fund Manager Requirements.
- (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.

The above list is not exhaustive and the assessment should include a general overview of the market, having particular regard to issues, not mentioned above, which would be relevant to the operation of the market and investment therein.

6. A Retail Investor AIF may invest no more than 20% of its net assets in securities issued by the same institution. For Retail Investor AIFs whose investment policy is to replicate an index, this limit is increased to 35% in the case of a single issuer where this is justified by exceptional market conditions.
7. Subject to paragraph 1 of section 1.i, a Retail Investor AIF may not hold more than 20% of any class of security issued by any single issuer. This requirement does not apply to investments in other open-ended investment funds.
8. A Retail Investor AIF may, subject to authorisation by the Central Bank, invest up to 100% of its net assets in transferable securities issued or guaranteed by any state, its constituent states, its local authorities, or public international bodies of which one or more states are members.

Full disclosure must be made in the prospectus indicating the states, local authorities and public international bodies in the securities of which it is intended to invest more than 20% of the assets in accordance with the provision of the preceding sentence.

Cash

9. No more than 10% of the net assets of a Retail Investor AIF may be kept on deposit with any one institution; this limit is increased to 30% of net assets for deposits with or securities evidencing deposits issued by or securities guaranteed by the following:
 - (a) a credit institution authorised in the European Economic Area (EEA) (European Union Member States, Norway, Iceland, Liechtenstein);
 - (b) a credit institution authorised within a signatory state, other than a Member State of the EEA, to the Basle Capital Convergence Agreement of July 1988 (Switzerland, Canada, Japan, United States);
 - (c) a credit institution authorised in Jersey, Guernsey, the Isle of Man, Australia or New Zealand;
 - (d) the depositary; or
 - (e) a credit institution which is an associated or related company of the depositary, on a case-by-case basis.

Investment funds¹

10. A Retail Investor AIF may invest in open-ended investment funds provided the underlying investment funds are authorised in Ireland, or in another jurisdiction authorised by a supervisory authority set up in order to ensure the protection of unit-holders and which in the opinion of the Central Bank, provides an equivalent level of investor protection as that provided under Irish laws, regulations and conditions governing investment funds. Investment funds which are deemed to meet this requirement are set out in section 5 of Part II as category 1 or category 2 investment funds (“regulated investment funds”).
11. Subject to paragraph 13 of this section, a Retail Investor AIF may not invest more than 30% of net assets in any one open-ended investment fund.
12. A Retail Investor AIF which invests more than 30% of net assets in other investment funds must ensure that the investment funds in which it invests are prohibited from investing more

¹ Where an underlying investment fund is an umbrella fund, investment restrictions apply in respect of investment in the individual sub-funds.

than 30% of net assets in other investment funds. Any such investments must not be made for the purpose of duplicating management and/or investment management fees.

13. A Retail Investor AIF may not invest more than 20% of net assets in unregulated open-ended investment funds.²
14. Where a Retail Investor AIF invests in units of an open-ended investment fund managed by the same management company or by an associated or related company, the manager of the investment fund in which the investment is being made must waive the preliminary/initial/redemption charge which it would normally charge.
15. Where a commission is received by the manager of the Retail Investor AIF by virtue of an investment in another investment fund, this commission must be paid into the property of the Retail Investor AIF.

Financial derivative instruments

16. The risk exposure to a counterparty of a Retail Investor AIF in an OTC derivative transaction shall not exceed:
 - (a) in case the counterparty is a relevant institution, 10% of its assets; or
 - (b) in any other case, 5% of its assets.
17.
 - (a) A Retail Investor AIF shall ensure that its global exposure relating to derivative instruments does not exceed the total net asset value of its portfolio.
 - (b) A Retail Investor AIF may invest, as a part of its investment policy, in financial derivative instruments provided that the exposure to the underlying assets does not exceed in aggregate the investment limits specified in these Requirements. Where a Retail Investor AIF invests in index-based FDIs, these investments do not have to be combined with the limits specified in these Requirements.
 - (c) When a transferable security or money market instrument contains an embedded derivative, the latter shall be taken into account when complying with the requirements of sub-paragraphs (a) and (b) of this paragraph.

² A regulated investment fund is defined in paragraph 10 of this section.

iii. Borrowing Powers

1. Subject to the provisions of the constitutional document, a Retail Investor AIF may borrow, which borrowing may be secured on the assets of the Retail Investor AIF.
2. Borrowings may not exceed 25% of the net assets of a Retail Investor AIF at any time. Credit balances (e.g. cash) may not be offset against borrowings when determining the percentage of borrowings outstanding.
3. A Retail Investor AIF which invests across a range of currencies may borrow foreign currency by means of a back-to-back loan agreement. Foreign currency obtained in this manner is not classed as borrowings for the purposes of the Central Bank's borrowing restriction in paragraph 2 of this section, provided the offsetting deposit equals or exceeds the value of the foreign currency loan outstanding. However, where foreign currency borrowings exceed the value of the back-to-back deposit, any excess is regarded as borrowing for the purposes of paragraph 2 of this section.
4. Paragraphs 1-3 of this section specify the extent of the disapplication by the Central Bank of Section 13(2)(a) and Section 13(2)(c) of the Unit Trusts Act 1990, in accordance with its powers under Section 13(3) of that Act.

iv. Financial Derivative Instruments

1. A Retail Investor AIF which proposes to engage in transactions in financial derivative instruments ("FDI") whether transactions are for investment purposes or for the purposes of hedging must comply with these provisions. Provisions in relation to the calculation of global exposure are also applicable where a Retail Investor AIF engages in repurchase/reverse repurchase agreements ("repo contracts") through which additional leverage is generated through the re-investment of collateral.
2. FDI must be dealt in on a market which is regulated, operating regularly, recognised and open to the public in a Member State or non-Member State.
3. Notwithstanding paragraph 2 of this section, a Retail Investor AIF may invest in FDI dealt in over-the-counter, "OTC derivatives" provided that:
 - (a) the counterparty is a relevant institution or an investment firm, authorised in accordance with MiFID in an EEA Member State, or is an entity subject to regulation as a Consolidated Supervised Entity ("CSE") by the US Securities and Exchange

- Commission;
- (b) in the case of a counterparty which is not a relevant institution, the counterparty has a minimum credit rating of A-2 or equivalent, or is deemed by the Retail Investor AIF to have an implied rating of A-2 or equivalent. Alternatively, an unrated counterparty will be acceptable where the Retail Investor AIF is indemnified or guaranteed against losses suffered as a result of a failure by the counterparty, by an entity which has and maintains a rating of A-2 or equivalent;
 - (c) when calculating its risk exposure to a counterparty to an OTC derivative transaction, the Retail Investor AIF shall calculate the exposure using the positive mark-to-market value of the OTC derivative contract with that counterparty. The Retail Investor AIF may net the derivative positions with the same counterparty, provided that the Retail Investor AIF is able to legally enforce netting arrangements with the counterparty. Netting is only permissible with respect to OTC derivative instruments with the same counterparty and not in relation to any other exposures the Retail Investor AIF may have with the same counterparty;
 - (d) the Retail Investor AIF is satisfied that:
 - the counterparty will value the OTC derivative with reasonable accuracy and on a reliable basis; and
 - the OTC derivative can be sold, liquidated or closed by an offsetting transaction at fair value at any time at the Retail Investor AIF's initiative;
 - (e) the Retail Investor AIF must subject its OTC derivatives to reliable and verifiable valuation on a weekly basis and ensure that it has appropriate systems, controls and processes in place to achieve this. The valuation arrangements and procedures must be adequate and proportionate to the nature and complexity of the OTC derivative concerned and shall be adequately documented;
 - (f) reliable and verifiable valuation shall be understood as a reference to a valuation, by the Retail Investor AIF, corresponding to fair value which does not rely only on market quotations by the counterparty and which fulfils the following criteria:
 - the basis for the valuation is either a reliable up-to-date market value of the instrument, or, if such a value is not available, a pricing model using an adequate recognised methodology;
 - verification of the valuation is carried out by one of the following:
 - an appropriate third party which is independent from the counterparty of the OTC-derivative, at an adequate frequency and in such a way that the Retail Investor AIF is able to check it;
 - a unit within the Retail Investor AIF which is independent from the department in charge of managing the assets and which is adequately equipped for such purpose.

4. Risk exposure to an OTC derivative counterparty may be reduced where the counterparty will provide the Retail Investor AIF with collateral. A Retail Investor AIF may disregard the counterparty risk on condition that the value of the collateral, valued at market price and taking into account appropriate discounts, exceeds the value of the amount exposed to risk at any given time.
5. Collateral received must at all times meet with the following criteria:
 - (a) Liquidity: Collateral must be sufficiently liquid in order that it can be sold quickly at a robust price that is close to its pre-sale valuation;
 - (b) Valuation: Collateral must be capable of being valued on at least a daily basis and must be marked to market daily;
 - (c) Issuer credit quality: Where the collateral issuer is not rated A-1 or equivalent, conservative haircuts must be applied;
 - (d) Safe-keeping: Collateral must be transferred to the depositary, or its agent;
 - (e) Enforceable: Collateral must be immediately available to the Retail Investor AIF, without recourse to the counterparty, in the event of a default by that entity;
 - (f) Non-cash collateral:
 - cannot be sold, pledged or re-invested;
 - must be held at the risk of the counterparty;
 - must be issued by an entity independent of the counterparty; and
 - must be diversified to avoid concentration risk in one issue, sector or country;
 - (g) Cash collateral must only be invested in risk-free assets.
6. Collateral passed to an OTC derivative counterparty by or on behalf of a Retail Investor AIF must be taken into account in calculating exposure of the Retail Investor AIF to counterparty risk. Collateral passed may be taken into account on a net basis only if the Retail Investor AIF is able to legally enforce netting arrangements with this counterparty.

Calculation of issuer concentration risk and counterparty exposure risk

7. Retail Investor AIF must calculate issuer concentration limits on the basis of the underlying exposure created through the use of FDI pursuant to the commitment method.
8. The calculation of exposure arising from OTC derivative transactions must include any exposure to OTC derivative counterparty risk.
9. A Retail Investor AIF must calculate exposure arising from initial margin posted to and

variation margin receivable from a broker relating to exchange-traded or OTC derivatives, which is not protected by client money rules or other similar arrangements to protect the Retail Investor AIF against the insolvency of the broker, within the OTC counterparty limit as referred to in paragraph 16 of section 1.ii.

10. The calculation of issuer concentration limits must take account of any net exposure to a counterparty generated through a stock lending or repurchase agreement. Net exposure refers to the amount receivable by a Retail Investor AIF less any collateral provided by the Retail Investor AIF. Exposures created through the reinvestment of collateral must also be taken into account in the issuer concentration calculations.
11. When calculating exposures for the purposes of the issuer concentration limits, a Retail Investor AIF must establish whether its exposure is to an OTC counterparty, a broker or a clearing house.
12. Position exposure to the underlying assets of FDI, including embedded FDI in transferable securities money market instruments or investment funds, when combined where relevant with positions resulting from direct investments, may not exceed the investment limits set out in these Requirements. When calculating issuer-concentration risk, the FDI (including embedded FDI) must be looked through in determining the resultant position exposure. This position exposure must be taken into account in the issuer concentration calculations. It must be calculated using the commitment method when appropriate or the maximum potential loss as a result of default by the issuer if more conservative. It must also be calculated by all Retail Investor AIF, regardless of whether they use VaR for global exposure purposes.

This provision does not apply in the case of index based FDI provided the underlying index is one which meets with the criteria set out in paragraph 5 of section 1.i of this Part.

13. A transferable security or money market instrument embedding a FDI shall be understood as a reference to financial instruments which contain a component which fulfils the following criteria:
 - (a) by virtue of that component some or all of the cash flows that otherwise would be required by the transferable security or money market instrument which functions as host contract can be modified according to a specified interest rate, financial instrument price, foreign exchange rate, index of prices or rates, credit rating or credit index, or other variable, and therefore vary in a way similar to a stand-alone derivative;
 - (b) its economic characteristics and risks are not closely related to the economic characteristics and risks of the host contract;

- (c) it has a significant impact on the risk profile and pricing of the transferable security or money market instrument.
14. A transferable security or a money market instrument shall not be regarded as embedding a FDI where it contains a component which is contractually transferable independently of the transferable security or the money market instrument. Such a component shall be deemed to be a separate financial instrument.

Cover requirements

15. A Retail Investor AIF must, at any given time, be capable of meeting all its payment and delivery obligations incurred by transactions involving FDI.
16. Monitoring of FDI transactions to ensure they are adequately covered must form part of the risk management process of the Retail Investor AIF.
17. A transaction in FDI which gives rise, or may give rise, to a future commitment on behalf of a Retail Investor AIF must be covered as follows:
- (a) in the case of FDI which automatically, or at the discretion of the Retail Investor AIF, are cash settled a UCITS must hold, at all times, liquid assets which are sufficient to cover the exposure.
 - (b) in the case of FDI which require physical delivery of the underlying asset, the asset must be held at all times by a Retail Investor AIF. Alternatively a Retail Investor AIF may cover the exposure with sufficient liquid assets where:
 - the underlying assets consists of highly liquid fixed income securities; and/or
 - the Retail Investor AIF considers that the exposure can be adequately covered without the need to hold the underlying assets, the specific FDI are addressed in the risk management process, and details are provided in the prospectus.

Risk management process and reporting

18. A Retail Investor AIF must provide the Central Bank with details of its proposed risk management process vis-à-vis its FDI activity. The initial filing is required to include information in relation to:
- (a) Permitted types of FDI, including embedded derivatives in transferable securities and money market instruments;
 - (b) Details of the underlying risks;
 - (c) Relevant quantitative limits and how these will be monitored and enforced;

- (d) Methods for estimating risks.

Material amendments to the initial filing must be notified to the Central Bank in advance. The Central Bank may object to the amendments notified to it and amendments and/or associated activities objected to by the Central Bank may not be made.

- 19. A Retail Investor AIF must submit a report to the Central Bank on its FDI positions on an annual basis. The report, which must contain information which reflects a true and fair view of the types of derivative instruments used by the Retail Investor AIF, the underlying risks, the quantitative limits and the methods used to estimate those risks, must be submitted with the annual report of the Retail Investor AIF. A Retail Investor AIF must, at the request of the Central Bank, provide this report at any time.

Calculation of Global Exposure

- 20. A Retail Investor AIF must calculate its global exposure on at least a daily basis, as either of the following:
 - (a) the incremental exposure and leverage generated by the Retail Investor AIF through the use of FDI, including embedded derivatives, which may not exceed the total of the Retail Investor AIF net asset value;
 - or
 - (b) the market risk of the Retail Investor AIF's portfolio.
- 21. A Retail Investor AIF may calculate its global exposure by using the commitment method, the value at risk approach or other advanced risk measurement methodologies as may be appropriate. For the purposes of this provision, 'value at risk' shall mean a measure of the maximum expected loss at a given confidence level over a specific time period. The Retail Investor AIF must ensure that the method selected is appropriate, taking into account the investment strategy of the Retail Investor AIF, the types and complexities of the FDI used and the proportion of the Retail Investor AIF portfolio which comprises FDI.
- 22. Where a Retail Investor AIF employs techniques and instruments including repurchase agreements in order to generate additional leverage or exposure to market risk, the Retail Investor AIF must take these transactions into consideration when calculating global exposure.
- 23. The limits on global exposure must be complied with on an on-going basis. Depending on the investment strategy of the Retail Investor AIF it may be necessary to calculate global

exposure intra-day.

24. Retail Investor AIFs must select an appropriate methodology to calculate global exposure which must be based on the assessment by the Retail Investor AIF of its risk profile resulting from its investment policy (including its use of FDI).
25. A Retail Investor AIF must use an advanced risk measurement methodology (supported by a stress testing program) such as the Value-at-Risk (VaR) approach to calculate global exposure where:
 - (i) the Retail Investor AIF engages in complex investment strategies which represent more than a negligible part of the Retail Investor AIF's investment policy; and/or
 - (ii) the Retail Investor AIF has more than a negligible exposure to exotic derivatives; and/or
 - (iii) the commitment method does not adequately capture the market risk of the Retail Investor AIF's portfolio.
26. The use of a commitment method or VaR approach or any other methodology to calculate global exposure does not exempt Retail Investor AIF from the requirement to establish appropriate internal risk management measures and limits.

Commitment method

27. A Retail Investor AIF using the commitment method must comply with Articles 8, 9, 10 and 11 and Annexes II and III of AIFMD Level 2.
28. A Retail Investor AIF using the commitment method must ensure that its global exposure does not exceed its total net asset value. The Retail Investor AIF may not therefore be leveraged in excess of 100% of net asset value.

Value at Risk (VaR) approach

29. Calculation of global exposure using the VaR approach must consider all the positions of the Retail Investor AIF's portfolio.
30. A Retail Investor AIF must always set the maximum VaR limit according to its defined risk profile.
31. A Retail Investor AIF can use the relative VaR approach or the absolute VaR approach to

calculate global exposure as set out in Appendix 3 to this Part. A Retail Investor AIF is responsible for deciding which VaR approach is the most appropriate methodology given the risk profile and investment strategy of the Retail Investor AIF. The decision and its underlying assumptions must be fully documented.

32. A Retail Investor AIF must be able to demonstrate that the VaR approach it uses is appropriate and there must be consistency in the choice of the type of VaR used.
33. The VaR model should take into account, as a minimum, general market risk and, if applicable, idiosyncratic risk. The event (and/or default) risks to which a Retail Investor AIF is exposed following its investments should be taken into account, as a minimum, in the stress testing program. If the proposed risk measurement framework should prove inadequate, the Central Bank may impose stricter measures for the Retail Investor AIF.
34. The choice of the appropriate model remains the responsibility of the Retail Investor AIF. When selecting the VaR model, the Retail Investor AIF must ensure that the model is appropriate with regard to the investment strategy being pursued and the types and complexity of the financial instruments used.
35. The VaR model should provide for completeness and it should assess the risks with a high level of accuracy. In particular:
 - (a) all the positions of the Retail Investor AIF's portfolio should be included in the VaR calculation.
 - (b) the model should adequately capture all the material market risks associated with portfolio positions and, in particular, the specific risks associated with FDI. For that purpose, all the risk factors which have more than a negligible influence on the fluctuation of the portfolio's value should be covered by the VaR model.
 - (c) the quantitative models used within the VaR framework (pricing tools, estimation of volatilities and correlations, etc) should provide for a high level of accuracy.
 - (d) all data used within the VaR framework should provide for consistency, timeliness and reliability.
36. When assessing the global exposure by means of a relative or absolute VaR approach, a Retail Investor AIF must comply with the quantitative and qualitative minimum requirements set out in Appendix 3 to this Part.

Back Testing

37. A Retail Investor AIF must monitor the accuracy and performance of its VaR model (i.e. prediction capacity of risk estimates) by conducting a back testing program. The back testing program should provide, for each business day, a comparison of the one-day VaR measure generated by the Retail Investor AIF's model for the Retail Investor AIF's end-of-day positions to the one-day change of the Retail Investor AIF's portfolio value by the end of the subsequent business day.
38. A Retail Investor AIF must carry out the back testing program at least on a monthly basis, subject to always performing retroactively the comparison for each business day as detailed above.
39. A Retail Investor AIF should determine and monitor the 'overshootings' on the basis of this back testing program. An 'overshooting' is a one-day change in the portfolio's value that exceeds the related one-day VaR measure calculated by the model. If the back testing results reveal a percentage of 'overshootings' that appears to be too high, the Retail Investor AIF must review the VaR model and make appropriate adjustments.
40. If the number of overshootings for a Retail Investor AIF for the most recent 250 business days exceeds 4 in the case of a 99% confidence interval, the Retail Investor AIF's senior management must be informed (at least on a quarterly basis) and the Central Bank must be informed on a semi-annual basis. The information should contain an analysis and explanation of the sources of 'overshootings' and a statement of what measures, if any, were taken to improve the accuracy of the model. The Central Bank may take measures and apply stricter criteria to the use of VaR if the 'overshootings' exceed an unacceptable number.

Stress testing

41. A Retail Investor AIF using the VaR approach must conduct a rigorous, comprehensive and risk-adequate stress testing program in accordance with the qualitative and quantitative requirements set out in these Requirements. Stress tests should be carried out on a regular basis, at least once a month. Additionally, they should be carried out whenever a change in the value or the composition of a Retail Investor AIF or a change in market conditions makes it likely that the test results will differ significantly.
42. The stress testing program must be designed to measure any potential major depreciation of a Retail Investor AIF value as a result of unexpected changes in the relevant market parameters and correlation factors. Conversely, where appropriate, it should also measure changes in the relevant market parameters and correlation factors, which could result in major depreciation

of a Retail Investor AIF's value.

43. The stress tests should be adequately integrated into the Retail Investor AIF's risk management process and the results should be considered when making investment decisions for the Retail Investor AIF. The design of the stress tests should be adapted in line with the composition of the Retail Investor AIF and the market conditions that are relevant for the Retail Investor AIF.
44. The stress tests should cover all risks which affect the value or the fluctuations in value of the Retail Investor AIF to any significant degree. In particular, those risks which are not fully captured by the VaR model used, should be taken into account.
45. The stress tests should be appropriate for analysing potential situations in which the use of significant leverage would expose the Retail Investor AIF to significant downside risk and could potentially lead to the default of the Retail Investor AIF (i.e. NAV <0).
46. The stress tests should focus on those risks which, though not significant in normal circumstances, are likely to be significant in stress situations, such as the risk of unusual correlation changes, the illiquidity of markets in stressed market situations or the behaviour of complex structured products under stressed liquidity conditions.
47. A Retail Investor AIF must implement clear procedures relating to the design of, and on-going adaptation of the stress tests. A program for carrying out stress tests must be developed on the basis of such procedures which must include an explanation why the program is suitable for the Retail Investor AIF. Completed stress tests together with their results must be clearly documented as must the reasons behind any intention to deviate from the program.

VaR: Additional safeguards

48. A Retail Investor AIF which calculates global exposure using a VaR methodology must regularly monitor its leverage.
49. A Retail Investor AIF must supplement the VaR / Stress Testing framework, where appropriate by taking into account the risk profile and the investment strategy being pursued, with other risk measurement methods.

v. **Efficient portfolio management**

1. Techniques and instruments which relate to transferable securities or money market instruments and which are used for the purpose of efficient portfolio management shall be understood as a reference to techniques and instruments which fulfil the following criteria:
 - (a) They are economically appropriate in that they are realised in a cost-effective way;
 - (b) They are entered into for one or more of the following specific aims:
 - reduction of risk;
 - reduction of cost;
 - generation of additional capital or income for the Retail Investor AIF with a level of risk which is consistent with the risk profile of the Retail Investor AIF and the risk diversification rules set out in these Requirements;
 - (c) Their risks are adequately captured by the risk management process of the Retail Investor AIF; and
 - (d) They cannot result in a change to the Retail Investor AIF's declared investment objective or add substantial supplementary risks in comparison to the general risk policy as described in its sales documents.

Repo contracts and Stock Lending

2. Repo contracts and stock lending may only be effected in accordance with normal market practice.
3. Collateral obtained under a repo contract or stock lending arrangement must, at all times, meet with the following criteria:
 - (a) Liquidity: Collateral must be sufficiently liquid in order that it can be sold quickly at a robust price that is close to its pre-sale valuation;
 - (b) Valuation: Collateral must be capable of being valued on at least a daily basis and must be marked to market daily;
 - (c) Issuer credit quality: Where the collateral issuer is not rated A-1 or equivalent, conservative haircuts must be applied.
4. Until the expiry of the repo contract or stock lending arrangement, collateral obtained under such contracts or arrangements:
 - (a) must equal or exceed, in value, at all times the value of the amount invested or securities loaned;
 - (b) must be transferred to the depositary, or its agent; and
 - (c) must be immediately available to the Retail Investor AIF, without recourse to the counterparty, in the event of a default by that entity.

Paragraph (b) is not applicable in the event that a Retail Investor AIF uses tri-party collateral management services of International Central Securities Depositories or relevant institutions which are generally recognised as specialists in this type of transaction. The depository must be a named participant to the collateral arrangements.

5. Non-cash collateral:
 - (a) cannot be sold, pledged or re-invested;
 - (b) must be held at the risk of the counterparty;
 - (c) must be issued by an entity independent of the counterparty; and
 - (d) must be diversified to avoid concentration in one issue, sector or country.

6. Cash collateral:

Cash may not be invested other than in the following:

 - (a) deposits with relevant institutions;
 - (b) government or other public securities;
 - (c) certificates of deposit issued by relevant institutions;
 - (d) letters of credit with a residual maturity of three months or less, which are unconditional and irrevocable and which are issued by relevant institutions;
 - (e) repurchase agreements, provided collateral received falls under categories (a)-(d) and (f) of this paragraph;
 - (f) daily dealing money market funds which have and maintain a rating of AAA or equivalent. If investment is made in a linked fund, subscription, conversion or redemption charge can be made by the underlying money market fund.

7. In accordance with paragraph 1(d) of this section, invested cash collateral held at the risk of the Retail Investor AIF, other than cash collateral invested in government or other public securities or money market funds, must be invested in a diversified manner. A Retail Investor AIF must be satisfied, at all times, that any investment of cash collateral will enable it to meet with its repayment obligations.

8. Invested cash collateral may not be placed on deposit with, or invested in securities issued by, the counterparty or a related entity.

9. Notwithstanding the provisions of paragraph 4(b) of this section, a Retail Investor AIF may enter into stock lending programmes organised by generally recognised International Central Securities Depositories Systems provided that the programme is subject to a guarantee from the system operator.

10. Without prejudice to paragraphs 5 and 6 of this section, a Retail Investor AIF may be permitted to enter repo contracts pursuant to which additional leverage is generated through the re-investment of collateral. In this case the repo contract must be taken into consideration for the determination of global exposure as required by paragraph 1 of section 1.iv of this Part. Any global exposure generated must be added to the global exposure created through the use of derivatives and the total of these must not be greater than 100% of the net asset value of the Retail Investor AIF. Where collateral is re-invested in financial assets that provide a return in excess of the risk-free return the Retail Investor AIF must include, in the calculation of global exposure:
 - (a) the amount received if cash collateral is held;
 - (b) the market value of the instrument concerned if non-cash collateral is held.
11. The counterparty to a repo contract or stock lending arrangement must have a minimum credit rating of A-2 or equivalent, or must be deemed by the Retail Investor AIF to have an implied rating of A-2 or equivalent. Alternatively, an unrated counterparty will be acceptable where the Retail Investor AIF is indemnified or guaranteed against losses suffered as a result of a failure by the counterparty, by an entity which has and maintains a rating of A-2 or equivalent.
12. A Retail Investor AIF must have the right to terminate the stock lending arrangement at any time and demand the return of any or all of the securities loaned. The agreement must provide that, once such notice is given, the borrower is obligated to redeliver the securities within 5 business days or other period as normal market practice dictates.
13. Repo contracts, stock borrowing or stock lending do not constitute borrowing or lending for the purposes of paragraph 2 of section 1.iii of this Part and paragraph 3 of section 1.i of this Part respectively.

vi. **Constitutional documents**

1. The constitutional document must provide that the assets of a Retail Investor AIF be entrusted to a depositary for safe keeping.
2. The trust deed, deed of constitution or partnership agreement shall prescribe the remuneration and the expenditure which the management company or general partner and depositary are empowered to charge to a unit trust, common contractual fund or investment limited partnership 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.

The articles of association shall prescribe the nature of the costs to be borne by the investment company.

3. The maximum annual fee³ charged by a management company of a unit trust or of a common contractual fund or investment company or a general partner of an investment limited partnership as provided for in the trust deed, deed of constitution, management agreement or partnership agreement may not be increased without approval on the basis of a majority of votes cast at general meeting.⁴ In the event of an increase in the annual fee a reasonable notification period must be provided by the Retail 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 Retail Investor AIF.
4. The constitutional document shall lay down the conditions and manner of application of income.
5. The trust deed, deed of constitution or partnership agreement shall specify the conditions under which there may be effected, and the procedure to be followed with respect to, the replacement of the management company/general partner with another 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.
6. The depositary of a Retail Investor AIF may not be replaced without the approval of the Central Bank. The constitutional document shall specify the conditions under which there may be effected, and the procedure to be followed with respect to, the replacement of the depositary of the Retail 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.
7. The management company or the investment company or the depositary shall issue registered certificates or bearer securities, representing one or more portions of the Retail Investor AIF,

³ The annual fee includes any performance related fee charged by the management company, the AIFM or the investment manager.

⁴ If the fee disclosed in the prospectus is less than the maximum fee permitted in these documents, unitholder approval will also be required for an increase in the fee disclosed in the prospectus unless the prospectus also provides that a higher fee may be charged.

or alternatively, in accordance with the provisions of the trust deed, deed of constitution or articles of association, written confirmation of entry in the register of units or fractions of units without limitation as to the splitting of units.

Rights attaching to fractions of units are exercised in proportion to the fraction of a unit held except for voting rights which can only be exercised by whole units. The certificates and bearer securities shall be signed by the depositary. This signature may be reproduced mechanically.

8. The stock exchanges and markets (including derivative markets), on which securities and financial derivative instruments of the Retail Investor AIF are listed or traded may be specified in the constitutional document of the Retail Investor AIF.

Alternatively, the constitutional document must incorporate the following:

“With the exception of permitted investments in unlisted securities and OTC derivatives, the Retail Investor AIF will only invest in those securities and derivative instruments listed or traded on a stock exchange or market (including derivative markets) which meets with the regulatory criteria (regulated, operate regularly, be recognised and open to the public) and which is listed in the prospectus.”

9. Where a Retail Investor AIF proposes making distributions from or charging fees and expenses to capital, provision for this must be made in the constitutional document.
10. If the constitutional document provides for subscription in specie, the following provisions must be included:
 - the nature of the assets to be transferred into the Retail Investor AIF would qualify as investments of the Retail Investor AIF in accordance with the investment objectives, policies and restrictions of the Retail Investor AIF;
 - assets to be transferred must be vested with the depositary or arrangements are made to vest the assets with the depositary;
 - 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 Retail Investor AIF or the depositary is satisfied that there is unlikely to be any material prejudice to the existing unitholders of the Retail Investor AIF.
11. Where the constitutional document provides for redemption in specie provide that:

- redemption in specie is at the discretion of the Retail 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 Retail Investor AIF where the redeeming unitholder requests redemption of a number of units that represent 5% or more of the net asset value of the Retail Investor AIF. In this event the Retail 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 are not applicable for an exchange traded fund where the original subscription was made in specie.

12. If the constitutional document provides for distribution in specie on a winding up, provide that:
 - an ordinary/special resolution is required; and
 - the Retail Investor AIF agrees to sell the assets if requested by a unitholder. The costs of such sale can be charged to redeeming unitholders.

vii. **Valuation**

1. The assets of a Retail Investor AIF will be valued in accordance with rules laid down in the constitutional document which shall clearly define an expected method of valuation and which shall set out a framework for variation from this method of valuation. Additional details may be set out elsewhere e.g. in the prospectus.
2. A Retail Investor AIF must ensure that the valuation rules provided in the constitutional document are clear and unambiguous.
3. The assets of a Retail Investor AIF may only be purchased and sold at prices which are in conformity with the rules in the constitutional document.
4. Units of a Retail Investor AIF shall be issued or sold at a price arrived at by dividing the net asset value of the Retail Investor AIF (calculated in accordance with the rules) by the number of units outstanding; such price may be increased by duties and charges.
5. Units shall be redeemed or repurchased at a price arrived at by dividing the net asset value of the Retail Investor AIF by the number of units outstanding; such price may be decreased by duties and charges. The maximum charge relating to the redemption or repurchase of units as

provided for in the constitutional document may not be increased without approval on the basis of a 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 Retail Investor AIF to enable unitholders redeem their units prior to the implementation of the increase.

6. Assets must be valued in accordance with the following rules unless an alternative method of valuation has been agreed in advance with the Central Bank:
 - (a) Securities which are listed or traded on a regulated market:
 - The value of the security is the closing or last known market price. The Retail Investor AIF may determine that this shall be the closing bid, last bid, last traded, closing mid-market or latest mid-market price.⁵
 - Where a security is listed on several exchanges, the relevant market shall be the one
 - which constitutes the main market, or
 - the one which the manager/directors/general partner determines provides the fairest criteria in a value for the security.
 - Securities listed or traded on a regulated market, but acquired or traded at a premium or at a discount outside or off the relevant market may be valued taking into account the level of premium or discount at the date of the valuation. The depositary must ensure that the adoption of such a procedure is justifiable in the context of establishing the probable realisation value of the security.
 - (b) Securities which are listed or traded on a regulated market where the market price is unrepresentative or not available and unlisted securities:
 - The value of the security is its probable realisation value which must be estimated with care and in good faith.
 - The security may be
 - valued by the Retail Investor AIF, or
 - valued by a competent person⁶ appointed by the Retail Investor AIF, and approved for the purpose by the depositary.

⁵ It may be more appropriate to use an offer price or offer quotation in certain circumstances (e.g. to value a short position or in the context of a dual pricing Retail Investor AIF (see paragraph 10 of this section).

⁶ Where the “competent person” is a related party to the Retail Investor AIF, the prospectus should disclose the possible conflict of interests which may arise (e.g. valuation provided by an investment adviser; the advisers fee will increase as the value of the Retail Investor increases)

- Matrix pricing (i.e. valuing securities by reference to the valuation of other securities which are considered comparable in rating, yield, due date and other characteristics) may be an appropriate method of valuation for fixed income securities, where reliable market quotations are not available. Provision may be made for matrix pricing provided the securities used in the matrix are comparable to the securities being valued. Matrix pricing must not ignore a reliable market quotation.
- (c) Investment funds:
- Valuation is based on the latest bid price or latest net asset value, as published by the investment fund.
 - Use of a mid or offer price is only acceptable if consistent with valuation policy of the Retail Investor AIF, i.e. the other assets held must be valued on the same basis.
 - Use of market prices may be accepted where the investment fund in which the investment is made is listed on a regulated market, in accordance with (a) above.
- (d) Cash:
- Value is the nominal/face value plus accrued interest.
- (e) Exchange traded derivative contracts:
- Valuation is based on the settlement price as determined by the market in question. If a settlement price is not available contracts may be valued in accordance with (b) above.
- (f) Over-the-counter derivative contracts:
- A Retail Investor AIF must be satisfied that the counterparty to an over-the-counter (“OTC”) derivative contract will value the contract with reasonable accuracy and on a reliable basis; and that the OTC derivative can be sold, liquidated or closed by an offsetting transaction at fair value⁷, at any time at the initiative of the Retail Investor AIF. A Retail Investor AIF must not enter into an OTC derivative if both conditions are not satisfied. Accordingly, a Retail Investor AIF must ensure that an OTC derivative contract includes a clause which requires the counterparty to close out the transaction at any time at the

⁷ For the purposes of this paragraph, the reference to fair value shall be understood as a reference to the amount for which an asset could be exchanged or a liability settled between knowledgeable, willing parties in an arm's length transaction.

request of the Retail Investor AIF at fair value unless the Retail Investor AIF can be satisfied that such a clause is not required.

- A Retail Investor AIF may value an OTC derivative using either the counterparty valuation or an alternative valuation, such as a valuation calculated by the Retail Investor AIF or by an independent pricing vendor, provided the Retail Investor AIF or other party has adequate human and technical means to perform the valuation. A Retail Investor AIF must value an OTC derivative contract on at least a weekly basis⁸.
 - Where a Retail Investor AIF values an OTC derivative using an alternative valuation:
 - the alternative valuation may be that provided by a competent person appointed by the Retail Investor AIF and approved for the purpose by the depositary, or a valuation by any other means provided that the value is approved by the depositary; and
 - the alternative valuation must be reconciled to the counterparty valuation on at least a monthly basis. Where significant differences arise these must be promptly investigated and explained.
 - Where a Retail Investor AIF will value an OTC derivative using the counterparty valuation:
 - the valuation must be approved or verified by a party who is approved for the purpose by the depositary and who is independent of the counterparty⁹;
 - the independent verification must be carried out at least monthly.¹⁰
- (g) Forward foreign exchange and interest rate swap contracts:
- Valuation of these OTC derivative contracts must be in accordance with the preceding paragraph or, alternatively, by reference to freely available market quotations. If the latter is used, there is no requirement to have such prices independently verified or reconciled to the counterparty valuation.

⁸ Closed-ended Retail Investor AIF are permitted to value OTC derivative contracts on at least a monthly basis.

⁹ An independent party can include the Retail Investor AIF. It can also include a party related to the OTC counterparty provided that the related party constitutes an independent unit within the counterparty's group, which does not rely on the same pricing models employed by the counterparty. In this case, the relationship between the parties, and the attendant risks, must be disclosed in the prospectus. Where the independent party is related to the OTC counterparty and the risk exposure to the counterparty may be reduced through the provision of collateral, the position must also be subject to verification by an unrelated party to the counterparty, on a six monthly basis.

¹⁰ A closed-ended Retail Investor AIF which values OTC derivatives on a monthly basis (see footnote 4) must carry out the independent verification procedure at least on a quarterly basis.

7. The constitutional document may provide that, notwithstanding the expected valuation method set out in the rules, valuation of a specific asset may be carried out under an alternative method of valuation if:
 - (a) the Retail Investor AIF deems it necessary and it is approved by the depositary; and
 - (b) the rationale/methodologies used is/are clearly documented.
8. The value of an asset may be adjusted by the Retail Investor AIF only where such an adjustment is considered necessary to reflect the fair value in the context of currency, marketability, dealing costs and/or such other considerations which are deemed relevant. The rationale and methodology for adjusting the value must be clearly documented.
9. A Retail Investor AIF which is a Short-Term Money Market Fund (as defined in section 2 of Part II) may provide for the use of amortised cost as an alternative method of valuation in accordance with paragraphs 1 - 7 of section 2.iii of Part II, as applicable.

Money Market Funds (as defined in section 2 of Part II), and non-money market Retail Investor AIF which have investments in money market instruments may value these instruments on an amortised basis provided that the money market instruments have a residual maturity of less than six months and have no specific sensitivity to market parameters, including credit risk.

10. The constitutional document of a Retail Investor AIF may provide for the calculation of a separate bid and offer price on its units, i.e. dual pricing, provided that the valuation procedures utilised in calculating both the bid and the offer price is clearly prescribed as previously outlined.
11. Dealing in the units of a Retail Investor AIF should be carried out at forward prices i.e. the Net Asset Value next computed after receipt of subscription and redemption requests.
12. Open-ended Retail Investor AIF must provide unitholders with the right to request redemption on a monthly basis. Closed-ended Retail Investor AIF and open-ended Retail Investor AIF with limited liquidity must value their portfolios on a monthly basis.

viii. Dealing

1. In order to be authorised as an open-ended Retail Investor AIF, a Retail Investor AIF must
 - (a) provide redemption facilities on at least a monthly basis; and
 - (b) redeem when requested at least 10% of net assets; and
 - (c) not impose a redemption fee in excess of 5%.

2. Retail Investor AIFs which:
 - (a) offer redemption and/or settlement facilities on a less than monthly basis; and/or
 - (b) provide for a period of greater than 30 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 Retail Investor AIFs with limited liquidity.
3. The trust deed in the case of a unit trust, deed of constitution in the case of a common contractual fund and articles of association in the case of an investment company shall lay down the conditions for the creation and cancellation of units.
4. The partnership agreement of an investment limited partnership shall lay down conditions for contributions and withdrawal of contributions of partners' capital.

ix. **Share classes**

General

1. A Retail Investor AIF may create one or more share classes within the Retail Investor AIF, or within a sub-fund of an umbrella Retail Investor AIF, subject to the following requirements:
 - (a) the constitutional document must provide for the creation of share classes. In the case of an umbrella Retail 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 Retail Investor AIF or sub-fund 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 Retail Investor AIF or sub-fund;
 - (e) unitholders in a share class must be treated equally;
 - (f) where more than one share class exists, all the unitholders in the different share classes must be treated fairly.
2. A Retail Investor AIF or sub-fund established with separate share classes must ensure that all share classes within the Retail Investor AIF or sub-fund have the same dealing procedures and frequencies.

3. A Retail Investor AIF or sub-fund may provide for the creation of a hedged currency share class or a hedged interest rate share class provided the constitutional document clearly establishes how the resultant costs and gains/losses will be charged to the relevant share class.
4. A Retail Investor AIF may use financial derivative instruments at share class level to provide a different level of participation in the performance of an underlying portfolio or different levels of capital protection provided that:
 - (a) the financial derivative instrument for each share class is based on the same underlying portfolio or index;
 - (b) the transactions do not result in a leveraged return per share class, i.e. the participation rate does not exceed 100% of the relevant share class's performance of the underlying portfolio;
 - (c) the Retail Investor AIF holds a legal opinion that the OTC counterparty's recourse to the Retail Investor AIF is limited to the relevant share class's participation in the Retail Investor AIF's assets; and
 - (d) the board of the AIFM/investment company/management company/general partner submits confirmation to the Central Bank that they have reviewed and are satisfied that the arrangements will, as a result of the agreement between the Retail Investor AIF and the over-the-counter counterparty, not result in any prejudice for unitholders in one class over another and that there will be no cross liability between share classes.

Side pocket share classes

5. A Retail 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 Retail Investor AIF's constitutional document and has been disclosed to unitholders.
6. The Retail Investor AIF's constitutional document must prescribe the parameters which will apply to the creation of side pocket share classes.
7. The Retail Investor AIF's AIFM must be able to demonstrate to the Retail Investors AIF how the illiquid or difficult to value investments come within the approved parameters.
8. The Retail Investor AIF's AIFM must report to the Retail Investor AIF on an annual basis confirming that the parameters continue to be respected and outlining the prospects and/or plans for the side pocketed assets.

9. The prospectus must contain a clear 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.
10. When it is proposed to establish a side pocket share class, the Retail Investor AIF and its depositary must provide written confirmation to the Central Bank that the proposed establishment is in accordance with the Retail Investor AIF's constitutional document and takes into account the interests of all unitholders.

x. **Umbrella Retail Investor AIFs**

1. Where a Retail Investor AIF is constituted as an umbrella Retail Investor AIF, each sub-fund of the Retail Investor AIF must comply with the laws, regulations and conditions governing Retail Investor AIFs.
2. The trust deed, deed of constitution or articles of association must provide that the assets of each sub-fund shall belong exclusively to the relevant sub-fund and shall not be used to discharge directly or indirectly the liabilities of or claims against any other sub-fund and shall not be available for any such purpose.
3. Investment companies authorised before 30 June 2005, which have as an investment objective the employment of leverage, may not establish additional sub-funds unless the umbrella Retail Investor AIF has taken measures necessary to apply segregated liability between sub-funds.
4. Investment by a sub-fund within an umbrella Retail Investor AIF in the units of another sub-fund within the umbrella is subject to the following:
 - (a) investment must not be made in a sub-fund which itself holds units in other sub-funds within the umbrella;
 - (b) the investing sub-fund may not charge an annual management fee in respect of that portion of its assets invested in other sub-funds within the umbrella. This provision is also applicable to the annual fee charged by an investment manager where this fee is paid directly out of the assets of the Retail Investor AIF.

xi. Investment through subsidiary companies

1. A Retail Investor AIF may not establish a subsidiary unless the Retail 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 Retail Investor AIF. The directors of the Retail 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 Retail Investor AIF is a party to such appointments or contractual arrangements.
 - (e) The constitutional document of the Retail Investor AIF must provide for the ability of the Retail 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 Retail Investor AIF and which restrict any person or entity other than the Retail Investor AIF from holding shares in the subsidiary.

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

1. Any transaction carried out with a Retail Investor AIF by a management company, general partner, depositary, AIFM, investment manager or by delegates or group companies of these must be carried out as if effected on normal commercial terms negotiated at arms length. Transactions must be in the best interests of the unitholders.
2. Transactions permitted are subject to:
 - (a) certified valuation by a person approved by the depositary, or the Retail Investor AIF in the case of transactions involving the depositary, as independent and competent; or
 - (b) execution on best terms on organised investment exchanges under their rules; or
 - (c) where (a) and (b) are not practical, execution on terms which the depositary, or the

Retail Investor AIF in the case of transactions involving the depositary, is satisfied conform to the principles outlined in paragraph 1 of this section.

3. The depositary may hold funds for a Retail Investor AIF subject to the provisions of Section 30 of the Central Bank Act 1989. Funds held by a depositary for a Retail Investor AIF must be held on terms which comply with paragraph 1 of this section.
4. Paragraphs 1 and 2 of this section specify the extent of the disapplication by the Central Bank of Section 13(1) of the Unit Trusts Act 1990, in accordance with its powers under Section 13(3) of that Act and of Section 15(1) of the Investment Funds Act 2005 in accordance with its powers under that Section.

xiii. Directed brokerage programmes and similar arrangements

1. Where a management company or AIFM of a Retail Investor AIF, or any of its delegates, successfully negotiates the recapture of a portion of the commissions charged by brokers or dealers in connection with the purchase and/or sale of securities for a Retail Investor AIF, the rebated commission shall be paid to the Retail Investor AIF.
2. The operator of the directed brokerage programme or similar arrangement may not be reimbursed out of the assets of a Retail Investor AIF for reasonable properly vouched costs, fees and expenses directly incurred by the operator in relation to the programme or arrangement unless the prospectus disclosure required by paragraph 1 of section 5.xv of this Part has been made. The Retail Investor AIF must be separately invoiced for these fees and expenses by the operator of the directed brokerage programme.

Appendix 1

Calculation of Global Exposure using the Value at Risk (VaR) Approach

Relative VaR approach

1. Under the relative VaR approach the global exposure of the Retail Investor AIF is calculated as follows:
 - (a) Calculate the VaR of the Retail Investor AIF's current portfolio (which includes derivatives);
 - (b) Calculate the VaR of a reference portfolio;
 - (c) Check that the VaR of the Retail Investor AIF's portfolio is not greater than twice the VaR of the reference portfolio in order to ensure a limitation of the global leverage ratio of the Retail Investor AIF to 2. This limit can be presented as follows:

$$\frac{(\text{VaR Retail Investor AIF} - \text{VaR Reference Portfolio})}{\text{VaR Reference Portfolio}} \times 100 \leq 100\%$$

2. The reference portfolio and the related processes should comply with the following criteria:
 - (a) The reference portfolio should be unleveraged and should, in particular, not contain any FDI or embedded FDI, except that;
 - a Retail Investor AIF engaging in a long/short strategy may select a reference portfolio which uses FDI to gain the short exposure;
 - a Retail Investor AIF which intends to have a currency hedged portfolio may select a currency hedged index as a reference portfolio.
 - (b) The risk profile of the reference portfolio should be consistent with the investment objectives, policies and limits of the Retail Investor AIF's portfolio;
 - (c) If the risk/return profile of a Retail Investor AIF changes frequently or if the definition of a reference portfolio is not possible, then the relative VaR method should not be used.
 - (d) The process relating to the determination and the on-going maintenance of the reference portfolio should be integrated in the risk management process and be supported by adequate procedures. Guidelines governing the composition of the reference portfolio should be developed. In addition, the actual composition of the reference portfolio and any changes should be clearly documented.

Absolute VaR approach

3. The absolute VaR approach limits the maximum VaR that a Retail Investor AIF can have relative to its Net Asset Value (NAV).

VaR approach: Quantitative requirements

4. Calculation Standards: The absolute VaR of a Retail Investor AIF cannot be greater than 20% of its NAV.
5. The calculation of the absolute and relative VaR should be carried out in accordance with the following parameters:
 - (a) one-tailed confidence interval of 99%;
 - (b) holding period equivalent to 1 month (20 business days);
 - (c) effective observation period (history) of risk factors of at least 1 year (250 business days) unless a shorter observation period is justified by a significant increase in price volatility (for instance extreme market conditions);
 - (d) quarterly data set updates, or more frequent when market prices are subject to material changes;
 - (e) at least daily calculation.
6. A confidence interval and/or a holding period differing from the default parameters above may be used by a Retail Investor AIF provided the confidence interval is not below 95% and the holding period does not exceed 1 month (20 days).
7. For Retail Investor AIF referring to an absolute VaR approach, the use of other calculation parameters goes together with a rescaling of the 20% limit to the particular holding period and/or confidence interval. The rescaling can only be done under the assumption of a normal distribution with an identical and independent distribution of the risk factor returns by referring to the quantiles of the normal distribution and the square root of time rule.

VaR approach: Qualitative requirements

8. The Alternative Investment Fund Manager Requirements provide that the risk management function is responsible inter alia for ensuring compliance with the Retail Investor AIF's risk limit system, including limits concerning global exposure. In this regard the risk management function is responsible for:
 - (a) sourcing, testing, maintaining and using the VaR model on a day-to-day basis;
 - (b) supervising the process relating to the determination of the reference portfolio if the Retail Investor AIF reverts to a relative VaR approach;
 - (c) ensuring on a continuous basis that the model is adapted to the Retail Investor AIF's

- portfolio;
 - (d) performing continuous validation of the model;
 - (e) validating and implementing a documented system of VaR limits consistent with the risk profile of the Retail Investor AIF that is to be approved by senior management and the board of directors;
 - (f) monitoring and controlling the VaR limits;
 - (g) monitoring on a regular basis the level of leverage generated by the Retail Investor AIF;
 - (h) producing on a regular basis reports relating to the current level of the VaR measure (including back testing and stress testing) for senior management.
9. The VaR model and the related outputs should represent an integral part of the daily risk management work. In addition, they should be integrated in the regular investment process lead by the investment managers as part of the risk management program to keep the Retail Investor AIF's risk profile under control and consistent with its investment strategy.
10. Following initial development, the model should undergo a validation by a party independent of the building process for ensuring that the model is conceptually sound and captures adequately all material risks. This validation process must also be carried out following any significant change to the model. A significant change could relate to the use of a new product by the Retail Investor AIF, the need to improve the model following the back testing results, or a decision taken by the Retail Investor AIF to change certain aspects of the model in a significant way.
11. The risk management function should perform on-going validation of the VaR model (this includes, but is not limited to back testing) in order to ensure the accuracy of the model's calibration and, where necessary, the model should be adjusted. The review should be documented.

Documentation and procedures

12. The documentation requirements referred to in paragraph 1 of section x of Part I of the Alternative Investment Fund Manager Requirements should be taken to include an adequate documentation of the VaR model and the related processes and techniques, thereby covering, among others:
- (a) the risks covered by the model;
 - (b) the model's methodology;
 - (c) the mathematical assumptions and foundations;
 - (d) the data used;

- (e) the accuracy and completeness of the risk assessment;
- (f) the methods used to validate the model;
- (g) the back testing process;
- (h) the stress testing process;
- (i) the validity range of the model; and
- (j) the operational implementation.

Section 2:**Application requirements - Information and document requirements of the Central Bank in support of an application for authorisation as a unit trust, common contractual fund, investment company or investment limited partnership****i. General information required for Retail Investor AIFs**

An application for authorisation of a Retail Investor AIF shall be made in writing to the Central Bank. Applications must contain the following information:

1. the name of the Retail Investor AIF
2. a statement of the general nature of the investment objectives of the Retail Investor AIF
3. the prospectus
4. the full name and address of the proposed AIFM of the Retail Investor AIF and the identity of and contact details for its competent authority
5. the full name and address of the proposed management company, if any
6. the full name and address of the proposed depositary
7. the full name and address of the proposed investment manager, if it is different from the management company, AIFM, investment company or general partner and a copy of the relevant agreement with the investment manager.

Where the proposed investment manager is not one of the entities listed in paragraph 1 of section 2.vii of this Part, sufficient information concerning the investment manager to enable the Central Bank to be satisfied as to its expertise, integrity and adequacy of financial resources. This information must include, inter alia, details of shareholders, latest audited accounts and details of the overseas regulatory status (if any).

8. the full name and address of the proposed auditor
9. the full name and address of any third party which will be contracted by the Retail Investor AIF, or management company acting for the Retail Investor AIF, to carry out its work and

copies of the relevant agreements with the third party. Sufficient information concerning any third party involved to enable the Central Bank to be satisfied as to its expertise, integrity and adequacy of financial resources. This information must include, inter alia, details of shareholders, latest audited accounts and details of overseas regulatory status (if any)

10. such additional information as the Central Bank may specify in the course of determining individual applications.

ii. Unit trusts and common contractual funds

An application for authorisation of a unit trust or common contractual fund shall be made in writing to the Central Bank by the full AIFM and the management company and depositary. Applications must contain the following additional information:

1. the trust deed or deed of constitution
2. a copy of the depositary agreement, in the case of a common contractual fund.

iii. Investment companies

An application for authorisation of an investment company shall be made in writing to the Central Bank by the investment company. Applications must contain the following additional information:

1. the memorandum and articles of association
2. the names of the directors and the company secretary
3. a copy of the agreement between the company and the depositary.

iv. Investment limited partnerships

An application for authorisation of an investment limited partnership shall be made in writing to the Central Bank by the proposed general partner(s). Applications must contain the following additional information:

1. the partnership agreement
2. the address of the registered office and the principal place of business of the investment

limited partnership

3. the term, if any, for which the investment limited partnership is entered into or, if for unlimited duration, a statement to that effect and the date of its commencement
4. the full name and address of the person proposed under the partnership agreement as general partner and, if more than one, of each of them
5. a copy of the agreement between the partnership and the depositary
6. a statement signed by the proposed general partner in accordance with section 8(4) of the Investment Limited Partnership Act 1994.

v. **Requirement for authorisation**

1. A Retail Investor AIF may not be established in Ireland without prior approval by the Central Bank of the arrangements made under which the Retail Investor AIF is to be operated.
2. An umbrella Retail Investor AIF which has been authorised by the Central Bank must obtain the Central Bank's prior approval for each sub-fund. Details of proposed sub-funds, and the amendment or supplement to the prospectus which will set out the investment objectives and policy for the new sub-funds, must be submitted for approval. Applications for new sub-funds of umbrella Retail Investor AIFs require the submission of a complete application form, which includes appropriate confirmation in relation to the contents of the relevant documentation.

vi. **Requirement for a full AIFM**

1. A Retail Investor AIF must have a full AIFM.

vii. **Investment managers**

1. Investment managers or sub-investment managers which are one of the following entities will not be subject to an additional regulatory review process by the Central Bank:
 - (a) management companies authorised under Directive 2009/65/EC;
 - (b) investment firms authorised under MiFID to perform portfolio management;
 - (c) credit institutions authorised under Directive 2006/48/EC having the approval to

- perform portfolio management under MiFID;
- (d) externally-appointed AIFMs authorised under the AIFMD; or
- (e) firms who are subject to regulation in other jurisdictions and recognised as such by the Central Bank.

However, in the cases of (a) to (d) above, if the firm does not appear on the relevant passport register¹¹, the Central Bank may require separate verification of its home state approval.

2. Firms which are not one of the entities listed in paragraph 1 of this section remain subject to the full review process.

viii. Investment advisers

1. The Central Bank will not apply an approval process to investment advisers provided that the manager/directors of the Retail Investor AIF confirm that the advisers in question will act in an advisory capacity only and will have no discretionary powers over any of the assets of the Retail Investor AIF.¹²
2. The Central Bank will not carry out a formal review of the investment advisory agreement provided that the management company/directors of the Retail Investor AIF confirm that the agreement does not:
 - (a) provide for any discretionary management powers;
 - (b) conflict with regulations and conditions applicable to Retail Investor AIFs.
3. Investment advisory agreements must be submitted to Central Bank, in order to facilitate reference in the event of issues arising.

ix. Establishment of subsidiaries

1. Prior to establishing a subsidiary for the purpose of making investments, an application for approval must be submitted to the Central Bank.
2. The application for approval must contain:
 - (a) the rationale for the establishment of the subsidiary;

¹¹ The relevant passport registers are maintained by the Central Bank based on notifications by EEA regulators that regulated firms intend to passport certain investment services into the State. However, firms should note that it is not necessary to utilise a passport in order to act as investment manager to a Retail Investor AIF.

¹² Investment advisers subject to the Investment Intermediaries Act 1995 ('the IIA') must of course obtain the appropriate authorisation under that Act.

- (b) the jurisdiction of establishment of the subsidiary;
- (c) confirmation from the Retail Investor AIF that it will be valuing the underlying assets of the subsidiary in compliance with these Requirements; and
- (d) confirmation from the Retail Investor AIF that the subsidiary has not been established under any Investment fund legislation.

Section 3:

Application process

i. General

1. The application must be made by the AIFM together with the management company / investment company or general partner and, in the case of unit trusts and common contractual funds, the depositary.

2. Complete applications must be submitted to:

The Head of Funds Authorisation Division
Central Bank of Ireland
Block D, Iveagh Court
Harcourt Road
Dublin 2.

3. The Central Bank expects that the board of directors of management companies, general partners and investment companies will include directors who have experience in relation to the organisation of Retail Investor AIFs. All directors, including new directors to existing management companies, must be approved in advance of the application.
4. An on-line Individual Questionnaire must be completed in respect of each director appointment, including directors who were previously approved as a director to a Retail Investor AIF or to a Retail Investor AIF service provider. Accordingly, all proposed directors must complete the on-line Individual Questionnaire at least 20 working days in advance of the proposed authorisation date for the Retail Investor AIF.
5. In the event of a name change of any of the previously approved/cleared parties to the Retail Investor AIF, notification of the change, together with evidence of change of name, must be provided to the Central Bank prior to the application for approval. Changes of address should be notified .

ii. Derogations

1. In the event that a Retail Investor AIF intends to seek derogations from provisions of these Requirements, or from general policies applicable to Retail Investor AIFs, requests for derogations must be made in good time to allow these be addressed by the Central Bank in advance of applications for authorisation. Details of derogations granted must be included in the application form and set out in the prospectus.
2. Proposals which have novel or other unusual features must be discussed with the Central Bank in advance of the submission of formal applications.

iii. Redemption frequency

1. An open-ended Retail Investor AIF must undertake in its prospectus to provide redemption facilities on at least a monthly basis.
2. An open-ended Retail Investor AIF with limited liquidity must disclose its dealing frequency and minimum redemption quotas in its prospectus.

iv. Closed-ended Retail Investor AIFs

1. An applicant who wishes to establish a closed-ended Retail Investor AIF must satisfy the Central Bank that the nature of the Retail Investor AIF as reflected, *inter alia*, in the investment objectives; the nature of the potential unitholders; the life or period of closure of the Retail Investor AIF; the intention regarding the listing of the Retail Investor AIF; and any proposals from the management company and/or AIFM and /or investment company to arrange for a market to be made, or otherwise to provide liquidity in the units; is such that it would be appropriate and prudent to approve the Retail Investor AIF as a closed-ended Retail Investor AIF.
2. The Retail Investor AIF must have a finite closed-end period, the duration of which must be provided for in the prospectus as a material part of the investment policy.
3. The Central Bank may permit the Retail Investor AIF to derogate from paragraph 4 of section 1.vii of this Part, and provide for the issue of units other than at net asset value. The Retail Investor AIF must demonstrate that unitholders will not be prejudiced by such a provision. The conditions under which units will be issued are subject to approval by the Central Bank.

4. A Retail Investor AIF established as a closed-ended Retail Investor AIF must confirm in its application that its prospectus is also being submitted separately for approval with the requirements of the Prospectus (Directive 2003/71/EC) Regulations 2005 (S.I. No. 324 of 2005).
5. Paragraphs 1-3 of this section specify the extent of the disapplication by the Central Bank of Section 12(1) of the Unit Trusts Act 1990, Section 253(2)(b)(ii) of the Companies Act 1990 Part XIII and Section 14(1) of the Investment Funds Act 2005.

v. **Regulated markets**

1. A Retail Investor AIF must confirm to the Central Bank, in writing as part of its application for authorisation, that each stock exchange and market listed in the prospectus, or which will be listed in the prospectus in the future, is regulated, operates regularly, is recognised and open to the public. The following stock exchanges and markets may be listed in a prospectus without a requirement to confirm to the Central Bank that they are regulated, operate regularly, are recognised and open to the public.

Stock Exchanges:

- (a) all stock exchanges in a Member State of the European Union;
- (b) all stock exchanges in the remaining Member States of the European Economic Area (EEA), (Norway, Iceland and Liechtenstein);
- (c) a stock exchange located in Australia, Canada, Japan, Hong Kong, New Zealand, Switzerland or USA.

Markets:

- Derivative markets approved in a Member State of the EEA
- The market organised by the International Capital Markets Association
- The market conducted by the “listed money market institutions” as described in the Bank of England publication “The Regulation of the Wholesale Cash and OTC Derivatives Markets” (in sterling, foreign currency and bullion)
- AIM - the Alternative Investment Market in the UK, regulated and operated by the London Stock Exchange
- The over-the-counter market in Japan regulated by the Securities Dealers Association of Japan
- NASDAQ in the United States
- The market in US government securities conducted by primary dealers regulated by the Federal Reserve Bank of New York

- The over-the-counter market in the United States regulated by the National Association of Securities Dealers Inc. (May also be described as; the over-the-counter market in the United States conducted by primary and secondary dealers regulated by the Securities and Exchanges Commission and by the National Association of Securities Dealers (and by banking institutions regulated by the US Comptroller of the Currency, the Federal Reserve System or Federal Deposit Insurance Corporation))¹³
- The French market for “Titres de Creance Negotiable (over-the-counter market in negotiable debt instruments)
- EASDAQ (European Association of Securities Dealers Automated Quotation)
- The over-the-counter market in Canadian Government Bonds regulated by the Investment Dealers Association of Canada.

¹³ US OTC markets are deemed to comply with the regulatory criteria because of the regulation of the participants and because of the regulation which applies to securities which are traded OTC, i.e. with some exceptions securities must comply with the provisions of the Securities Act, 1933. (Bankers acceptances and commercial paper are exempt from the registration requirements contained in the 1933 Act in recognition of the nature of these short-term obligations). Other securities, which are not required to be registered with the US SEC, are not deemed to be traded on a regulated market.

Section 4:

Supervisory requirements

i. General conditions

1. In general, amendments to Retail Investor AIF documentation, post authorisation, will not be approved without receipt of a completed application form, which includes appropriate confirmation in relation to the amendments.
2. The Central Bank must be notified of proposed amendments to the prospectus. The Central Bank may object to the amendments notified to it and amendments objected to by the Central Bank may not be made.
3. No alteration in the constitutional document or change in the name of Retail Investor AIFs shall be made without the approval of the Central Bank. The Central Bank must be notified in advance of proposed amendments to such documents. 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 Central Bank must be notified in advance of proposed amendments to material agreements entered into with third parties. The Central Bank may object to the amendments notified to it and amendments objected to by the Central Bank may not be made.
5. Investment by a sub-fund within an investment company constituted as an umbrella Retail Investor AIF in the units of another sub-fund within the umbrella by way of transfer for consideration¹⁴ is subject to prior notification to the Central Bank.

ii. Directors of Retail Investor AIF investment companies¹⁵

1. Appointments to the office of director or alternate director of the investment company require the prior approval of the Central Bank. Departures from the office of director and the reason for the departure must be notified to the Central Bank immediately by filing the relevant

¹⁴ Section 255(3) of the Companies Act 1990 Part XIII permits an umbrella investment company to acquire shares in a sister sub-fund by way of subscription or transfer for consideration. It is expected that, generally, such cross-investments will be processed as subscriptions under normal dealing arrangements. In the event that a transfer for consideration is proposed the Retail Investor AIF must notify the Central Bank in advance setting out the rationale behind the proposed transaction.

¹⁵ The provisions of footnote 1 in the AIF Management Company Requirements will apply *mutatis mutandis* to directors of Retail Investor AIF investment companies which are in distressed or failing circumstances.

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 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 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 board of directors of the investment company must not have directors in common with the board of directors of its depositary. A minimum of two directors must be Irish resident.
3. Directors are required to disclose to their board any concurrent directorships which they hold.

iii. **Suspensions**

1. A management company, in the case of a unit trust or common contractual fund, a general partner, in the case of an investment limited partnership or an investment company which temporarily suspends the calculation of the net asset value and repurchase or redemption of its units must inform the Central Bank immediately, and in any event within the working day on which such suspension took effect.

iv. **Replacement of depositary**

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 management company of a unit trust scheme or common contractual fund or the general partner of an investment limited partnership. In addition the Central Bank requires confirmation from both the retiring depositary and new depositary that they are satisfied with the transfer of assets.

v. **Replacement of management company, general partner or third party**

1. The management company in the case of a unit trust or common contractual fund or a management company appointed by an investment company may not be replaced without the approval of the Central Bank.
2. A general partner of an investment limited partnership may not be replaced by another general partner nor may additional general partners be admitted to such partnership, without

the prior approval of the Central Bank.

3. The Central Bank must be notified in advance of any proposal to replace third parties which have contracted (directly or indirectly) with the management company in the case of a unit trust or common contractual fund, investment company or investment limited partnership to carry out services. The Central Bank may object to the proposals and replacements objected to by the Central Bank may not proceed.
4. The procedures to be followed by Retail Investor AIFs in relation to the replacement of an AIFM, management company, investment manager or fund administration company must be approved by the board of the investment company, the management company of a unit trust or common contractual fund or the general partner of an investment limited partnership.

vi. **Monthly and quarterly returns**

1. The management company, in the case of a unit trust or common contractual fund, investment company and general partner of an investment limited partnership must submit a monthly return to the Statistics Division of the Central Bank and any other reports which the Central Bank may from time to time request. The contents of the monthly return are set out below in paragraph 3 of this section.
2. The management company, in the case of a unit trust or common contractual fund, investment company and general partner of an investment limited partnership must submit a quarterly Survey of Collective Investment Undertakings (OFII Form) return to the Statistics Division of the Central Bank within ten working days of the end-quarter to which it refers. The management company, in the case of a unit trust or common contractual fund, investment company and general partner of an investment limited partnership must also submit a Funds Annual Survey of Liabilities return to the Statistics Division of the Central Bank, along with the OFII Form, for the first quarter of each year.
3. The following information must be included in the monthly returns:
 - (a) total gross asset value of the Retail Investor AIF at end-month.
 - (b) total net asset value of the Retail Investor AIF at end-month.
 - (c) number of units in circulation at end-month.
 - (d) net asset value per unit at end-month.
 - (e) payments received from the issues of units during month.
 - (f) payments made for the repurchase of units during month.
 - (g) net amount from issues and repurchases during month.

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.

vii. Amalgamation of Retail Investor AIFs with other investment funds

1. Where a Retail Investor AIF is the merging AIF, a proposal to amalgamate it with a receiving investment fund must be presented to the Central Bank before the proposal is put forward for consideration by its unitholders. The submission must indicate how the conditions set out in paragraph 2 of this section will be satisfied. A proposal to which the Central Bank objects will not be permitted to proceed.
2. The minimum conditions which the Central Bank will require are as follows:
 - (a) the receiving investment fund must:
 - be located in the State, another Member State of the European Union, a Member State of the European Economic Area ('EEA') (Norway, Liechtenstein, Iceland), Guernsey, Jersey or the Isle of Man;
 - not contain restrictions on subscriptions or redemptions which are materially different to the merging AIF, including the categories of target unitholders; and
 - be authorised and supervised by the relevant competent authority.

Retail Investor AIFs may be permitted to amalgamate with receiving investment funds located in other jurisdictions on a case-by-case basis.

- (b) There must be full disclosure to the merging AIF's unitholders of all material facts and considerations relevant to the proposal by the investment company/management company/general partner. The cover of the circular containing this information must prominently disclose that the information contained therein is important and that unitholders must take advice if they do not fully understand it.

The circular must include, *inter alia*, full disclosure in relation to the following:

- the background to, and rationale for, the proposal;
- a description of the receiving investment fund, which must be sufficient to enable unitholders to make an informed judgement of the proposal being put to them. In particular, this description must highlight any material differences by comparison with the merging AIF;
- the procedures to be adopted for the transfer of assets;

- the alternatives for unitholders who do not wish to become holders of units in the receiving investment fund. These unitholders must be offered an opportunity to redeem their holdings in cash prior to the amalgamation taking effect;
 - the regulatory status of the receiving investment fund. It must be made clear, where relevant, that the receiving investment fund has not been authorised by and will not be supervised by the Central Bank;
 - details on how unitholders, if they so require, may obtain the prospectus, constitutional document and financial statements of the receiving investment fund;
 - all relevant costs including, where applicable, costs associated with the winding-up of the merging AIF and who will bear these costs (see sub-paragraph (e) below); and
 - other material information concerning, *inter alia*, tax treatment¹⁶ and details of the service providers to the receiving investment fund including their relationship, if any, with the service providers to the merging AIF.
- (c) Prior to notification to unitholders, the depositary of the merging AIF must review and be satisfied with the proposal and confirm to the Central Bank in writing that it has no objection to the proposal being put before unitholders for approval.
- (d) A general meeting of merging AIF's unitholders must be convened to consider and to approve the amalgamation proposal including, if appropriate, a resolution:
- to amend the constitutional document of the merging AIF to provide that the assets of the merging AIF may be passed to a non-Irish depositary to coincide with the time that the amalgamation becomes effective; and
 - to wind-up the merging AIF.
- Approval of the proposal will be effective only if:
- it is approved by not less than three fourths of the votes cast, in person or by proxy, at the meeting; and
 - the votes in favour represent more than half of the total number of units in issue.
- (e) Where the proposal to amalgamate derives from a commercial decision on the part of an investment manager/management company/AIFM to rationalise its own

¹⁶ Tax treatment must be fully disclosed as it relates to the Retail Investor AIF; unitholders must be recommended to seek advice in relation to tax implications for themselves or advice in relation to the implications of the proposal vis-à-vis their own tax circumstances.

activities/structures, the investment manager/management company/AIFM must agree to bear the costs of the amalgamation proposal and arrangements for the winding-up of the merging AIF. The Central Bank may consider other proposals in exceptional circumstances.

- (f) All unitholders must be notified of the outcome of the general meeting. In the event that the resolution is passed, unitholders must be advised of the procedures and deadlines by which they must submit their redemption request, if they so wish. A reasonable notification period following the general meeting must be provided to unitholders in open-ended Retail Investor AIF and open-ended Retail Investor AIF with limited liquidity in order to consider and submit a redemption request.¹⁷
 - (g) The provisions of this section will also apply in the case of amalgamations of sub-funds within umbrella Retail Investor AIF.
3. Notwithstanding the above, the Central Bank may refuse to permit any such proposal to proceed if it is of the opinion that to do so is not in the public interest, the best interests of unitholders and/or the appropriate and prudent regulation of the business of Retail Investor AIFs.

¹⁷ The Central Bank considers that a minimum period of two weeks in the case of daily/weekly dealing Retail Investor AIF or one dealing day in the case of less frequent redemptions should be provided.

Section 5:

Prospectus requirements

i. General requirements

1. A Retail Investor AIF must publish a prospectus, which must be dated and the essential elements of which must be kept up to date.
2. The prospectus must contain sufficient information for investors to make an informed judgement of the investment proposed to them.
3. A Retail Investor AIF must where relevant comply with section xix of Part I of the Alternative Investment Fund Manager Requirements regarding disclosure to unitholders obligations. The information set out in paragraphs 4 to 6 of section xix of Part I of the Alternative Investment Fund Managers Requirements, which AIFMs are required to make available to prospective investors before they invest, must be disclosed in a Retail Investor AIF's prospectus.
4. The prospectus must be offered to unitholders free of charge before the conclusion of a contract.
5. The prospectus may be translated into other languages provided that any such translation shall only contain the same information and shall have the same meaning as in the prospectus submitted to the Central Bank.
6. The management company in the case of a unit trust or common contractual fund, the general partner in the case of an investment limited partnership and an investment company must comply with the terms of the prospectus issued by the Retail Investor AIF.
7. A change to the investment objectives, or a material change to the investment policies of a Retail Investor AIF, as disclosed in the prospectus, may not be effected without the prior written approval of all unitholders or without approval on the basis of a 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 Retail Investor AIF".

In the event of a change of investment objectives and/or investment policy, on the basis of a majority of votes cast at a general meeting, a reasonable notification period¹⁸ must be provided by the Retail Investor AIF to enable unitholders redeem their units prior to implementation of these changes.

ii. General information concerning the Retail Investor AIF

1. The prospectus must disclose the following - the name of the Retail Investor AIF, form in law, and, in the case of an investment company, the registered office and head office if different from the registered office.
2. The date of establishment or incorporation of the Retail Investor AIF and indication of duration, if limited.
3. A statement of the place where the constitutional document, if not annexed, and annual reports may be obtained.
4. Brief indications relevant to unitholders of the tax system applicable to the Retail Investor AIF. Details of whether deductions are made at source from the income and capital gains paid by the Retail Investor AIF to unitholders must also be included.
5. The accounting dates and distribution frequency. The time limit (if any) after which entitlement to dividend lapses and procedure in this event.
6. A description of the rules for determining and applying income.
7. In the case of investment companies, the names and positions in the company of the directors; their experience both current and past, which is relevant to the company; and details of their main activities outside the company where these are of significance with respect to the company.
8. The persons who accept responsibility for information contained in the prospectus.
9. The material provisions of the contracts between third parties and the management company, general partner or investment company which may be relevant to unitholders, excluding those

¹⁸ The Central Bank considers that a minimum period of two weeks in the case of daily/weekly dealing Retail Investor AIF or one dealing day in the case of less frequent redemptions should be provided.

relating to remuneration.

10. The authorised share capital in the case of an investment company.
11. The types and main characteristics of the units and in particular:
 - (a) the nature of the right (real, personal or other) represented by the unit,
 - (b) whether there are original securities or certificates providing evidence of title; whether there is entry in a register or in an account,
 - (c) the characteristics of the units: whether they are registered or bearer; and indication of any denominations which may be provided for,
 - (d) an indication of unitholders' voting rights,
 - (e) the circumstances in which winding-up of the Retail Investor AIF can be decided on and winding-up procedure, in particular as regards the rights of unitholders.
12. Where applicable, indication of stock exchanges or markets where the units are listed or dealt in.
13. The base currency of the Retail Investor AIF.

iii. Investment policy

1. The prospectus must contain quantitative parameters on the extent of leverage which will be engaged in by the Retail Investor AIF.
2. The prospectus must also include a list¹⁹ of those stock exchanges and markets (including derivative markets) on which securities or financial derivative instruments of the Retail Investor AIF are listed or traded. Only those stock exchanges and markets which meet with the regulatory criteria (i.e. regulated, operate regularly, be recognised and open to the public) at the date of the prospectus, may be included in the prospectus.

iv. Investment in other investment funds

1. The prospectus must clearly indicate the extent to which it is intended to invest in underlying investment funds and state that additional fees will arise from this investment policy. The prospectus must disclose, and quantify to the extent possible, the types of charges and other

¹⁹ Stock Exchanges in the European Economic Area, Australia, Canada, Hong Kong, Japan, New Zealand, Switzerland and the United States need not be listed individually. Derivative markets in the European Economic Area need not be listed individually.

costs relating to the underlying investment funds which will be borne by the Retail Investor AIF. In addition to disclosure regarding fees which will arise at the level of the Retail Investor AIF, the prospectus must also disclose, to the extent possible, the fees which will arise at the level of the underlying investment funds.

2. The prospectus must clearly disclose both the jurisdiction and type of underlying investment fund into which the Retail Investor AIF proposes to invest. If it is intended to invest in unregulated investment funds, full disclosure regarding the nature of the underlying investment fund, including information on whether the underlying investment fund may be leveraged and the attendant risks must be contained in the prospectus.

v. **Efficient portfolio management**

1. A Retail Investor AIF must inform unitholders clearly in the prospectus of its intention to use the techniques and instruments for efficient portfolio management purposes. The use of these techniques and instruments should be in line with the best interests of the Retail Investor AIF.
2. The Retail Investor AIF should disclose in the prospectus the policy regarding direct and indirect operational costs/fees arising from efficient portfolio management techniques that may be deducted from the revenue delivered to the Retail Investor AIF. These costs and fees should not include hidden revenue. The Retail Investor AIF should disclose the identity of the entity(ies) to which the direct and indirect costs and fees are paid and indicate if these are related parties to the management company, AIFM or the depositary.

vi. **Valuation**

1. The prospectus must disclose how the sale or issue price and the repurchase or redemption price of units will be calculated. It must also specify:
 - (a) the method used to value the assets of the Retail Investor AIF,
 - (b) the method and frequency of the calculation of those prices,
 - (c) information concerning the charges relating to the sale or issue and the repurchase, or redemption of units,
 - (d) the means, places and frequency of the publication of those prices.

vii. **Remuneration and costs arising from underlying investments**

1. The prospectus must disclose the manner, amount and calculation of remuneration payable by the Retail Investor AIF to the management company, directors of the investment company,

general partners, the depositary or third parties, and reimbursement of costs by the Retail Investor AIF to the management company, directors of the investment company, general partners, the depositary or to third parties.

2. The prospectus must disclose, and quantify to the extent possible, the types of charges and other costs relating to investments in underlying investment funds which will be borne by the Retail Investor AIF.

viii. Dealing

1. The prospectus must disclose the procedures and conditions for 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 repurchase or redemption may be suspended.
2. Where a Retail Investor AIF is an open-ended investment fund with limited liquidity, the limited nature of the redemption facilities must be clearly outlined in the prospectus.

Redemption in Specie

3. Where the prospectus provides for redemption in specie provide that:
 - redemption in specie is at the discretion of the Retail 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 Retail Investor AIF where the redeeming unitholder requests redemption of a number of units that represent 5% or more of the net asset value of the Retail Investor AIF. In this event the Retail 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 are not applicable for an exchange traded fund where the original subscription was made in specie.

ix. Offer period

1. The offer period cannot commence prior to the authorisation of the Retail Investor AIF or approval in the case of a sub-fund and must be for a period no longer than six months. In the case of Retail Investor AIFs which are established as private equity or real estate Retail

Investor AIFs this period may extend up to one year provided that the terms of the offer ensure that early unitholders are not prejudiced by the arrangements.

2. Extensions to initial offer periods may be made without prior notification to the Central Bank provided that no subscriptions have been received at the date of the proposed extension. Notifications of any such extensions must be made to the Central Bank on an annual basis.
3. Proposals to extend initial offer periods where subscriptions have been received must be submitted to the Central Bank for approval.

x. **Information concerning a management company or general partner (where not the AIFM)**

1. The prospectus must disclose the name, form in law, registered office and head office, if different from the registered office, of the management company or general partner. If the 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 prospectus must disclose the names and positions in the management company or general partner of the members of the administrative, management and supervisory bodies; their experience, both current and past, which is relevant to the Retail Investor AIF; and details of their main activities outside the management company or general partner where those are of significance with respect to that management company or general partner.
3. The prospectus must disclose the amount of the prescribed capital of the management company or general partner with an indication of the capital paid-up.

xi. **Information concerning service providers**

1. Details of service providers must be disclosed in the prospectus of a Retail Investor AIF.
2. The prospectus must disclose the material provisions of the contract with the management company, general partner or investment company which may be relevant to the unitholders, excluding those relating to remuneration.
3. The prospectus must disclose the other significant activities engaged in by the investment manager.

4. The Central Bank will not require details of the investment adviser to be published in the prospectus²⁰ unless appointed directly by the Retail Investor AIF.

xii. Authorisation status

1. The prospectus must state that the authorisation of the Retail Investor AIF is not an endorsement or guarantee of the Retail Investor AIF by the Central Bank nor is the Central Bank responsible for the contents of the prospectus and must incorporate the following statement:

“The Central Bank shall not be liable by virtue of its authorisation of this Retail Investor AIF or by reason of its exercise of the functions conferred on it by legislation in relation to this Retail Investor AIF for any default of the Retail Investor AIF. Authorisation of this Retail Investor AIF does not constitute a warranty by the Central Bank as to the creditworthiness or financial standing of the various parties to the Retail Investor AIF.”

xiii. Risk disclosures

1. The prospectus issued by all Retail Investor AIFs must identify, and describe in a comprehensive manner, the risks applicable to investing in that particular Retail Investor AIF. In particular Retail Investor AIFs must make reference to:
 - (a) the fact that prices of units may fall as well as rise;
 - (b) the desirability of consulting a stockbroker or financial adviser about the contents of the prospectus; and
 - (c) where relevant, the fact that the difference at any one time between the sale and repurchase price of units in the Retail Investor AIF means that the investment must be viewed as medium to long term.
2. Where relevant, the prospectus must contain a prominent risk warning which will make specific reference to the following:
 - (i) any potential for above average risk involved and
 - (ii) 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.

²⁰ A prospectus may however include additional disclosure regarding investment advisers in accordance with the particular policy of the Retail Investor AIF.

3. The prospectus must include a detailed description of the risks involved in the efficient portfolio management activities, including counterparty risk and potential conflicts of interest, and the impact they will have on the performance of the Retail Investor AIF.
4. A Retail Investor AIF which invests in emerging stock exchanges and markets is required to recommend, in a prominent manner, that unitholders should not invest a substantial proportion of their investment portfolio in the Retail Investor AIF. This risk warning, which should be set out in bold type at the beginning of the prospectus, must cross reference to the more detailed disclosure of risk factors which are contained in the body of the prospectus.
5. A Retail Investor AIF which invests in gold is required to include the following statements in a prominent manner:

The price of gold varies considerably over time. This makes investment in gold high risk, particularly for the medium to long term investor. If the price of gold falls considerably, as it has in the past, you could face a significant loss on your investment.

6. A Retail Investor AIF which proposes to make distributions out of capital and which invests greater than 20% in fixed income instruments must highlight the greater risk of capital erosion given the lack of potential for capital growth and the likelihood that, due to capital erosion, the value of future returns would also be diminished.

xiv. Conflicts of interest

1. The prospectus must include a description of the potential conflicts of interest which could arise between the management company, general partner and investment manager and the Retail Investor AIF with details, where applicable, of how these are going to be resolved. A description of soft commission arrangements which may be entered into by a Retail Investor AIF must also be included.
2. Where it is envisaged that transactions with a partner, manager, depositary, AIFM, investment manager and/or its delegate or associated or group companies may be entered into, there must be full disclosure in the Retail Investor AIF's prospectus.

xv. Directed brokerage programmes and similar arrangements

1. Full details of any directed brokerage programmes or similar arrangements operated in relation to a Retail Investor AIF (including details of the services provided) must be clearly disclosed in the Retail Investor AIF's prospectus.

xvi. Umbrella Retail Investor AIFs

1. The prospectus of an investment company constituted as an umbrella Retail Investor AIF must include the words "*An umbrella fund with segregated liability between sub-funds*". Investment companies constituted as umbrella Retail 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.
2. Where a supplement to the prospectus is issued the supplement must state that the Retail Investor AIF is constituted as an umbrella Retail Investor AIF and name the other existing sub-funds or provide that these will be available upon request.
3. The prospectus must disclose the extent to which one sub-fund can invest in another and the conditions which apply to such investments. A sub-fund within an umbrella investment company may not invest in another sub-fund within the umbrella unless the umbrella investment company, or its delegate, has the systems capability to provide disclosure in relation to the cross-holdings in accordance with industry adopted standards.
4. The prospectus of an umbrella Retail Investor AIF must clearly state the charges, if any, applicable to the exchange of units in one sub-fund for units in another.

xvii. Structured Retail Investor AIF

1. A structured UCITS must ensure that the prospectus:
 - (a) contains full disclosure regarding the investment policy, underlying exposure and payoff formulas in clear language which can be easily understood by the retail investor; and
 - (b) includes a prominent risk warning informing unitholders who redeem their investment prior to maturity that they do not benefit from the pre-defined payoff and may suffer significant losses.

xviii. Warehousing

1. Proposals to acquire assets pursuant to a warehousing arrangement must be fully disclosed in the prospectus, including details of any fee payable in relation to such arrangements. The prospectus must state that the Retail Investor AIF will pay no more than current market value for these assets.

xix. Distributions out of and charging of fees and expenses to capital

1. Where a Retail Investor AIF proposes to make distributions out of capital, the prospectus must include appropriate disclosure including:
 - (a) the rationale behind the policy;
 - (b) a prominent risk warning, at the front of the prospectus, which describes the effects of making distributions from capital. This warning must include the following:
 - that capital will be eroded;
 - that the distribution is achieved by forgoing the potential for future capital growth;
 - this cycle may continue until all capital is depleted; and
 - (c) highlight that distributions out of capital may have different tax implications to distributions of income and recommend that investors seek advice in this regard.
2. Where a Retail Investor AIF proposes to charge fees and expenses, including management fees, to capital, the prospectus must include appropriate disclosure including:
 - (a) indicate that fees and expenses, including management fees, or a portion thereof, may be charged to capital;
 - (b) a prominent risk warning in bold text at front of prospectus which states:
“Unitholders/Shareholders should note that all or part of fees and expenses, including (if applicable) management fees, will be charged to the capital of the Retail Investor AIF. This will have the effect of lowering the capital value of your investment”; and
 - (c) a description of the effects of the charging of fees and expenses, including management fees, to capital i.e. that capital may be eroded.
3. In the case of Retail Investor AIFs which invest greater than 20% in fixed income instruments, where the priority of the Retail Investor AIF is the generation of income rather than capital growth this must be highlighted. In addition the prospectus must include a statement that distributions made during the life of the Retail Investor AIF must be

understood as a type of capital reimbursement.

xx. Hedged and unhedged Retail Investor AIF and share classes

1. The prospectus must clearly describe the general currency hedging strategies of the Retail Investor AIF and, where relevant, the features of individual currency share classes.
2. Where the Retail Investor AIF intends to invest in assets denominated in currencies other than the base currency, the prospectus must disclose whether it is the intention of the Retail Investor AIF to hedge the resulting currency exposure back into the base currency and, if so, to what extent. The general costs and/or exchange rate risks associated with the currency strategy must also be disclosed.
3. In the case of an unhedged currency share class, the prospectus must disclose that a currency conversion will take place on subscription, redemption and distributions at prevailing exchange rates. Where appropriate it must disclose that the value of the unit expressed in the class currency will be subject to exchange rate risk in relation to the base currency. In the case of hedged share classes, the prospectus must indicate that, to the extent that hedging is successful, the performance of the class is likely to move in line with the performance of the underlying assets and that unitholders in the hedged class will not benefit if the class currency falls against the base currency and/or the currency in which the assets of the Retail Investor AIF are denominated.
4. In the case of hedged currency share classes the prospectus must disclose the implications of the hedging policy. Typically this will include:
 - (a) a statement indicating the extent to which the Retail Investor AIF intends to hedge against currency fluctuations and noting that while not the intention, over-hedged or under-hedged positions may arise due to factors outside of the control of the Retail Investor AIF. The prospectus must provide that over-hedged positions will not be permitted to exceed 105% of the net asset value of the class;
 - (b) a statement that the hedged positions will be kept under review to ensure that over-hedged positions do not exceed the provisions set out in the prospectus. This review will also incorporate a procedure to ensure that positions materially in excess of 100% will not be carried forward from month to month;
 - (c) a statement that transactions will be clearly attributable to a specific class. (Therefore currency exposures of different currency classes may not be combined or offset and currency exposures of assets of the Retail Investor AIF may not be allocated to separate share classes);
 - (d) a disclosure that the costs and gains/losses of the hedging transactions will accrue

solely to the relevant class.

5. A Retail Investor AIF may engage in interest rate hedging at share class level provided the benefits and costs of such hedging may be accrued and attributed solely to unitholders in a hedged share class. Such arrangements must be effected in accordance with the principles established in paragraphs 1 to 4.

xxi. Investment through subsidiaries

1. Where a Retail Investor AIF proposes to invest through one or more subsidiaries, its prospectus of the must disclose:
 - (a) the name of the subsidiary; and
 - (b) that the subsidiary is wholly owned by the Retail Investor AIF.

Section 6:**General operational requirements****i. Dealing**

1. Retail Investor AIFs must make the issue and redemption prices of their units available promptly to unitholders on request.
2. Units may not be issued, or if issued must be cancelled, unless the equivalent of the net issue price is paid into the assets of the Retail Investor AIF within a reasonable time, which is specified in the prospectus. This shall not preclude the distribution of bonus units.
3. An investment limited partnership may not temporarily suspend the calculation of the net asset value and redemption of units 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.

ii. Hedged share classes

1. In order to provide currency hedging at class level, the valuation systems operated by the management company, AIFM, investment company or administration company must be capable of processing and identifying the relevant hedge transactions at share class level. Systems must also be in place to enable a review of the hedge to be undertaken in the light of ongoing flows into and out of the share class.

iii. Regulated markets

1. A Retail Investor AIF must regularly review the stock exchanges and markets included on the list contained in the prospectus to ensure that they continue to meet with the regulatory criteria i.e. they must be regulated, operate regularly, be recognised and open to the public.
2. A Retail Investor AIF may update the prospectus from time to time to include additional stock exchanges, as they meet with the regulatory criteria. A Retail Investor AIF must consult with the depositary to ensure that adequate custody arrangements are in place before including additional stock exchanges or markets in the prospectus.

iv. **Directed brokerage programmes or similar arrangements**

1. A Retail Investor AIF must, at a minimum, and on an annual basis, formally review any directed brokerage programmes or similar arrangements and associated costs where such programmes or arrangements are being operated in relation to it.

Section 7:**Annual and half-yearly reports****i. Publication of annual and half-yearly reports**

1. A Retail Investor AIF must comply with section xix of Part I of the Alternative Investment Fund Manager Requirements concerning annual reports. In addition to the disclosures required by the Alternative Investment Fund Manager Requirements, the information set out in this section must be incorporated into the annual report.
2. A Retail Investor AIF must publish a half-yearly report covering the first six months of the financial year. The information set out in this section must be incorporated into the half-yearly report.
3. Dates for the initial reports issued by a Retail Investor AIF will be agreed with the Central Bank at the time of authorisation. The first set of accounts (whether annual or half-yearly) must be within 9 months of the launch date and published within 2 months if half-yearly or 6 months if annual. The first annual reports must be within 18 months of incorporation/establishment and published within 6 months.
4. The annual report must be published within 6 months of the end of the financial year to which it relates. The half-yearly report must be published within 2 months of the reporting period to which it relates.
5. The annual and half-yearly reports must be sent to the Central Bank and supplied to unitholders free of charge on request.
6. The Central Bank exempts an investment limited partnership from the provisions of the European Communities (Accounts) Regulations, 1993 where its sole business is the investment of its funds in property with the aim of spreading investment risk and giving its partners the benefit of the management of its assets.
7. A unit trust or common contractual fund constituted as an umbrella Retail Investor AIF 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.

8. In accordance with company law, an investment company established as an umbrella Retail Investor AIF must include accounts for all sub-funds of that company in its periodic reports.

ii. Information to be contained in the annual report

1. The annual reports must indicate how any transactions undertaken to provide protection against exchange rate risks have been utilised.
2. The annual report issued by all Retail Investor AIFs must, where relevant, disclose if distributions have been made out of the capital of the Retail Investor AIF.
3. Details of all sub-investment managers must to be disclosed in the annual reports issued by the Retail Investor AIF.
4. The annual report must include the following as well as any significant information which will enable unitholders to make an informed judgement on the development of the Retail Investor AIF and its results.
 - (a) number of units in circulation.
 - (b) net asset value per unit.
 - (c) a full portfolio statement or a condensed portfolio statement which lists positions/exposures greater than 5% of net assets, distinguishing between the different types of investments and each investment analysed in accordance with the most appropriate criteria in the light of the investment policy of the Retail Investor AIF (e.g., in accordance with economic, geographical or currency criteria) as a percentage of net assets; for each of the investments the proportion it represents of the total net assets of the Retail Investor AIF must be stated. If a condensed portfolio statement is included in the annual report, a Retail Investor AIF must make the full portfolio statement available to unitholders on demand. This can be made available to potential investors at the Retail Investor AIF's discretion.
 - (d) a statement of changes in the composition of the portfolio during the reference period. To ensure that unitholders can identify significant changes in the disposition of the assets of the scheme only material changes are required to be included in the published statement. These are defined as aggregate purchases of a security exceeding 1% of the total value of purchases for the period and aggregate disposals greater than 1% of the total value of sales. At a minimum the largest 20 purchases and 20 sales must be given. As an alternative, schemes may include a declaration that a complete statement of

changes will be made available to unitholders on request free of charge. The complete statement must, in any event, be sent to the Central Bank.

- (e) where a Retail Investor AIF holds more than 10% of its assets in deposits or other accounts with credit institutions, details of the amounts and the names of the institutions must be provided. Retail Investor AIFs holding less than 10% of assets in deposits or other accounts with credit institutions must submit the relevant details to the Central Bank with their reports.
- (f) investments by sub-funds within an umbrella investment company in the units of other sub-funds within the umbrella must be disclosed in accordance with industry adopted standards. The policies adopted to disclose cross-investments must be explained in a note to the accounts.
- (g) information on the investment funds in which the Retail Investor AIF has invested during the reference period, including disclosure on their regulatory status and fees paid by the Retail Investor AIF and, to the extent possible, by the underlying investment funds. In the case of Retail Investor AIF which are funds of unregulated funds, the periodic reports must list the names of the underlying investment funds, their managers and their domicile. The annual report must provide information on the impact of fees, including performance fees, on returns to unitholders.
- (h) a description of soft commission arrangements affecting the Retail Investor AIF during the period.
- (i) a description on how financial derivative instruments, securities lending and repurchase agreements have been utilised during the reporting period. This description must identify the specific techniques and instruments used during the period and indicate the purposes for the use of such techniques and instruments to allow unitholders assess their nature and the risk relating to them.

Open derivative positions at reporting date must be marked to market and specifically identified in the portfolio statement. Information on open option positions must include the strike price, final exercise date and an indication whether such positions are covered or not.

Retail Investor AIFs which have engaged in securities lending must disclose, in a note to the accounts, the aggregate value of securities on loan at reporting date, together with the value of collateral held by the Retail Investor AIF in respect of these securities. Where a Retail Investor AIF has entered into a securities lending programme organised by generally recognised International Central Securities Depositories Systems, the name of the Central Securities Depository System must be

disclosed

- (j) a list of exchange rates used in the report.
- (k) a comparative table covering the last three financial years and including, for each financial year, at the end of the financial year:
 - (l) the total net asset value.
 - (m) the net asset value per unit.
 - (n) depositary's report.
 - (o) a report of the transactions entered into with a management company, general partner, depositary, AIFM, investment manager or its delegate or group companies of these during the reporting period. This report must include a list of all transactions, by type, the name of the related party and where relevant, fees paid to that party in connection with the transaction;
 - (p) full details of the amounts paid under any directed brokerage programmes or similar arrangements;
 - (q) Details of any distributions out of capital.

iii. Information to be contained in the half-yearly report

1. A balance sheet or statement of assets and liabilities.
2. Number of units in circulation.
3. Net asset value per unit.
4. A full portfolio statement or a condensed portfolio statement which lists positions/exposures greater than 5% of net assets, distinguishing between the different types of investments and each investment analysed in accordance with the most appropriate criteria in the light of the investment policy of the Retail Investor AIF (e.g., in accordance with economic, geographical or currency criteria) as a percentage of net assets; for each of the investments the proportion it represents of the total net assets of the Retail Investor AIF must be stated. If a condensed portfolio statement is included in the half-yearly report, a Retail Investor AIF must make the full portfolio statement available to unitholders on demand. This can be made available to potential investors at the Retail Investor AIF's discretion.
5. A statement of changes in the composition of the portfolio during the reference period. To ensure that unitholders can identify significant changes in the disposition of the assets of the scheme only material changes are required to be included in the published statement. These are defined as aggregate purchases of a security exceeding 1% of the total value of purchases

for the period and aggregate disposals greater than 1% of the total value of sales. At a minimum the largest 20 purchases and 20 sales must be given. As an alternative, schemes may include a declaration that a complete statement of changes will be made available to unitholders on request free of charge. The complete statement must, in any event, be sent to the Central Bank.

6. Where a Retail Investor AIF holds more than 10% of its assets in deposits or other accounts with credit institutions, details of the amounts and the names of the institutions must be provided. Retail Investor AIF holding less than 10% of assets in deposits or other accounts with credit institutions must submit the relevant details to the Central Bank with their reports.
7. Investments by sub-funds within an umbrella investment company in the units of other sub-funds within the umbrella must be disclosed in accordance with industry adopted standards. The policies adopted to disclose cross-investments must be explained in a note to the accounts.
8. Information on the investment funds in which the Retail Investor AIF has invested during the reference period, including disclosure on their regulatory status and fees paid by the Retail Investor AIF and, to the extent possible, by the underlying investment funds.
9. A description of soft commission arrangements affecting the Retail Investor AIF during the reference period.
10. A description on how financial derivative instruments, securities lending and repurchase agreements have been utilised during the reporting period. This description should identify the specific techniques and instruments used during the period and indicate the purposes for the use of such techniques and instruments to allow unitholders assess their nature and the risk relating to them.

Open derivative positions at reporting date should be marked to market and specifically identified in the portfolio statement. Information on open option positions should include the strike price, final exercise date and an indication whether such positions are covered or not.

Retail Investor AIFs which have engaged in securities lending must disclose, in a note to the accounts, the aggregate value of securities on loan at reporting date, together with the value of collateral held by the Retail Investor AIF in respect of these securities. Where a Retail Investor AIF has entered into a securities lending programme organised by generally recognised International Central Securities Depositories Systems, the name of the Central

Securities Depository System must be disclosed

11. A description of any material changes in the prospectus during the reporting period.
12. A list of exchange rates used in the report.
13. Where a Retail Investor AIF 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.
14. A report of the transactions entered into with a management company, general partner, depositary, AIFM, investment manager or its delegate or group companies of these during the reporting period. This report must include a list of all transactions, by type, the name of the related party and where relevant, fees paid to that party in connection with the transaction;
15. Details of any distributions out of capital.

Part II: SPECIFIC FUND-TYPE REQUIREMENTS

Obligations are derived directly from provisions of the investment fund legislation, or are conditions imposed by the Central Bank under powers given to the Central Bank under that legislation.

Section 1:**Venture or development capital or private equity Retail Investor AIFs**

1. A Retail Investor AIF, which invests in venture or development capital or private equity investments, is subject to the following rules in addition to the general rules for all Retail Investor AIFs which are not disapplied below:
 - (a) The title of the Retail Investor AIF must make clear that the Retail Investor AIF is a venture or development capital or private equity investment fund.
 - (b) The venture capital or development capital or private equity investments of the Retail Investor AIF must be diversified such that no more than 30% of net assets is held in any one company or group of companies. The provisions of paragraphs 5 and 6 of section 1.ii of Part I do not apply to these investments. The Retail Investor AIF may derogate from this restriction for one year following the date of its launch provided it observes the principle of risk spreading.
2. The prospectus must indicate the intention of the Retail Investor AIF regarding the exercise of legal and management control over underlying investments.
3. The prospectus must contain a description of the risks involved in this type of Retail Investor AIF and a prominent risk warning which will make reference to the following:
 - (a) the above average risk involved;
 - (b) the suitability of this type of investment only for unitholders who are in a position to take such a risk;
 - (c) the likelihood that because the Retail Investor AIF is invested in unquoted companies, delays may arise in meeting redemption requests from unitholders; and
 - (d) a recommendation that not more than 5% of an investor's portfolio be invested in the Retail Investor AIF.
4. The prospectus must contain a description of the potential conflicts of interest which could arise between the Retail Investor AIF and the management company/AIFM and/or any delegates of the Retail Investor AIF and the management company/AIFM.

Section 2:

Money market Retail Investor AIFs

A Retail Investor AIF which labels or markets itself as a money market fund must comply with this section in addition to the general rules for all Retail Investor AIFs which are not disapplied below. It must classify itself as a “Short-Term Money Market Fund” or a “Money Market Fund”.

Weighted Average Maturity (“WAM”): WAM is a measure of the average length of time to maturity of all of the underlying securities in the money market fund weighted to reflect the relative holdings in each instrument, assuming that the maturity of a floating rate instrument is the time remaining until the next interest rate reset to the money market rate, rather than the time remaining before the principal value of the security must be repaid. In practice, WAM is used to measure the sensitivity of a money market fund to changing money market interest rates.

Weighted Average Life (“WAL”): WAL is the weighted average of the remaining life (maturity) of each security held in a money market fund, meaning the time until the principal is repaid in full (disregarding interest and not discounting). Contrary to what is done in the calculation of the WAM, the calculation of the WAL for floating rate securities and structured financial instruments does not permit the use of interest rate reset dates and instead only uses a security’s stated final maturity. WAL is used to measure the credit risk, as the longer the reimbursement of principal is postponed, the higher is the credit risk. WAL is also used to limit the liquidity risk.

Constant net asset value (“NAV”) Money Market Funds: A constant or stable NAV money market fund seeks to maintain an unchanging face value NAV (for example \$1/€1 per unit). Income in the fund is accrued daily and can either be paid out to the investor or used to purchase more units in the fund. Assets are generally valued on an amortised cost basis which takes the acquisition cost of the security and adjusts this value for amortisation of premiums (or discounts) until maturity.

1. The Retail 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 Retail 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.

- (i) In the case of Money Market Funds this must take account of the longer WAM and WAL.
- (ii) 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. Short-Term Money Market Funds

1. A Short-Term Money Market Fund 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. Investments are limited to high quality money market instruments, as determined by the Retail 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 Retail Investor AIF). Credit quality must be monitored on an ongoing 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;
 - (d) the liquidity profile.
4. Investments are limited to securities or instruments with a residual maturity until the legal redemption date of less than or equal to 397 days.
5. A Short-Term Money Market Fund must provide daily NAV and price calculations and have daily subscriptions and redemptions of units.
6. The WAM of the portfolio must not exceed 60 days.
7. The WAL of the portfolio must not exceed 120 days. When calculating the WAL for securities, including structured financial instruments, the Retail 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 Retail 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 Retail Investor AIF implies that there is a high probability that the option will be exercised at the next exercise date.
8. When calculating the WAM and WAL, the impact of financial derivative instruments, deposits and efficient portfolio management techniques must be taken into account.
 9. Direct or indirect exposure to equities or commodities, including through financial derivative instruments, is not permitted.
 10. Financial derivative instruments may only be used when these are in line with the money market investment strategy of the Retail 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. Investment in other investment funds is not permitted unless those investment funds are also Short-Term Money Market Funds.
 12. A Short-Term Money Market Fund may have either a constant or fluctuating NAV.

ii. Money Market Funds

1. A Money Market Fund 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. Investments are limited to high quality money market instruments, as determined by the Retail 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 Retail Investor AIF). Credit quality must be monitored on an ongoing 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;
 - (d) the liquidity profile.
4. Investments are limited 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. A Money Market Fund must provide daily NAV and price calculations and have daily subscriptions and redemptions of units.
 6. The WAM of the portfolio must not exceed 6 months.
 7. The WAL of the portfolio must not exceed 12 months. When calculating the WAL for securities, including structured financial instruments, the Retail 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 Retail 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 Retail Investor AIF implies that there is a high probability that the option will be exercised at the next exercise date.
 8. When calculating the WAM and WAL, the impact of financial derivative instruments, deposits and efficient portfolio management techniques must be taken into account.
 9. Direct or indirect exposure to equities or commodities, including through financial derivative instruments, is not permitted.
 10. 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. Investment in other investment funds is not permitted unless those investment funds are Short-Term Money Market Funds or Money Market Funds.
 12. A Money Market Fund must have a fluctuating NAV.

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

1. Short-Term Money Market Funds are permitted to follow an amortised cost valuation methodology provided the Retail Investor AIF or, where relevant, its delegate have demonstrable expertise in the operations of money market funds which follow this method of valuation. This condition is satisfied where:
 - (a) the Short-Term Money Market Fund has obtained a triple-A rating from an internationally recognised 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 exceptional circumstances, the management company or investment manager may provide sufficient information to the Central Bank to demonstrate appropriate expertise in the operation of this type of money market fund. Such applications will be considered on a case-by-case basis and must be submitted in advance of the application for authorisation of the money market fund.
2. The Retail Investor AIF must be satisfied 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 Retail 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 Retail 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. If discrepancies in excess of 0.3% between the market value and the amortised cost value of the portfolio occur a daily review must take place. The Retail 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 constitutional document must provide for the escalation procedures set out in paragraph 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 Retail Investor AIF must engage in 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.
7. Money Market Funds are not permitted to follow an amortised cost valuation methodology.

iv. European Central Bank reporting requirements

Introduction

1. The objective of this section is to ensure that all Retail Investor AIF money market funds are identified to the Central Bank and to ensure that these Retail Investor AIFs are aware of their responsibility, under European Community law, to file certain additional periodic returns.

Background

2. On a regular basis the European Central Bank (ECB) prepares a consolidated balance sheet of money-creating financial intermediaries, referred to as Monetary Financial Institutions (MFIs), for the euro area. Statistical information is reported by these MFIs at monthly and quarterly intervals.
3. The objective is to supply monthly data on the business of MFIs in sufficient detail to provide the ECB with a comprehensive statistical picture of monetary developments in the euro area and to allow flexibility in the calculation of monetary aggregates.
4. MFIs fall into four broad categories. These are:-
 - (a) Central Banks
 - (b) Credit Institutions
 - (c) Other MFIs
 - (d) Money Market Funds
5. Money market funds, which meet the specific criteria listed below, are defined as MFIs.

*Money Market Funds (MMFs) Defined*²¹

6. Collective investment undertakings complying with all the following criteria shall be treated as MMFs, where they:
- (a) pursue the investment objective of maintaining a fund's principal and providing a return in line with the interest rates of money market instruments;
 - (b) invest in money market instruments which comply with the criteria for money market instruments set out in Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)²², or deposits with credit institutions or, alternatively, ensure that the liquidity and valuation of the portfolio in which they invest is assessed on an equivalent basis;
 - (c) ensure that the money market instruments they invest in are of high quality, as determined by the management company. The quality of a money market instrument shall be considered, *inter alia*, on the basis of the following factors:
 - the credit quality of the money market instrument,
 - the nature of the asset class represented by the money market instrument,
 - for structured financial instruments, the operational and counterparty risk inherent within the structured financial transaction,
 - the liquidity profile;
 - (d) ensure that their portfolio has a weighted average maturity (WAM) of no more than 6 months and a weighted average life (WAL) of no more than 12 months;
 - (e) provide daily net asset value (NAV) and a price calculation of their shares/units, and daily subscription and redemption of shares/units;
 - (f) limit investment in securities to those 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 rate reset date is less than or equal to 397 days whereby floating rate securities must reset to a money market rate or index;
 - (g) limit investment in other collective investment undertakings to those complying with the definition of MMFs;
 - (h) do not take direct or indirect exposure to equity or commodities, including via derivatives and only use derivatives in line with the money market investment strategy of the fund. Derivatives which give exposure to foreign exchange may only be used for hedging purposes. Investment in non-base currency securities is allowed provided the currency exposure is fully hedged;

²¹ The definition is 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).

²² OJ L 302, 17.11.2009, p.32.'

- (i) have either a constant or fluctuating NAV.
7. In addition to the above description of a money market fund, the ECB has also provided a more detailed set of definitions which is contained in the Appendix attached to the end of this section.

Application Requirements

8. The Central Bank is required to identify all those collective investment undertakings which are domiciled in the State and which are considered money market funds as defined by the ECB.
9. Guidelines on a common definition of European money market funds were issued on 19 May 2010 by the Committee of European Securities Regulators (CESR) the predecessor of the European Securities and Markets Authority. The population of MMFs for the European System of Central Banks will be aligned with the identification criteria applied for supervisory purposes following the above mentioned CESR guidelines. Any new fund that is authorised by the Funds Authorisation Division (FAD) of the Central Bank must indicate if they are a 'short-term money market fund' or a 'money-market fund' during the authorisation process and these funds will be considered to be in the reporting population of money market funds for the European Central Bank, and must meet the necessary reporting requirements.

Statistical Reports - Content and Deadlines for Submission

10. The Central Bank has prepared a *Statistical Reporting Pack* ('the Pack') which contains copies of the reporting formats which MMFs will be required to use when sending information to the Central Bank. These are simplified versions of the reporting formats which the ECB has issued and which other MFIs are required to use. The Central Bank has attempted to make the reporting formats as short, simple and user friendly as possible, taking account of the specific characteristics of a typical MMF and the minimum mandatory reporting requirements of the ECB.
11. The Pack contains a copy of the monthly and quarterly reporting formats together with detailed guidelines on their completion. The Pack and a copy of all the relevant EU and ECB Regulations (see below) will be provided on request.

12. Each **MMF** domiciled within a Monetary Union Member State (MUMS) must submit two sets of data.²³
 - (a) **Monthly Data** - This return must be prepared on a monthly basis and must 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 - net asset value and borrowings; assets - cash, deposits, debt securities (money market paper and other) and equity holdings. All components of assets are broken into three general issuer categories (Irish, other MUMS and the rest of the world).
 - (b) **Quarterly Data** - This return must be prepared on a quarterly basis end March, June, September and December and must be received by the Central Bank **within 10 working days** of the end-quarter to which it relates. Essentially it requires a more detailed breakdown of the monthly data. The additional information relates primarily to a profile of the issuers and maturity of the assets held by the MMF.

Processing and Publication of Information

13. General details, e.g. name, address, etc., of each MMF will be sent to the ECB. This information, together with that for all other MFIs, will be available on the ECB's website and will also be published on an annual basis. Individual monthly and quarterly data will be aggregated by the Central Bank. The aggregated data for all MFIs will be transmitted to and published by the ECB. A subset of these data will also be published by the Central Bank, however individual institutions data will not be published and confidentiality is respected at all times.

Relevant Regulations

14. The ECB's statistical reporting system is based on the following regulations:
 - (a) Council Regulation [EC] 2533/98 of 23 November 1998 - This Regulation was adopted by the Council of the European Union in late 1998. It provides for the right of the ECB, assisted by the National Central Banks ("NCBs"), to collect statistical information within the limits of the reference reporting population (refer to Article 2.2 of the Regulation).

²³ The ECB's reporting requirements are set out in Council Regulation (EC) No 25/2009 of the ECB of 19 December 2008 (ECB/2008/32).

It provides the ECB with the power to adopt additional Regulations in order to define and impose specific reporting requirements and with powers to compulsorily collect and verify the relevant information. The Regulation also grants the ECB power to impose sanctions on reporting entities who fail to comply with their reporting obligations.

- (b) Council Regulation [EC] 2423/2001 of the European Central Bank of 22 November 2001 (ECB/2001/13) - As required by Council Regulation [EC] 2533 (see above), the Governing Council of the ECB adopted Regulation 2423 in November 2001. It sets out who must submit reports (within the broad parameters set out Council Regulation 2533/98) and the nature of the information required.
- (c) Council Guideline ECB/2007/9 of 3 September 2007 - This Guideline deals with monetary, financial institutions and markets statistics. In Article 10, the Guideline includes provisions regarding the reporting by the national central banks (NCB's) of statistics on the assets and liabilities of money market funds.
- (d) Council Regulation ECB/2008/32 of 19 December 2008 - Regulation ECB/2001/13 of 22 November 2001 concerning the consolidated balance sheet of the monetary financial institutions sector has been significantly amended on several occasions. Since further amendments to this Regulation were required in 2008 (primarily relating to the reporting obligations of credit institutions), the original and amendments to the regulation were recast in the interests of clarity and transparency.
- (e) Regulation of the European Central Bank ECB/2001/12 of 25 August 2001 - This regulation sets new identification criteria for MMF's for ESCB statistical purposes, such that the population of statistical MMF's is aligned with the identification criteria for supervisory purposes. This change aims to increase market transparency and facilitate management reporting on funds. The regulation sets out criteria to differentiate between "short-term money market funds" and "money market funds", and applies the concepts of WAM and WAL as applicable to both.

Appendix

‘Section 2: Specifications for the MMFs’ identification criteria’ for the purpose of 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).

- a) the money market instrument shall be considered to be of a high credit quality, if 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 management company’s internal rating process. Where a recognised credit rating agency divides its highest short-term rating into two categories, these two ratings shall be considered as a single category and therefore the highest rating available;
- b) the money market fund may, as an exception to the requirement in paragraph (a), hold sovereign issuance of at least investment grade quality, whereby ‘sovereign issuance’ means money market instruments issued or guaranteed by a central, regional or local authority or central bank of a Member State, the ECB, the European Union or the European Investment Bank;
- c) when calculating WAL for securities, including structured financial instruments, the maturity calculation is based 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:
 - the put option may be freely exercised by the management company at its exercise date,
 - the strike price of the put option remains close to the expected value of the instrument at the next exercise date,
 - the investment strategy of the MMF implies that there is a high probability that the option will be exercised at the next exercise date;
- d) when calculating both WAL and WAM, the impact of financial derivative instruments, deposits and efficient portfolio management techniques shall be taken into account;
- e) weighted average maturity’ (WAM) shall mean a measure of the average length of time to maturity of all of the underlying securities in the fund weighted to reflect the relative holdings

in each instrument, assuming that the maturity of a floating rate instrument is the time remaining until the next interest rate reset to the money market rate, rather than the time remaining before the principal value of the security must be repaid. In practice, WAM is used to measure the sensitivity of a MMF to changing money market interest rates;

- f) 'weighted average life' (WAL) shall mean the weighted average of the remaining maturity of each security held in a fund, meaning the time until the principal is repaid in full, disregarding interest and not discounting. Contrary to the calculation of the WAM, the calculation of the WAL for floating rate securities and structured financial instruments does not permit the use of interest rate reset dates and instead only uses a security's stated final maturity. WAL is used to measure the credit risk, as the longer the reimbursement of principal is postponed, the higher the credit risk. WAL is also used to limit the liquidity risk;
- g) 'money market instruments' means instruments normally traded on the money market which are liquid and have a value which can be accurately determined at any time;
- h) 'management company' means a company, the regular business of which is the management of the portfolio of an MMF.

Section 3:

Real Estate Retail Investor AIFs

A Retail Investor AIF, which invests in real estate or real estate related assets, is subject to the following rules in addition to the general rules for all Retail Investor AIFs which are not disapplied below.

“**Real Estate**” is defined as a freehold or leasehold interest in any land or building.

“**Real Estate related assets**” refer to securities issued by a body corporate (e.g. shares, debentures, warrants or certificates representing these) whose main activity is investing in, dealing in, developing or redeveloping real estate.

1. Before a real estate interest is acquired for the Retail Investor AIF it must be valued. The valuation report must confirm that if the real estate interest was acquired for the Retail Investor AIF it could be disposed of at that valuation within a reasonable period. The real estate interest must be acquired within six months from the date of the report and at a price which is within 5% of the valuation price.
2. Real Estate related assets must be traded in or dealt on a market which is provided for in the constitutional document. However, up to 20% of the Retail Investor AIF's net assets may consist of real estate related assets which are not traded in or dealt on such a market provided that these assets are acquired under the same conditions as for real estate interests above.
3. Not more than 30% of the Retail Investor AIF's net assets may be invested in any single real estate interest. This restriction is effective from the date of acquisition; however, a real estate interest whose economic viability is linked to another real estate interest is not considered as a separate item of real estate interest for this purpose. The Retail Investor AIF may derogate from this restriction for two years following the date of its launch provided it observes the principle of risk spreading.
4. Not more than 25% of the Retail Investor AIF's net assets may be invested in real estate interests which are vacant, in the process of development or requiring development.
5. Not more than 25% of the Retail Investor AIF's net assets may be invested in real estate interests which are subject to a mortgage. (This provision does not affect the ability of a

Retail Investor AIF to secure its borrowing generally on the real estate interests of the scheme.) The amount of the outstanding mortgage on any real estate interest must not represent more than 50% of the value of that property.

6. The Retail Investor AIF may not grant any person an option to acquire any real estate interest included in the Retail Investor AIF.
7. The prospectus must contain a description of the risks involved in this type of Retail Investor AIF including the risks associated with investing in leasehold interests where the unexpired period of the lease is short (e.g. less than seventy years). Where appropriate, the prospectus must also contain a prominent risk warning which makes reference to circumstances in real estate markets which can cause difficulties in meeting redemptions.
8. Details of any minimum size to be achieved during the initial offer period in order for the Retail Investor AIF to be feasible and information on procedure in the event that the minimum size is not achieved in the initial offer period.

Section 4:

Funds of unregulated funds Retail Investor AIFs

Retail Investor AIFs may invest no more than 20% of their net asset value in unregulated investment funds. A Retail Investor AIF, which proposes to invest more than 20% in unregulated investment funds, including investments in hedge funds and other alternative investment funds, is subject to the following rules in addition to the general rules for all Retail Investor AIFs which are not disappplied below.

Diversification

1. The Retail Investor AIF must not invest more than 20% of net assets in the units of any one unregulated investment fund.

Underlying investment funds

2. The underlying investment funds
 - (a) must be subject to independent audit in accordance with generally accepted international auditing standards; and
 - (b) must have arrangements in place such that all assets are held by a party/parties independent of the manager of the investment funds.

Management

3. The management of the Retail Investor AIF and its delegate(s), where applicable, must demonstrate appropriate experience and expertise in relation to alternative investment funds.

Detailed information must be submitted to enable the Central Bank to be satisfied that appropriate controls and systems are in place to monitor constantly the activities of the underlying investment funds, their managers and risk assessment procedures. This will include, inter alia, information on the extent to which the management of the Retail Investor AIF and its delegate(s) will:

- (a) review the background, expertise and experience of the underlying managers;
- (b) review, on an on-going basis, the risks of the underlying investment funds and the risks of the strategies being employed, including the amount of gearing inherent in these strategies and counterparty risk;
- (c) monitor overall leverage of the Retail Investor AIF.

4. The management of the Retail Investor AIF must be able to provide the Central Bank, on request, with a detailed report on the risk profile and recent performance of the Retail Investor AIF's investments.
5. Where the Retail Investor AIF invests more than 40% of net assets in investment funds managed by the same management company, or by an associated or related company, the management of the Retail Investor AIF must make a quarterly report to the Central Bank on the extent to which the underlying investment funds diversified between trading strategies.
6. The Retail Investor AIF may not invest in units of another fund of funds.
7. The Retail Investor AIF may not invest in units of an investment fund which itself invests more than 30% of net assets in another investment fund. This restriction does not apply in limited circumstances where the first underlying investment fund provides the only means of investing in a second underlying investment fund and the first and second underlying investment funds act, in effect, as a singular structure. In this case the prospectus must:
 - explain that the investment is made for the purposes of gaining access to certain AIFs and is only permissible through this layered structure;
 - describe the singular structure of the first and second underlying investment funds;
 - provide that there will be no double charging of investment management fees including performance fees and depositary fees and indicate whether these will be borne at one level or divided between the first and second underlying investment funds;
 - provide details of the duplication of fees which will arise at the level of both the first and second underlying investment funds e.g. administration fees, legal fees, audit fees.

Any such investments must not be made for the purpose of duplicating management and/or investment management fees.

Redemption policies

8. Where the Retail Investor AIF is open-ended it must provide at least one dealing day per month. The maximum interval between submission of a redemption request and payment of settlement proceeds must not exceed 95 calendar days.

The Retail Investor AIF may retain up to 10% of redemption proceeds, where this reflects the redemption policy of the underlying investment fund(s) until such time as the full redemption proceeds from the underlying investment fund(s) is received.

Prospectus

9. The Retail Investor AIF must include the following risk warning, in bold, in a prominent position on the cover of the prospectus and on the application form attached to the prospectus:

"This Retail Investor AIF will invest in unregulated investment funds which may not be subject to the same legal and regulatory protection as afforded by investment funds authorised and regulated in the European Union or equivalent jurisdictions. Investment in unregulated investment funds involves special risks that could lead to a loss of all or a substantial portion of such investment."

An investment in this Retail Investor AIF is not suitable for all unitholders. A decision to invest in the Retail Investor AIF should take into account your own financial circumstances and the suitability of the investment as a part of your portfolio. You should consult a professional investment adviser before making an investment."

10. In addition to the normal information provided, the prospectus must include information on the special risks referred to in paragraph 9 of this section. It must provide specific information drawing attention to:
- (a) the investment policies of underlying investment funds in which the Retail Investor AIF proposes to invest and the relevant risks associated with such policies;
 - (b) the levels of leverage employed by the underlying investment funds;
 - (c) the expected impact of fees charged at both the level of the Retail Investor AIF and the underlying investment funds on overall performance;
 - (d) cumulative effect of performance fees, which may arise at both the Retail Investor AIF and underlying investment fund level;
 - (e) potential liquidity problems;
 - (f) potential valuation difficulties.
11. The prospectus must provide an explanation, in plain English, including a glossary of terms if necessary, of the alternative investment strategies which the underlying investment funds may employ.
12. The prospectus must describe the diversification policies of the Retail Investor AIF including information on the extent to which the Retail Investor AIF will diversify between trading strategies and also the extent to which it will invest in underlying investment funds which have demonstrated a high volatility of return.

13. The decision to invest in investment funds with lock up periods must not affect the redemption arrangements provided for in the prospectus issued by the Retail Investor AIF. The prospectus must fully disclose the intention to invest in such investment funds. Disclosure must focus on typical duration of lock-up periods and the amount of net assets which are likely to be invested in this type of investment fund.

Periodic reports

14. The periodic reports must list the names of the underlying investment funds, their managers and their domicile. The annual report must provide information on the impact of fees, including performance fees, on returns to unitholders. In the case of Retail Investor AIFs covered by paragraph 7 of this section, the periodic reports must include these details for both the first and second underlying investment funds.

Section 5:

Retail Investor AIFs which invest more than 30% of net assets in another investment fund

1. A Retail Investor AIF may invest more than 30% of net assets in an open-ended investment fund and may disregard paragraph 11 of section 1.ii provided that:
 - the underlying investment fund is authorised in Ireland; or
 - authorised in another jurisdiction by a supervisory authority established in order to ensure the protection of unitholders and which, in the opinion of the Central Bank, provides an equivalent level of investor protection to that provided under Irish laws, regulations and conditions governing Retail Investor AIFs.

2. For the purposes of paragraph 1 of this section, acceptable investment funds are:

Category 1

- investment funds established in a Member State of the European Union which are authorised under Directive 2009/65/EC;
- investment funds established in a Member State of the European Economic Area which are authorised under domestic legislation implementing Directive 2009/65/EC;
- investment funds established in Guernsey and authorised as Class A Schemes;
- investment funds established in Jersey as Recognised Funds;
- investment funds established in the Isle of Man as Authorised Schemes;
- Retail Investor AIF authorised by the Central Bank.

Category 2

Investment funds:

- authorised in a Member State of the European Union;
- established in Guernsey and authorised as Class B Schemes;
- established in Jersey which are not Recognised Funds;
- established in the Isle of Man as unauthorised schemes;
- authorised by the US Securities and Exchanges Commission under the Investment Companies Act 1940;

and which comply, in all material respects, with the provisions of the Handbook in respect of Retail Investor AIF.

The consideration of “all material respects” should include, inter alia, consideration of the following:

- supervision by the regulatory authority of the investment fund;
 - the existence of an independent depositary with similar duties and responsibilities in relation to both safekeeping and supervision;
 - requirements for the spreading of investment risk including concentration limits, ownership restrictions, leverage and borrowing restrictions, etc.;
 - availability of pricing information and reporting requirements;
 - redemption facilities and frequency;
 - restrictions in relation to dealings by related parties.
3. In the case of Category 1, the Central Bank must be supplied with the prospectus of the underlying investment fund and any other information which it may request. The Central Bank may impose conditions on, or may object to, the inclusion of a particular underlying investment fund.
4. (a) In the case of Category 2, the Central Bank must be supplied with the prospectus of the underlying investment fund and any other information which it may request. The Central Bank may impose conditions on, or may object to, the inclusion of a particular underlying investment fund.
- (b) The Retail Investor AIF must provide a letter to the Central Bank confirming that the underlying investment fund complies in all material respects with the provisions of the Handbook in respect of Retail Investor AIF.
- (c) The Central Bank’s assessment will take into account the totality of the investment fund's arrangements. For example, the fact that the underlying investment fund does not have identical investment rules will not necessarily rule out the underlying investment fund as a permitted investment. Also the Central Bank will not require that a list of regulated markets be included in the prospectus.
- (d) Similarly, the oversight responsibilities, as opposed to the safe-keeping function, of a depositary of an underlying investment fund, may not be equivalent to those of Irish depositaries. The oversight function must, at a minimum, include requirements to:
- ensure that valuations of assets are carried out correctly;
 - ensure that units of the underlying investment fund are issued and redeemed correctly; and
 - ensure that the management of the assets is carried out correctly.

- (e) The Retail Investor AIF must inform the Central Bank immediately it becomes aware that the underlying investment fund has materially breached any of its legal, regulatory or constitutional obligations.
5. The Central Bank will consider other jurisdictions and types of investment fund on the basis of submissions made for that purpose. Such submissions must be detailed and comprehensive and should contain supporting documentation from the jurisdiction in question.
6. Where the Category 1 or Category 2 investment fund is a fund of funds, the Retail Investor AIF's prospectus must:
- include a prominent risk warning to alert unitholders to the fact that they will be subject to higher fees arising from the layered investment structure;
 - disclose, in tabular form, the fees arising at the level of (i) the Retail Investor AIF, (ii) the funds of funds, and (iii) the underlying investment funds into which the fund of funds invests, to the extent known (and at least an indication of these).
7. The periodic reports of the Retail Investor AIF must have the periodic reports of the underlying investment fund attached.

Section 6:**Closed ended Retail Investor AIFs or open-ended Retail Investor AIFs with limited liquidity****i. Closed-ended period**

1. The maximum initial duration permitted by the Central Bank for a closed ended Retail Investor AIF is:
 - (a) 5 years; or
 - (b) 10 years provided this is reasonably required by the investment objective of the Retail Investor AIF; or
 - (c) greater than 10 years in the case of a Retail Investor AIF which has made realistic provision for liquidity in its units and which has provided specific opportunities for the redemption of units after 10 years, by all those unitholders who may wish to do so, and on a periodic basis thereafter.

ii. Liquidity

1. Liquidity provisions must realistically contribute to the ability of a unitholder to realise his/her investment prior to the expiry of the closed-ended period.

Examples of realistic liquidity provisions include the following:

- (a) Appointment of market makers (i.e. institutions who would be prepared to make a bid for units presented to it) or other system whereby unitholders would be assured of obtaining a reasonable price for their units within a reasonable time-frame. It is recognised that such a provision does not necessarily entail that a unitholder would receive the prevailing net asset value.
- (b) Limited redemption facilities which could take the form of a limited period during which requests for redemption may be accepted.
- (c) Listing on a regulated stock exchange in conjunction with the appointment of brokers who would execute orders on a matched bargain basis. The acceptability of this type of provision would depend on the liquidity provided by the listing (i.e. the extent to which a market in units was likely to develop).

2. It is noted that the appointment of brokers who would execute orders on a matched bargain basis is a desirable feature of a closed-ended Retail Investor AIFs. However, where a market in units is unlikely to develop, it must be recognised that this provision does not provide realistic liquidity in the units of a Retail Investor AIF.

iii. **Changes to existing closed-ended Retail Investor AIFs**

Changes to Duration

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

Changes to the investment objective or material²⁴ changes to the investment policy of a Retail 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 Retail Investor AIF, 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 Retail Investor AIF, votes in favour of the change must represent at least 50% of votes cast.

Non-material changes to the investment policy of a Retail Investor AIF

5. In the event of non-material changes to investment policies unitholders must be notified of these changes. Notification can be provided by means of appropriate disclosure in the next periodic report.

²⁴ In accordance with paragraph 7 of section 5.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 Retail Investor AIF”

Changes to Fees or Charges

6. Where a closed-ended Retail Investor AIF proposes to amend the maximum redemption charge as disclosed in the constitutional documents or the maximum annual fee charged by the management company as disclosed in the constitutional documents²⁵, the following approach must be adopted:
 - (a) No realistic liquidity provisions: Where there is a proposed increase in these fee or charges with no opportunity for unitholders to redeem or otherwise exit the Retail Investor AIF, 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 Retail Investor AIF, votes in favour of the increase must represent at least 50% of votes cast.

iv. Other changes

1. The Central Bank may require the application of the approach set out in paragraph 6 of section 6.iii of this Part in the case of other proposed changes depending on the impact of the proposed changes on the unitholders. Circumstances where this approach is likely to be required include changes to the distribution policies of the closed-ended Retail Investor AIF or changes to the valuation policies. Proposed changes will be considered by the Central Bank on a case by case basis.

v. Open-ended Retail Investor AIFs with limited liquidity

1. In order to be authorised as an open-ended Retail Investor AIF, the Central Bank requires that the unitholders must be able to request redemption of their holdings at least monthly.
2. Retail Investor AIFs, which are not closed-ended Retail Investor AIFs, but which do not provide redemption facilities monthly, are classified as open-ended Retail Investor AIFs with limited liquidity. The extent to which this section applies to open-ended Retail Investor AIFs with limited liquidity will be determined by the Central Bank on a case-by-case basis and will depend on the liquidity arrangements which are provided. For example, a Retail Investor AIF with very few exit mechanisms will be subject to this section whereas it will not be applicable in the case of a Retail Investor AIF which provides regular redemption facilities.

²⁵ If the fee disclosed in the prospectus is less than the maximum fee permitted in these documents, unitholder approval will also be required for an increase in the fee disclosed in the prospectus unless the prospectus also provides that a higher fee may be charged.

Section 7:

Guaranteed Retail Investor AIFs

1. The Central Bank will not permit the use of the word “guaranteed” in the name of a Retail Investor AIF unless there is a specific legally enforceable guarantee between the Retail Investor AIF and a legally independent third party of substance, for the benefit of the unitholders, the material provisions of which must be clearly disclosed in the prospectus.

Legal agreement

2. The guarantee must be evidenced in a contract e.g. a deed of guarantee or an irrevocable letter of credit, which is legally enforceable under Irish law.²⁶ The guarantor must have the legal authority to enter into the contract. The contract must not contain onerous provisions in respect of the Retail Investor AIF which would permit the guarantor to invalidate the guarantee. The Retail Investor AIF would be expected to provide to the Central Bank a letter from its legal advisors to confirm that the guarantee conforms to these criteria.

Third party

3. Certain parties to a Retail Investor AIF, in particular, the investment company itself or the management company, or general partner to a Retail Investor AIF may not act as guarantors. The guarantor must be an entity of substance and good standing.
4. The guarantor must be a credit institution with paid-up share capital in excess of €100million which is either:
 - (a) a credit institution authorised in the European Economic Area (EEA) (European Union Member States, Norway, Iceland, Liechtenstein); or
 - (b) a credit institution authorised within a signatory state, other than a Member State of the EEA, to the Basle Capital Convergence Agreement of July 1988 (Switzerland, Canada, Japan, United States); or
 - (c) a credit institution authorised in Jersey, Guernsey, the Isle of Man, Australia or New Zealand.

²⁶ The Central Bank may permit non-Irish law and/or non-exclusive foreign jurisdiction to be applied where this is shown to be best market practice and does not prejudice the interests of unit-holders.

Disclosure

5. The prospectus issued by a guaranteed Retail Investor AIF must disclose, in a prominent position, material provisions of the guarantee as follows:
 - (a) the name of the guarantor;
 - (b) the obligations of the Retail Investor AIF under the guarantee, including detail on the cost of the guarantee;
 - (c) the nature, timing and characteristics of the guarantee;
 - (d) a warning to the effect that eventual performance of the guarantee is dependent on the solvency of the guarantor;
 - (e) a clear description of the upside limitation as well as the downside protection, sufficient for an investor to make an informed judgement about its value;
 - (f) where relevant, the impact on unitholders who sell their units prior to the maturity of the guarantee.

Section 8:

Distributions out of and charging fees and expenses to capital

1. A Retail Investor AIF which proposes to make distributions out of capital must include the risk warning specified in paragraph 1(b) of section 5.xix of Part I in any subscription form or marketing material.
2. A Retail Investor AIF which proposes to charge fees and expenses, including management fees, to capital must include the following in bold text in the subscription application form:
“Unitholders/Shareholders should note that all or part of fees and expenses, including (if applicable) management fees will be charged to the capital of the Retail Investor AIF. This will have the effect of lowering the capital value of your investment.”
3. Any income statement issued to unitholders or shareholders where fees and expenses have been charged to capital should include a statement to explain the effect of this accounting policy, including wording to the effect that the investor’s capital amount has been reduced.

Part III: INWARD MARKETING OF AIF TO RETAIL INVESTORS

1. AIFs which propose to market their units in Ireland to retail investors must be authorised by a supervisory authority set up in order to ensure the protection of unitholders and which, in the opinion of the Central Bank, provides an equivalent level of investor protection to that provided under Irish laws, regulations and conditions governing Retail Investor AIF.
2. An AIF situated in another jurisdiction which proposes to market its units in Ireland to retail investors must make application to the Central Bank in writing, enclosing the following information and documentation:

Information

- (a) the full name of the AIF.
- (b) the full name and address of the management company and/or AIFM and/or investment company.
- (c) the full name and address of the depositary.
- (d) the jurisdiction in which the AIF is authorised and the name and address of the supervisory authority.
- (e) details of the arrangements for the marketing of units in Ireland.
- (f) the full name and address of the establishment in Ireland (hereafter “facilities agent”) where facilities will be maintained where:
 - unitholders can be advised how dividend payments will be made, how a redemption request can be made to the AIF and how redemption proceeds will be paid to unitholders;
 - the constitutional document, the prospectus, the annual and half-yearly reports can be examined, free of charge, and copies obtained if required; and
 - complaints can be made for forwarding to the head office of the management company/AIFM/investment company.

Documentation

Documentation submitted to the Central Bank must be in English or Irish or must be accompanied with a translation in English or Irish.

- (a) a completed Retail Investor AIF application form together with a letter explaining any material differences between the requirements applicable to the AIF and those applicable to a Retail Investor AIF.

- (b) a statement or certificate from the supervisory authority of the AIF confirming that it is authorised.
- (c) a certified copy of the constitutional document.
- (d) the prospectus and any amendments thereto.
- (e) the latest annual report and any subsequent half-yearly report.
- (f) a copy of any other document materially affecting the rights of unitholders in the AIF.
- (g) confirmation from the facilities agent that it has agreed to act for the AIF.

3. AIFs which are one of the following:

- (a) established in Guernsey and authorised as Class A schemes
- (b) established in Jersey and authorised as recognised funds
- (c) established in the Isle of Man as authorised schemes

will receive approval to market their units in Ireland to retail investors on completion of the information and documentation requirements. Other AIF must demonstrate that the AIF arrangements are such that they provide an equivalent level of investor protection to that provided under Irish laws, regulations and conditions governing Retail Investor AIF.

4. Marketing of units in Ireland to retail investors may not take place until the AIF has received a letter of approval from the Central Bank.
5. The following statement must be included in a prominent position in each copy of the AIF's prospectus and in any marketing material distributed in Ireland for the purposes of promoting the AIF to retail investors

“While this AIF has been approved to market its units to the public in Ireland by the Central Bank, the scheme is not supervised or authorised in Ireland. It is incorporated/established in _____ and is supervised by _____.”

6. The prospectus must provide the following information for Irish unitholders

- (a) details of the facilities agent and the facilities maintained;
- (b) provisions of Irish tax laws, if applicable;
- (c) details of the places where issue and repurchase prices can be obtained or are published;

7. An AIF constituted as an umbrella fund must seek approval before marketing units of additional sub-funds to retail investors in Ireland. Applications must be made to the Central Bank, in writing, enclosing the following:
 - (a) a statement or certificate from the supervisory authority of the AIF confirming that the sub-fund is authorised or approved;
 - (b) the revised prospectus for the AIF; and
 - (c) details of any material changes in the operation of the AIF since the initial approval to market in Ireland was provided.
8. AIF marketing their units in Ireland to retail investors must comply with the Consumer Protection Code of the Central Bank.
9. AIF marketing their units in Ireland must comply with the law, regulations and administrative provisions in force in Ireland.
10. The annual and half-yearly reports, if any, issued by AIF marketing their units in Ireland to retail investors must be submitted to the Central Bank as soon as they are available.
11. When an AIF has received approval from the Central Bank to market units in Ireland to retail investors the name of the AIF and the name and address of the facilities agent will be placed on a list of AIF marketing in Ireland to retail investors, which will be made available to the public on request.

2013

Chapter 2 – Qualifying Investor AIF Requirements

TO WHOM THESE REQUIREMENTS APPLY:

These Requirements set out the conditions which the Central Bank of Ireland (“the Central Bank”) applies to Qualifying Investor AIF alternative investment funds selling only to qualifying investors (hereafter “Qualifying Investor AIFs”). These Requirements are additional to requirements imposed on the persons involved in the management or fund administration of such Qualifying Investor AIFs which are set out in separate chapters. These Requirements are imposed by the Central Bank further to the legislation governing the establishment of investment funds in Ireland.

Qualifying Investor AIFs may be established as:

- (a) unit trusts, under the Unit Trusts Act 1990;
- (b) designated investment companies (i.e. investment companies which may raise capital by promoting their shares to the public) under the Companies Act 1990 Part XIII;
- (c) investment limited partnerships under the Investment Limited Partnerships Act 1994; and
- (d) common contractual funds under the Investment Funds, Companies and Miscellaneous Provisions Act 2005.

These Acts are, hereafter, referred to as the investment fund legislation.

A Qualifying Investor AIF must have a minimum subscription of €100,000 or its equivalent in other currencies. The aggregate of an investor’s investments in the sub-funds of an umbrella Qualifying Investor AIF can 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 €100,000 are unrestricted.

Institutions may not group amounts of less than €100,000 for individual investors.

A unitholder in a Qualifying Investor AIF must be an investor who is a professional client within the meaning of Annex II of Directive 2004/39/EC (Markets in Financial Instruments Directive).

An exemption from the minimum subscription requirement can be granted to the following:

- (a) the management company or general partner;
- (b) a company appointed to provide investment management or advisory services to the Qualifying Investor AIF;
- (c) a director of the management company, investment company or general partner or a director of a company appointed to provide investment management or advisory services to the Qualifying Investor AIF;
- (d) an employee 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, where the employee;

- is directly involved in the investment activities of the Qualifying Investor AIF, or
- is a senior employee of the company and has experience in the provision of investment management services.

In the case of investments by employees²⁷, the management company, investment company or general partner, as appropriate, must be satisfied²⁸ that prospective unitholders fall within the criteria outlined at (d) above. The investing employees must certify to the Qualifying Investor AIF 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 subscription of €100,000.

Unitholders must certify in writing to the investment company, management company in the case of a unit trust or common contractual fund, or general partner in the case of an investment limited partnership that they meet the minimum criteria listed 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.

A Qualifying Investor AIF authorised under the Companies Act 1990 Part XIII is subject to Section 253(2)(a) in relation to the spreading of investment risk. The memorandum and articles of association must state that the Qualifying Investor AIF must comply with the aim of spreading investment risk in accordance with Section 253(2) (a) of the Companies Act 1990 Part XIII. It is the responsibility of the directors of the investment company to ensure that the Qualifying Investor AIF complies with the legislative requirement.

Under the investment fund legislation the Central Bank is responsible for the authorisation and supervision of unit trusts, common contractual funds, investment companies and investment limited partnerships and has the power to impose conditions on them.

The conditions which the Central Bank is imposing are contained in these Requirements which supersede all requirements on Qualifying Investor AIFs set out in previous Notices. These Requirements on the Qualifying Investor AIF must be read in conjunction with all the other requirements set out in this AIF Handbook. These Requirements must be read in conjunction with the investment fund legislation and the AIFMD Regulations which contain, *inter alia*, provisions on the operation of Qualifying Investor AIFs. In the event of any difference or discrepancy between

²⁷ An employee who is primarily involved in the provision of clerical, secretarial or administrative functions may not avail of this exemption.

²⁸ This may entail a provision in the investment management/advisory agreement which will require the investment management/advisory company to confirm the status of the employee in question.

these Requirements and the investment fund legislation or the AIFMD Regulations, the provisions of the investment fund legislation or the AIFMD Regulations will prevail.

A Qualifying Investor AIF must take steps to rectify any breaches of the conditions contained in these Requirements. The timeframe within which such steps must be taken will depend on factors such as the nature, cause and consequence of the breach. A Qualifying Investor AIF must take due account of the interests of unitholders when rectifying a breach. All material breaches of the conditions contained in these requirements must be reported to the Central Bank immediately.

Where a condition set out in these Requirements 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.

The following points must be noted:

- (a) This AIF Handbook includes a separate chapter in respect of Retail Investor AIFs.
- (b) Obligations imposed on a Qualifying Investor AIF under the investment fund legislation and under these Requirements are, in the case of a self-managed investment company, obligations of the investment company and in the case of unit trusts and common contractual funds, or investment companies that have appointed a management company, obligations of the management company and in the case of investment limited partnerships, obligations of the general partner.
- (c) The Requirements are divided as follows:
 - restrictions on the design of Qualifying Investor AIFs;
 - requirements relevant to applications to establish a Qualifying Investor AIF;
 - requirements which apply to a Qualifying Investor AIF to notify, seek further permission from or provide information to the Central Bank;
 - requirements in relation to the prospectus;
 - requirements as to how the Qualifying Investor AIF should be operated; and
 - requirements specific to particular types of Qualifying Investor AIFs.

DEFINITIONS

For the purposes of these Requirements the following interpretations and definitions shall apply:

AIF Handbook: The Central Bank's handbook in relation to AIFs which contains chapters concerning Retail Investor AIF, Qualifying Investor AIF, AIF Management Companies, Fund Administrators, Alternative Investment Fund Managers, AIF Depositaries and Grandfathering Arrangements.

AIFM: An alternative investment fund manager as defined in the AIFMD Regulations.

AIFMD: Alternative Investment Fund Managers Directive (Directive 2011/61/EU) as amended.

AIFMD Level 2: Commission Delegated Regulation (EU) [x].

AIFMD Regulations: European Communities (Alternative Investment Fund Managers Directive) Regulations (SI No. [] of 2012).

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.

Base currency: The currency of denomination of the Qualifying Investor AIF.

Class currency: The currency of denomination of the share class.

Constitutional document: The trust deed, in the case of a unit trust, the memorandum and articles of association, in the case of an investment company, the deed of constitution, in the case of a common contractual fund and the partnership agreement, in the case of an investment limited partnership.

Credit ratings: References to credit ratings are made in some of the sections. The ratings referred to are Standard and Poors. An “**equivalent rating**” for the purposes of these Requirements is one which has been provided by an internationally recognised rating agency and which is deemed equivalent to the rating stipulated in the section. An “**implied rating**” arises where a decision on an unrated entity is made by a Qualifying Investor AIF on the basis of a relationship between an issuer and its rated parent, or where an issuer has a senior debt/long term rating but no short term rating.

Currency share class: A share class denominated in a currency other than the base currency.

Establishment: The creation of a collective investment Qualifying Investor AIF by the initiation of marketing or any like activity which has the effect of either making investment available to potential unitholders or drawing the option of investing in the Qualifying Investor AIF to the attention of unitholders.

Fund Administration Services: The administration of Qualifying Investor AIFs, including the performance of valuation services or fund accounting services or acting as transfer agents or registration agents for such Qualifying Investor AIFs.

Full AIFM: An AIFM which has been authorised under the AIFMD.

Group companies: Member companies of a group of associated or related companies (see other definitions).

Investment adviser: An entity which provides investment advice only and does not have discretionary powers over any of the assets of the Qualifying Investor AIF.

Investment Funds Act 2005: Investment Funds, Companies and Miscellaneous Provisions Act 2005.

Investment manager: An entity which is appointed either directly by the Qualifying Investor AIF or the management company of a Qualifying Investor AIF, or indirectly, as sub-investment manager by an investment manager, to manage assets of a Qualifying Investor AIF on a discretionary basis.

Investment objectives/Investment policy: Some of the sections refer to investment objectives and/or investment policy. By investment objective the Central Bank means the purpose for which the Qualifying Investor AIF was established. Investment policy is the means through which the objective will be achieved.

Liquid: Money market instruments/transferable securities are regarded as being liquid where they can be repurchased, redeemed or sold at limited cost, in terms of low fees and narrow bid/offer spread, and with very short settlement delay.

Merging AIF: An AIF or a sub-fund thereof which transfers its net assets to another sub-fund or to another investment fund or a sub-fund thereof (“receiving investment fund”).

MiFID: Markets in Financial Instruments Directive (Directive 2004/39/EC) as amended.

Registered AIFM: An AIFM which has been registered with the Central Bank in accordance with Regulation [x] of the AIFMD Regulations.

Related company: This term has the same meaning as in the Companies Act 1990, section 140(5). 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.

Share class: Classes of units or shares created within a Qualifying Investor AIF.

Underlying investment funds: This term refers to the underlying investment funds which form the assets of both fund of fund Qualifying Investor AIFs and Qualifying Investor AIFs which invest more than 50% of net assets in another investment fund.

Unitholder: A shareholder in the case of an investment company, a limited partner in the case of an investment limited partnership and unitholder in the case of a unit trust or common contractual fund.

Units: Shares of an investment company, interests of the partners in an investment limited partnership and units of a unit trust or common contractual fund.

PART I: GENERAL RULES

Obligations are derived directly from provisions of the investment fund legislation, or are conditions imposed by the Central Bank under powers given to the Central Bank under that legislation.

Section 1:

Qualifying Investor AIF restrictions

i. General restrictions

1. Qualifying Investor AIFs may not raise capital from the public through the issue of debt securities. This restriction does not operate to prevent the issue of notes by Qualifying Investor AIFs, on a private basis, to a lending institution to facilitate financing arrangements. Details of the note issued must be clearly provided in the prospectus.
2. Qualifying Investor AIFs may 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.
3. An investment company, or an AIFM or management company acting in connection with all of the investment funds which it manages, may not acquire any shares carrying voting rights which would enable it to exercise significant influence over the management of the issuing body.
4. Where the Qualifying Investor AIF invests in units of an investment fund managed by the same management company or by an associated or related company, the manager of the investment fund in which the investment is being made must waive the preliminary/initial/redemption charge which it would normally charge.

5. These Requirements specify the extent of the disapplication by the Central Bank of Section 13(2)(a) and Section 13(2)(c) of the Unit Trusts Act 1990, in accordance with its powers under Section 13(3) of that Act.
6. 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.

ii. Constitutional documents

1. The constitutional document must provide that the assets of a Qualifying Investor AIF be entrusted to a depositary for safe-keeping.
2. The trust deed, deed of constitution or partnership agreement shall prescribe the remuneration and the expenditure which the management company or general partner and depositary are empowered to charge to a unit trust, common contractual fund or investment limited partnership 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.

The articles of association shall prescribe the nature of the costs to be borne by the investment company.

The maximum annual fee²⁹ charged by an AIFM, a management company of a unit trust or of a common contractual fund or investment company or a general partner of an investment limited partnership as provided for in the trust deed, deed of constitution, management agreement or partnership agreement may not be increased without approval on the basis of a majority of votes cast at general meeting.³⁰ In the event of an increase in the annual fee 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.

3. The constitutional document shall lay down the conditions and manner of application of income.

²⁹ The annual fee includes any performance related fee charged by the AIFM, the management company or the investment manager.

³⁰ If the fee disclosed in the prospectus is less than the maximum fee permitted in these documents, unitholder approval will also be required for an increase in the fee disclosed in the prospectus unless the prospectus also provides that a higher fee may be charged.

4. The trust deed, deed of constitution or partnership agreement shall specify the conditions under which there may be effected, and the procedure to be followed with respect to, the replacement of the management company/general partner with another 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.
5. The depositary of a Qualifying Investor AIF may not be replaced without the approval of the Central Bank. The constitutional document shall specify 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.
6. The management company or the investment company or the depositary shall issue registered certificates or bearer securities, representing one or more portions of the Qualifying Investor AIF which it manages, or alternatively, in accordance with the provisions of the trust deed, deed of constitution or articles of association, written confirmation of entry in the register of units or fractions of units without limitation as to the splitting of units.

Rights attaching to fractions of units are exercised in proportion to the fraction of a unit held except for voting rights which can only be exercised by whole units. The certificates and bearer securities shall be signed by the depositary. This signature may be reproduced mechanically.

7. Qualifying Investor AIFs may provide for the issue of partly paid units in their constitutional documents.
8. If the constitutional document provides for subscription in specie, the following provisions must be included:
 - 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 must be vested with the depositary or arrangements are made to vest the assets with the depositary;
 - 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.

9. Where the constitutional document provides for redemption in specie provide that:
 - 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 net asset value 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.

10. If the constitutional document provides for distribution in specie on a winding up, provide that:
 - an ordinary/special resolution is required; 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.

iii. Valuation

1. The assets of a Qualifying Investor AIF will be valued in accordance with rules laid down in the constitutional document which shall clearly define an expected method of valuation and which shall set out a framework for variation from this method of valuation. Additional details may be set out elsewhere e.g. in the prospectus.

2. The assets of a Qualifying Investor AIF may only be purchased and sold at prices which are in conformity with the rules in the constitutional document.

3. The trust deed in the case of a unit trust, deed of constitution in the case of a common contractual fund and articles of association in the case of an investment company shall lay down the conditions for the creation and cancellation of units.

The partnership agreement of an investment limited partnership shall lay down conditions for contributions and withdrawal of contributions of partners' capital.

4. Units of a Qualifying Investor AIF shall be issued or sold at a price arrived at by dividing the net asset value of the Qualifying Investor AIF (calculated in accordance with the rules) by the number of units outstanding; such price may be increased by duties and charges.
5. Units shall be redeemed or repurchased at a price arrived at by dividing the net asset value of the Qualifying Investor AIF by the number of units outstanding; such price may be decreased by duties and charges. The maximum charge relating to the redemption or repurchase of units as provided for in the constitutional document or prospectus may not be increased without approval on the basis of a 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.
6. Dealing in the units of a Qualifying Investor AIF should be carried out at forward prices i.e. the Net Asset Value next computed after receipt of subscription and redemption requests.

iv. **Distinction between open-ended Qualifying Investor AIF and those which are open-ended with limited liquidity arrangements**

1. In order to be authorised as an open-ended Qualifying Investor AIF, a Qualifying Investor AIF must:
 - (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 its net asset on a quarterly basis; and
 - (c) not impose a redemption fee in excess of 5%.
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 days between the dealing deadline and the payment of redemption proceedswill 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.
3. While open-ended Qualifying Investor AIFs may provide for dealing on a quarterly basis, the Central Bank requires that 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 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.).

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.

v. **Share classes**

1. Subject to paragraph 2 below, the Central Bank's approach to the creation of more than one share class within a Qualifying Investor AIF or within a sub-fund of an umbrella Qualifying Investor AIF is as follows:
 - (a) each Qualifying Investor AIF/sub-fund must consist of a single common pool of assets;
 - (b) assets may not be allocated to individual share classes;
 - (c) 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;
 - (d) unitholders in a share class must be treated equally; and
 - (e) where more than one share class exists, all the unitholders in the different share classes must be treated fairly.

Share classes may be established which may be differentiated on the basis of subscription/redemption procedures, 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 10, and provided that 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,

assets (including, without limitation, financial derivative instruments) within a Qualifying Investor AIF/sub-fund may be allocated to individual share classes and capital gains/losses and income arising from those assets must be distributed and/or must accrue equally 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 pool of assets of the Qualifying Investor AIF/sub-fund. Where it is not possible to ensure such segregation of liability, this shall be prominently disclosed in the prospectus.

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.
4. The Qualifying Investor AIF's constitutional document must prescribe the parameters which will apply to the creation of side pocket share classes.
5. The Qualifying Investor AIF's AIFM must be able to demonstrate to the Qualifying Investors AIF how the illiquid or difficult to value investments come within the approved parameters.
6. The Qualifying Investor AIF's AIFM must report to the Qualifying Investor AIF on an annual basis confirming that the parameters continue to be respected and outlining the prospects and/or plans for the side pocketed assets.
7. The prospectus must contain a clear 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. When it is proposed to establish a side pocket share class into which assets which have become illiquid or difficult to value may be placed, the Qualifying Investor AIF and its depositary must provide written confirmation to the Central Bank that the proposed establishment of a side pocket share class 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.
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.

vi. **Umbrella Qualifying Investor AIFs**

1. Where a Qualifying Investor AIF is constituted as an umbrella Qualifying Investor AIF, each sub-fund of the Qualifying Investor AIF must comply with the laws, regulations and conditions governing Qualifying Investor AIFs.
2. The trust deed, deed of constitution or articles of association must provide that the assets of each sub-fund shall belong exclusively to the relevant sub-fund and shall not be used to discharge directly or indirectly the liabilities of or claims against any other sub-fund and shall not be available for any such purpose.
3. Investment companies authorised before 30 June 2005, which have as an investment objective the employment of leverage, may not establish additional sub-funds unless the umbrella Qualifying Investor AIF has taken measures necessary to apply segregated liability between sub-funds.
4. Where a sub-fund (the "Investing Fund") of an umbrella Qualifying Investor AIF invests in the units of other sub-funds of that umbrella (each a "Receiving Fund"), the rate of the annual management fee which investors in the Investing Fund are charged in respect of that portion of the Investing Fund's assets invested in Receiving Funds (whether such fee is paid directly at the Investing Fund level, indirectly at the level of the Receiving Funds or a combination of both) may not exceed the rate of the maximum annual management fee which investors in the Investing Fund may be charged in respect of the balance of the Investing Fund's assets, such that there shall be no double charging of annual management fee to the Investing Fund as a result of its investments in the Receiving Fund. This provision is 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.

vii. Investment through subsidiary companies

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.

viii. Dealings by manager, general partner, depositary, AIFM, investment manager and group companies

1. Any transaction carried out with a Qualifying Investor AIF by a general partner, manager, depositary, AIFM, investment manager and/or its delegate or associated or group companies of these must be carried out as if effected on normal commercial terms negotiated at arms length. Transactions must be in the best interests of the unitholders.
2. Transactions permitted are subject to:
 - (a) certified valuation by a person approved by the depositary, or the Qualifying Investor AIF in the case of transactions involving the depositary, as independent and competent;

or

- (b) execution on best terms on organised investment exchanges under their rules; or
- (c) where (a) and (b) are not practical, execution on terms which the depositary, or the Qualifying Investor AIF in the case of transactions involving the depositary, is satisfied conform to the principles outlined in paragraph 1 of this section.

The depositary may hold funds for a Qualifying Investor AIF subject to the provisions of Section 30 of the Central Bank Act 1989. Funds held by a depositary for a Qualifying Investor AIF must be held on terms which comply with paragraph 1 of this section.

3. Paragraphs 1 and 2 of this section specify the extent of the disapplication by the Central Bank of Section 13(1) of the Unit Trusts Act 1990, in accordance with its powers under Section 13(3) of that Act and of Section 15(1) of the Investment Funds Act 2005 in accordance with its powers under that Section.

Section 2:**Application requirements - Information and document requirements of the Central Bank in support of an application for authorisation as a unit trust, common contractual fund, investment company or investment limited partnership****i. General information required for Qualifying Investor AIFs**

An application for authorisation of a Qualifying Investor AIF shall be made in writing to the Central Bank by the Qualifying Investor AIF. Applications must contain the following information:

1. the name of the Qualifying Investor AIF;
2. a statement of the general nature of the investment objectives of the Qualifying Investor AIF;
3. the prospectus;
4. the full name and address of the proposed AIFM of the Qualifying Investor AIF, the identity of and contact details for its competent authority and whether the AIFM is registered or authorised under the AIFMD;
5. the full name and address of the proposed management company or general partner;
6. the full name and address of the proposed depositary;
7. the full name and address of the proposed investment manager, if it is different from the management company, AIFM, investment company or general partner and a copy of the relevant agreement with the investment manager.

Where the proposed investment manager is not one of the entities listed in paragraph 1 of section 2.vii of this Part, sufficient information concerning the investment manager to enable the Central Bank to be satisfied as to its expertise, integrity and adequacy of financial resources. This information must include, inter alia, details of shareholders, latest audited accounts and details of the overseas regulatory status (if any);

8. the full name and address of the proposed auditor;

9. the full name and address of any third party which will be contracted by the Qualifying Investor AIF, or management company acting for the Qualifying Investor AIF, to carry out its work and copies of the relevant agreements with the third party. Sufficient information concerning any third party involved to enable the Central Bank to be satisfied as to its expertise, integrity and adequacy of financial resources. This information must include, inter alia, details of shareholders, latest audited accounts and details of overseas regulatory status (if any); and
10. such additional information as the Central Bank may specify in the course of determining individual applications.

ii. Unit trusts and common contractual funds

Applications must contain the following additional information:

1. the trust deed or deed of constitution; or
2. a copy of the depositary agreement, in the case of a common contractual fund.

iii. Investment companies

Applications must contain the following additional information:

1. the full name and address of the investment company and the memorandum and articles of association;
2. the names of the directors and the company secretary; and
3. a copy of the agreement between the company and the depositary.

iv. Investment limited partnerships

Applications must contain the following additional information:

1. the partnership agreement;
2. the address of the registered office and the principal place of business of the investment limited partnership;
3. the term, if any, for which the investment limited partnership is entered into or, if for unlimited duration, a statement to that effect and the date of its commencement;
4. the full name and address of the person proposed under the partnership agreement as general partner and, if more than one, of each of them;
5. a copy of the agreement between the partnership and the depositary; and

6. a statement signed by the proposed general partner in accordance with section 8(4) of the Investment Limited Partnership Act 1994.

v. Requirement for authorisation

1. A Qualifying Investor AIF may not be established or carry on business without prior approval by the Central Bank of the arrangements made under which the Qualifying Investor AIF is to be operated.
2. An umbrella Qualifying Investor AIF which has been authorised by the Central Bank must obtain the Central Bank's prior approval for each sub-fund. Details of proposed sub-funds, and the amendment or supplement to the prospectus which will set out the investment objectives and policy for the new sub-funds, must be submitted for approval. Applications for new sub-funds of umbrella Qualifying Investor AIFs require the submission of a complete application form, which includes appropriate confirmation in relation to the contents of the relevant documentation.

vi. Requirement for a full AIFM

1. A Qualifying Investor AIF authorised by the Central Bank on or after 22 July 2013 must have a full AIFM within 2 years from the date of launch i.e. the date when the initial offer period closes or, where there are multiple closings, the date of first closing.

vii. Investment managers

1. Investment managers or sub-investment managers which are one of the following entities will not be subject to an additional regulatory review process by the Central Bank:
 - (a) management companies authorised under Directive 2009/65/EC;
 - (b) investment firms authorised under MiFID to perform portfolio management;
 - (c) credit institutions authorised under Directive 2006/48/EC having the approval to perform portfolio management under MiFID;
 - (d) externally-appointed AIFMs authorised under the AIFMD; or
 - (e) firms who are subject to regulation in other jurisdictions and recognised as such by the Central Bank.

However, in the cases of (a) to (d) above, if the firm does not appear on the relevant passport

register³¹, the Central Bank may require separate verification of its home state approval.

2. Firms which are not one of the entities listed in paragraph 1 of this section remain subject to the full review process.

viii. Investment advisers

1. The Central Bank will not apply an approval process to investment advisers provided that the manager/directors of the Qualifying Investor AIF confirm that the advisers in question will act in an advisory capacity only and will have no discretionary powers over any of the assets of the Qualifying Investor AIF.³²
2. The Central Bank will not carry out a formal review of the investment advisory agreement provided that the manager/directors of the Qualifying Investor AIF confirm that the agreement does not:
 - (a) provide for any discretionary management powers; and/or
 - (b) conflict with regulations and conditions applicable to Qualifying Investor AIFs.
3. Investment advisory agreements must be submitted to the Central Bank, in order to facilitate reference in the event of issues arising.

³¹ The relevant passport registers are maintained by the Central Bank based on notifications by EEA regulators that regulated firms intend to passport certain investment services into the State. However, firms should note that it is not necessary to utilise a passport in order to act as investment manager to a Qualifying Investor AIF.

³² Investment advisers subject to the Investment Intermediaries Act, 1995 ('the IIA') must of course obtain the appropriate approval under that act.

Section 3:

Application process

i. Introduction

1. The Central Bank will authorise a Qualifying Investor AIF on receipt of a complete application provided that:
 - (a) the parties involved are approved by the Central Bank in advance of the application and meet the necessary approval criteria set out in the AIF Handbook; and
 - (b) appropriate confirmation is received in relation to the contents of the relevant documentation.
2. This section provides information in relation to the authorisation procedure and in relation to various matters relevant to the operations of Qualifying Investor AIFs. The application forms are available from the Central Bank's website: www.centralbank.ie

ii. Applications

1. An application for authorisation as a Qualifying Investor AIF can only be made where the:
 - (a) Management company
 - (b) General partner
 - (c) AIFM
 - (d) Directors in the case of an investment company
 - (e) Depositary
 - (f) Other service providers (fund administrator, investment manager)have been approved/cleared by the Central Bank in advance of the application.
2. An application for authorisation must be made in writing specifying the legislation under which authorisation is required. The letter of application must be accompanied by the standard application form, duly completed and all relevant documentation.
3. The application must be made by the AIFM together with the investment company or management company or general partner and depositary as appropriate.

4. Complete applications must be submitted to:

Head of Funds Authorisation Division
Central Bank of Ireland
Block D, Iveagh Court
Harcourt Road
Dublin 2.
5. Applications must be clearly identified as **Qualifying Investor AIF applications**, for the attention of **Qualifying Investor AIF Authorisation**.
6. Applications must be completed honestly and with due care. Where the applicant has a doubt as to whether to disclose any matter in the application, it must either disclose the matter or seek prior guidance from the Central Bank.
7. It is a breach of Central Bank requirements to make an incomplete or deceptive application. The applicant, counter-signatory and any person involved in the preparation of the application are susceptible to administrative sanction in the event of such an application being made.
8. Applications, including applications for approval of new sub-funds of existing umbrella Qualifying Investor AIFs, must be filed **no later than 3pm** on the business day before the proposed date of authorisation or approval. Where applications are not in full compliance with the Central Bank's requirements authorisation or approval will not proceed. Late and/or incomplete applications will be returned in order that documents may be re-dated or otherwise amended as necessary.
9. Letters of authorisation or approval will issue by close of business on the day of authorisation or approval.

iii. Pre-clearance

1. All parties to the Qualifying Investor AIF must have been authorised or otherwise deemed acceptable to the Central Bank prior to the application for authorisation.
2. The Central Bank expects that the board of directors of management companies and investment companies will include directors who have experience in relation to the organisation of Qualifying Investor AIFs. All directors, including new directors to existing management companies, must be approved in advance of the application.

3. An on-line Individual Questionnaire must be completed in respect of each director appointment, including directors who were previously approved as a director to a Qualifying Investor AIF or to a Qualifying Investor AIF service provider. Accordingly, all proposed directors must complete the on-line Individual Questionnaire at least 5 working days in advance of filing the Qualifying Investor AIF application.
4. In the event of a name change of any of the previously approved/cleared parties to the Qualifying Investor AIF, notification of the change, together with evidence of change of name, must be provided to the Central Bank prior to the application for authorisation. Changes of address can be notified by way of the application form.

iv. Derogations

1. In the event that a Qualifying Investor AIF intends to seek derogations from provisions of these Requirements, or from general policies applicable to Qualifying Investor AIFs, requests for derogations must be made in good time to allow these to be addressed by the Central Bank in advance of applications for authorisation. Details of derogations granted must be included in the application form and set out in the prospectus.
2. Proposals which have novel or other unusual features must be discussed with the Central Bank in advance of the submission of formal applications.

v. Closed-ended Qualifying Investor AIFs

1. A Qualifying Investor AIF established as a closed-ended Qualifying Investor AIF must confirm in its application that its prospectus is also being submitted separately for approval with the requirements of the Prospectus (Directive 2003/71/EC) Regulations 2005 (S.I. No. 324 of 2005), if applicable.

Section 4:

Supervisory requirements

i. General conditions

1. No change in the name of Qualifying Investor AIFs shall be made without the approval of the Central Bank.
2. No alteration in the Qualifying Investor AIF documentation, including the prospectus, constitutional document or material contracts, shall be made without prior notification to 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.
3. Amendments to Qualifying Investor AIF documentation post authorisation must be notified to the Central Bank by submitting an application form, duly completed including appropriate confirmation in relation to the amendments, and all relevant documentation.
4. The post authorisation application must be made by the AIFM and the investment company or management company or general partner as appropriate.
5. Complete applications must be submitted to:

Head of Funds Authorisation Division
Central Bank of Ireland
Block D, Iveagh Court
Harcourt Road
Dublin 2.
6. Applications must be clearly identified as **Qualifying Investor AIF post-authorisation applications**, for the attention of **Qualifying Investor AIF Post-Authorisation**.
7. Applications must be completed honestly and with due care. Where the applicant has a doubt as to whether to disclose any matter in the application, it must either disclose the matter or seek prior guidance from the Central Bank.
8. It is a breach of Central Bank requirements to make an incomplete or deceptive application. The applicant, counter-signatory and any person involved in the preparation of the application

are susceptible to administrative sanction in the event of such an application being made.

9. Applications must be filed **no later than 3pm** on the business day before the proposed date of noting by the Central Bank. Where applications are not in full compliance with the Central Bank's requirements noting will not proceed. Late and/or incomplete applications will be returned in order that documents may be re-dated or otherwise amended as necessary.
10. Letters of noting will issue by close of business on the day of noting.
11. Investment by a sub-fund within an investment company constituted as an umbrella Qualifying Investor AIF, in the units of another sub-fund within the umbrella, by way of transfer for consideration³³, is subject to prior notification to the Central Bank.

ii. Directors of Qualifying Investor AIF investment companies³⁴

1. Appointments to the office of director or alternate director of the investment company require the prior approval of the Central Bank. 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 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 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 board of directors of the investment company must not have directors in common with the board of directors of its depository.
3. A minimum of two directors must be Irish resident.

³³ Section 255(3) of the Companies Act 1990 Part XIII permits an umbrella investment company to acquire shares in a sister sub-fund by way of subscription or transfer for consideration. It is expected that, generally, such cross-investments will be processed as subscriptions under normal dealing arrangements. In the event that a transfer for consideration is proposed the Qualifying Investor AIF must notify the Central Bank in advance setting out the rationale behind the proposed transaction.

³⁴ The provisions of footnote 1 in the AIF Management Company Requirements will apply *mutatis mutandis* to directors of Qualifying Investor AIF investment companies which are in distressed or failing circumstances.

4. Directors are required to disclose to their board any concurrent directorships which they hold.

iii. Suspensions

1. A management company, in the case of a unit trust or common contractual fund, a general partner, in the case of an investment limited partnership, or an investment company which temporarily suspends the calculation of the net asset value and repurchase or redemption of its units must inform the Central Bank immediately, and in any event within the working day on which such suspension took effect.

iv. Replacement of depositary

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 management company of a unit trust scheme or common contractual fund or the general partner of an investment limited partnership. In addition the Central Bank requires confirmation from both the retiring depositary and new depositary that they are satisfied with the transfer of assets.

v. Replacement of management company, general partner or third party

1. The management company in the case of a unit trust or common contractual fund or a management company appointed by an investment company may not be replaced without the approval of the Central Bank.
2. A general partner of an investment limited partnership may not be replaced by another general partner nor may additional general partners be admitted to such partnership, without the prior approval of the Central Bank.
3. The Central Bank must be notified in advance of any proposal to replace third parties which have contracted (directly or indirectly) with the management company in the case of a unit trust or common contractual fund, investment company or investment limited partnership to carry out services. The Central Bank may object to the proposals and replacements objected to by the Central Bank may not proceed.
4. The procedures to be followed by Qualifying Investor AIFs in relation to the replacement of a management company or fund administration company must be approved by the board of the investment company, the management company of a unit trust or common contractual fund or the general partner of an investment limited partnership.

vi. Monthly and quarterly returns

1. The management company, in the case of a unit trust or common contractual fund, investment company and general partner of an investment limited partnership must submit a monthly return to the Statistics Division of the Central Bank and any other reports which the Central Bank may from time to time request. The contents of the monthly return are set out below.
2. The following information must be included in the monthly returns:
 - (a) Total gross asset value of the Qualifying Investor AIF at end-month.
 - (b) Total net asset value of the Qualifying Investor AIF at end-month.
 - (c) Number of units in circulation at end-month.
 - (d) Net asset value per unit at end-month.
 - (e) Payments received from the issues of units during month.
 - (f) Payments made for the repurchase of units during month.
 - (g) Net amount from issues and repurchases during month.

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 management company, in the case of a unit trust or common contractual fund, investment company and general partner of an investment limited partnership must submit a quarterly Survey of Collective Investment Undertakings (OFII Form) return to the Statistics Division of the Central Bank within ten working days of the end-quarter to which it refers. The management company, in the case of a unit trust or common contractual fund, investment company and general partner of an investment limited partnership must also submit a Funds Annual Survey of Liabilities return to the Statistics Division of the Central Bank, along with the OFII Form, for the first quarter of each year.

vii. Amalgamation of Qualifying Investor AIFs with other investment funds

1. Where a Qualifying Investor AIF is the merging AIF, a proposal to amalgamate it with a receiving investment fund must be presented to the Central Bank before the proposal is put forward for consideration by its unitholders. The submission must indicate how the conditions set out in paragraph 2 of this section will be satisfied. A proposal to which the Central Bank objects will not be permitted to proceed.

2. The minimum conditions which the Central Bank will require are as follows:
- (a) The receiving investment fund must be authorised and supervised by the relevant competent authority.
 - (b) There must be full disclosure to the merging AIF's unitholders of all material facts and considerations relevant to the proposal by the investment company/management company/general partner. The cover of the circular containing this information must prominently disclose that the information contained therein is important and that unitholders must take advice if they do not fully understand it.

The circular must include, *inter alia*, full disclosure in relation to the following:

- the background to and rationale for the proposal;
- a description of the receiving investment fund, which must be sufficient to enable unitholders to make an informed judgement of the proposal being put to them. In particular, this description must highlight any material differences by comparison with the merging AIF;
- the procedures to be adopted for the transfer of assets;
- the alternatives for unitholders who do not wish to become holders of units in the receiving investment fund. These unitholders must be offered an opportunity to redeem their holdings in cash prior to the amalgamation taking effect;
- the regulatory status of the receiving investment fund. It must be made clear, where relevant, that the receiving investment fund has not been authorised by and will not be supervised by the Central Bank;
- details on how unitholders, if they so require, may obtain the prospectus, constitutional document and financial statements of the receiving investment fund;
- all relevant costs including, where applicable, costs associated with the winding-up of the merging AIF and who will bear these costs;
- other material information concerning, *inter alia*, tax treatment³⁵ and details of the service providers to the receiving investment fund including their relationship, if any, with the service providers to the merging AIF; and
- if the receiving AIF does not provide redemption facilities at least as frequently as the merging AIF, this matter must be highlighted in a prominent position at the beginning of the circular.

³⁵ Tax treatment must be fully disclosed as it relates to the Qualifying Investor AIF; unitholders must be recommended to seek advice in relation to tax implications for themselves or advice in relation to the implications of the proposal vis-à-vis their own tax circumstances.

- (c) Prior to notification to unitholders, the depositary of the merging AIF must review and be satisfied with the proposal and confirm to the Central Bank in writing that it has no objection to the proposal being put before unitholders for approval.
- (d) A general meeting of the merging AIF's unitholders must be convened to consider and to approve the amalgamation proposal including, if appropriate, a resolution:
 - to amend the constitutional document of the merging AIF to provide that the assets of the merging AIF may be passed to a non-Irish depositary to coincide with the time that the amalgamation becomes effective; and
 - to wind-up the merging AIF.

Approval of the proposal will be effective only if:

- it is approved by not less than three fourths of the votes cast, in person or by proxy, at the meeting; and
 - the votes in favour represent more than half of the total number of units in issue.
- (e) All unitholders must be notified of the outcome of the general meeting. In the event that the resolution is passed, unitholders must be advised of the procedures and deadlines by which they must submit their redemption request, if they so wish. A reasonable notification period following the general meeting must be provided to unitholders in open-ended Qualifying Investor AIF and open-ended Qualifying Investor AIF with limited liquidity in order to consider and submit a redemption request.
 - (f) The provisions of this section will also apply in the case of amalgamations of sub-funds within an umbrella Qualifying Investor AIF.

3. Notwithstanding the above, the Central Bank may refuse to permit any such proposal to proceed if it is of the opinion that to do so is not in the public interest, the best interests of unitholders and/or the appropriate and prudent regulation of the business of Qualifying Investor AIFs.

Section 5:

Prospectus requirements

i. General requirements

1. A Qualifying Investor AIF must publish a prospectus, which must be dated and the essential elements of which must be kept up to date.
2. A Qualifying Investor AIF must where relevant comply with section xix of Part I of the Alternative Investment Fund Managers Requirements regarding disclosure to unitholders obligations. The information set out in paragraphs 4 to 6 of section xix of Part I of Alternative Investment Fund Managers Requirements, which AIFMs are required to make available to prospective investors before they invest, must be disclosed in a Qualifying Investor AIF's prospectus.
3. The prospectus may be translated into other languages provided that any such translation shall only contain the same information and shall have the same meaning as in the prospectus submitted to the Central Bank.
4. The AIFM and the management company in the case of a unit trust or common contractual fund, the general partner in the case of an investment limited partnership and the investment company must comply with the terms of the prospectus issued by the Qualifying Investor AIF.
5. A change to the investment objectives, or a material change to the investment policies of a Qualifying Investor AIF, as disclosed in the prospectus, may not be effected without the prior written approval of all unitholders or without approval on the basis of a 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 majority of votes cast at a general meeting, a reasonable notification period must be provided by the Qualifying Investor AIF to enable unitholders redeem their units prior to implementation of these changes.

ii. General information concerning the Qualifying Investor AIF

1. The prospectus must disclose the following:
 - (a) the name of the Qualifying Investor AIF, form in law, and, in the case of an investment company, the registered office and head office if different from the registered office.
 - (b) the date of establishment or incorporation of the Qualifying Investor AIF and indication of duration, if limited;
 - (c) a statement of the place where the constitutional document, if not annexed, and annual reports may be obtained;
 - (d) brief indications relevant to unitholders of the tax system applicable to the Qualifying Investor AIF. Details of whether deductions are made at source from the income and capital gains paid by the Qualifying Investor AIF to unitholders must also be included;
 - (e) the accounting dates and distribution frequency. The time limit (if any) after which entitlement to dividend lapses and procedure in this event;
 - (f) a description of the rules for determining and applying income;
 - (g) in the case of investment companies, the names and positions in the company of the directors; their experience both current and past, which is relevant to the company; details of their main activities outside the company where these are of significance with respect to the company;
 - (h) the persons who accept responsibility for information contained in the prospectus;
 - (i) the material provisions of the contracts between third parties and the management company, general partner or investment company which may be relevant to unitholders, excluding those relating to remuneration.
 - (j) the authorised share capital in the case of an investment company;
 - (k) The types and main characteristics of the units and in particular:
 - the nature of the right (real, personal or other) represented by the unit;

- whether there are original securities or certificates providing evidence of title;
 - whether there is entry in a register or in an account;
 - the characteristics of the units: whether they are registered or bearer;
 - indication of any denominations which may be provided for;
 - an indication of unitholders' voting rights; and
 - the circumstances in which winding-up of the Qualifying Investor AIF can be decided on and winding-up procedure, in particular as regards the rights of unitholders;
- (l) where a Qualifying Investor AIF proposes issuing partly paid units, the nature of the commitment which unitholders will enter into must be fully disclosed;
- (m) where applicable, indication of stock exchanges or markets where the units are listed or dealt in;
- (n) where a sub-fund within an umbrella Qualifying Investor AIF wishes to invest in the units of another sub-fund within the umbrella, this intention must be disclosed in the prospectus;
- (o) a description of all fees, charges and expenses and of the maximum amounts thereof which are directly or indirectly borne by unitholders must be disclosed in the prospectus;
- (p) description of the AIFM's remuneration policies and practices pursuant to section v of Part I of the Alternative Investment Fund Manager Requirements.

iii. **Investments in other investment funds**

1. Any proposed investment by a Qualifying Investor AIF into another investment fund must be clearly disclosed. Disclosure must focus on the implications of this policy regarding increased costs to unitholders (i.e. the fact that fees will arise at two or, in the cases where the underlying fund is itself a fund of funds, three levels – the Qualifying Investor AIF, the underlying fund of funds and the underlying funds in which the underlying fund of funds invests) and the resultant lack of transparency in investments.
2. A fund of funds Qualifying Investor AIF may invest in another investment fund which itself invests more than 50% of net assets in another investment fund where suitable disclosure regarding increased costs and lack of transparency is provided.

3. A Qualifying Investor AIF which invests in other investment funds and which provides for a period of 95 calendar days for the payment of redemption proceeds must include a prominent statement highlighting the fact that while the Qualifying Investor AIF deals, for example, on a monthly basis there may be times when redemption proceeds are paid on a quarterly basis.

iv. Open-ended Qualifying Investor AIF with limited liquidity

1. Where a Qualifying Investor AIF is an open-ended investment fund with limited liquidity, the limited nature of the redemption facilities must be clearly outlined in the prospectus.

v. Dealing

1. The prospectus must disclose the period within which redemption proceeds will normally be paid or discharged to unitholders. It must also disclose the circumstances in which repurchase or redemption may be suspended.

Redemption in Specie

2. Where the prospectus provides for redemption in specie provide that:
 - 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 net asset value 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.

vi. Offer period

1. The offer period cannot commence 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.
2. In the case of Qualifying Investor AIFs which are established as private equity or real estate 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. Extensions to initial offer periods may be made without prior notification to the Central Bank provided that no subscriptions have been received at the date of the proposed extension. Notifications of any such extensions must be made to the Central Bank on an annual basis.
4. Proposals to extend initial offer periods where subscriptions have been received must be submitted to the Central Bank for approval.

vii. Information concerning a management company or general partner

1. The prospectus must disclose the name, form in law, registered office and head office, if different from the registered office, of the management company or general partner. If the 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 prospectus must disclose the names and positions in the management company or general partner of the members of the administrative, management and supervisory bodies; their experience, both current and past, which is relevant to the Qualifying Investor AIF; and details of their main activities outside the management company or general partner where those are of significance with respect to that management company or general partner.
3. The prospectus must disclose the amount of the prescribed capital of the management company or general partner with an indication of the capital paid-up.

viii. Information concerning investment managers and other service providers

1. Details of service providers must be disclosed in the prospectus of a Qualifying Investor AIF.
2. The prospectus must disclose the material provisions of the contracts with the management company, general partner or investment company which may be relevant to the unitholders, excluding those relating to remuneration.
3. The prospectus must disclose the other significant activities engaged in by the investment manager.

ix. **Authorisation status**

1. The prospectus must indicate, in a prominent position, that a Qualifying Investor AIF has been authorised by the Central Bank for marketing solely to qualifying investors. It must specify its 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.”

2. The prospectus must state that the authorisation of the Qualifying Investor AIF is not an endorsement or guarantee of the Qualifying Investor AIF by the Central Bank nor is the Central Bank responsible for the contents of the prospectus and must incorporate the following statement:

“The Central Bank shall not be liable by virtue of its authorisation of this Qualifying Investor AIF or by reason of its exercise of the functions conferred on it by legislation in relation to this Qualifying Investor AIF for any default of the Qualifying Investor AIF. Authorisation of this Qualifying Investor AIF does not constitute a warranty by the Central Bank as to the creditworthiness or financial standing of the various parties to the Qualifying Investor AIF.”

x. **Conflicts of interest**

1. The prospectus must include a description of the potential conflicts of interest which could arise between the AIFM, management company or general partner and the Qualifying Investor AIF, for example directed brokerage programmes 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 are going to be resolved. A description of soft commission arrangements which may be entered into by a Qualifying Investor AIF must also be included.
2. Where it is envisaged that transactions with a partner, manager, depositary, AIFM, investment manager and/or its delegate or associated or group companies may be entered into, there must be full disclosure in the Qualifying Investor AIF’s prospectus.

xi. Umbrella Qualifying Investor AIFs

1. The prospectus of an investment company constituted as an umbrella Qualifying Investor AIF must 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.
2. Where a supplement to the prospectus is issued the supplement must state that the Qualifying Investor AIF is constituted as an umbrella Qualifying Investor AIF and name the other existing sub-funds or provide that these will be available upon request.
3. The prospectus must disclose the extent to which one sub-fund can invest in another and the conditions which apply to such investments.
4. The prospectus of an umbrella Qualifying Investor AIF must clearly state the charges, if any, applicable to the exchange of units in one sub-fund for units in another.

xii. Warehousing

1. Proposals to acquire assets pursuant to a warehousing arrangement must be fully disclosed in the prospectus, including details of any fee 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.

xiii. Investment through subsidiaries

1. Where a Qualifying Investor AIF proposes to invest through one or more subsidiaries, its prospectus must:
 - (a) provide for the ability to establish wholly-owned subsidiaries in accordance with the requirements of the Central Bank; and
 - (b) state that the names of any subsidiaries will be disclosed in the annual report.

Section 6:

General operational requirements

i. Financial resources of investment companies

1. An investment company must have sufficient financial resources at its disposal to enable it to conduct its business effectively and meet its liabilities.
2. An investment company which does not employ the services of a management company or full AIFM 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 iii of the AIF Management Company Requirements.

ii. Dealing

1. Qualifying Investor AIFs must make the issue and redemption prices of their units available promptly to unitholders on request.
2. Units may not be issued, or if issued must be cancelled, unless the equivalent of the net issue price is paid into the assets of the Qualifying Investor AIF within a reasonable time, which is specified in the prospectus. This shall not preclude the distribution of bonus units.
3. An investment limited partnership may in these cases and according to the procedure provided for in the partnership agreement, temporarily suspend the calculation of the net asset value and redemption of units. 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.

iii. **Breach of investment restrictions**

1. The limits on investments set down in the Qualifying Investor AIF's prospectus must be deemed to apply at the time of purchase of the investments. If the limits laid down are subsequently exceeded for reasons beyond the control of a Qualifying Investor AIF or as a result of the exercise of subscription rights, the Qualifying Investor AIF must adopt as a priority objective the remedying of that situation, taking due account of the interests of its unitholders.

Section 7:

Annual reports

i. Publication of annual report

1. A Qualifying Investor AIF must comply with section xix of Part I of the Alternative Investment Fund Manager Requirements concerning annual reports. In addition to the disclosures required by the Alternative Investment Fund Manager Requirements, the information set out in this section must be incorporated into the annual report.
2. Dates for the initial reports issued by a Qualifying Investor AIF will be agreed with the Central Bank at the time of authorisation. A Qualifying Investor AIF must produce a set of accounts (whether an interim report or an annual report) within 12 months of the launch date and publish it within 2 months if an interim report or 6 months if an annual report. The first annual reports must be within 18 months of incorporation/establishment and published within 6 months.
3. The annual report must be sent to the Central Bank.
4. The Central Bank exempts an investment limited partnership from the provisions of the European Communities (Accounts) Regulations, 1993 where its sole business is the investment of its funds in property with the aim of spreading investment risk and giving its partners the benefit of the management of its assets.
5. A unit trust or common contractual fund constituted as an umbrella Qualifying Investor AIF 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.
6. In accordance with company law, an investment company established as an umbrella Qualifying Investor AIF must include accounts for all sub-funds of that company in its periodic reports.

ii. Information to be contained in the annual report

1. Annual reports issued by an investment company must confirm that the aim of spreading of investment risk has been maintained.

2. The annual report must include the following 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:
- (a) Number of units in circulation.
 - (b) Net asset value per unit.
 - (c) A full portfolio statement or a condensed portfolio statement which lists positions/exposures greater than 5% of net assets, distinguishing between the different types of investments and each investment analysed in accordance with the most appropriate criteria in light of the investment policy of the Qualifying Investor AIF (e.g., in accordance with economic, geographical or currency criteria) as a percentage of net assets; for each of the investments the proportion it represents of the total net assets of the Qualifying Investor AIF must be stated. If a condensed portfolio statement is included in the annual report, a Qualifying Investor AIF must make the full portfolio statement available to unitholders on demand. This can be made available to potential investors at the Qualifying Investor AIF's discretion.
 - (d) Investments by sub-funds within an umbrella investment company in the units of other sub-funds within the umbrella must be disclosed in accordance with industry adopted standards. The policies adopted to disclose cross-investments must be explained in a note to the accounts.
 - (e) Information on the investment funds in which the Qualifying Investor AIF has invested during the reference period, including disclosure on their regulatory status and fees paid by the Qualifying Investor AIF and, to the extent possible, by the underlying investment funds.
 - (f) A description of soft commission arrangements affecting the Qualifying Investor AIF during the period.
 - (g) A description on how financial derivative instruments, securities lending and repurchase agreements have been utilised during the reporting period. This description must identify the specific techniques and instruments used during the period and indicate the purposes for the use of such techniques and instruments to allow unitholders assess their nature and the risk relating to them.

Open derivative positions at reporting date must be marked to market and specifically identified in the portfolio statement. Information on open option positions must include the strike price, final exercise date and an indication whether such positions are covered or not.

Qualifying Investor AIFs which have engaged in securities lending must disclose, in a note to the accounts, the aggregate value of securities on loan at the reporting date, together with the value of collateral held by the Qualifying Investor AIF in respect of these securities. Where a Qualifying Investor AIF has entered into a securities lending programme organised by generally recognised International Central Securities Depositories Systems, the name of the Central Securities Depository System must be disclosed.

- (h) A list of exchange rates used in the report.
- (i) A comparative table covering the last three financial years and including, for each financial year, at the end of the financial year:
 - the total net asset value
 - the net asset value per unit.
- (j) Depositary's report.
- (k) A report of the transactions entered into with a management company, general partner, depositary, AIFM, investment manager or its delegate or group companies of these during the reporting period. This report must include a list of all transactions, by type, the name of the related party and where relevant, fees paid to that party in connection with the transaction.
- (l) A report on any commissions received by the manager 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 manager is consistent with its inducements and best execution obligations.
- (m) The names of any wholly owned subsidiaries.

PART II: SPECIFIC FUND-TYPE REQUIREMENTS

Obligations are derived directly from provisions of the investment fund legislation, or are conditions imposed by the Central Bank under powers given to the Central Bank under that legislation.

Section 1:

Money market Qualifying Investor AIFs

A Qualifying Investor AIF which labels or markets itself as a money market fund must comply with this section in addition to the general rules for all Qualifying Investor AIFs which are not disappplied below. It must classify itself as a “Short-Term Money Market Fund” or a “Money Market Fund”.

Weighted Average Maturity (“WAM”): WAM is a measure of the average length of time to maturity of all of the underlying securities in the money market fund weighted to reflect the relative holdings in each instrument, assuming that the maturity of a floating rate instrument is the time remaining until the next interest rate reset to the money market rate, rather than the time remaining before the principal value of the security must be repaid. In practice, WAM is used to measure the sensitivity of a money market fund to changing money market interest rates.

Weighted Average Life (“WAL”): WAL is the weighted average of the remaining life (maturity) of each security held in a money market fund, meaning the time until the principal is repaid in full (disregarding interest and not discounting). Contrary to what is done in the calculation of the WAM, the calculation of the WAL for floating rate securities and structured financial instruments does not permit the use of interest rate reset dates and instead only uses a security’s stated final maturity. WAL is used to measure the credit risk, as the longer the reimbursement of principal is postponed, the higher is the credit risk. WAL is also used to limit the liquidity risk.

Constant net asset value (“NAV”) Money Market Funds: A constant or stable NAV money market fund seeks to maintain an unchanging face value NAV (for example \$1/€1 per unit). Income in the fund is accrued daily and can either be paid out to the investor or used to purchase more units in the fund. Assets are generally valued on an amortised cost basis which takes the acquisition cost of the security and adjusts this value for amortisation of premiums (or discounts) until maturity.

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. Short-Term Money Market Funds

1. A Short-Term Money Market Fund 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. Investments are limited 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 ongoing 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. Investments are limited to securities or instruments with a residual maturity until the legal redemption date of less than or equal to 397 days.
5. A Short-Term Money Market Fund must provide daily NAV and price calculations and have daily subscriptions and redemptions of units.
6. The WAM of the portfolio must not exceed 60 days.

7. The WAL of the portfolio must 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. When calculating the WAM and WAL, the impact of financial derivative instruments, deposits and efficient portfolio management techniques must be taken into account.
9. Direct or indirect exposure to equities or commodities, including through financial derivative instruments, is not permitted.
10. 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. Investment in other investment funds is not permitted unless those investment funds are also Short-Term Money Market Funds.
12. A Short-Term Money Market Fund may have either a constant or fluctuating NAV.

ii. Money Market Funds

1. A Money Market Fund 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. Investments are limited 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 ongoing 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. Investments are limited 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. A Money Market Fund must provide daily NAV and price calculations and have daily subscriptions and redemptions of units.
6. The WAM of the portfolio must not exceed 6 months.
7. The WAL of the portfolio must 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. When calculating the WAM and WAL, the impact of financial derivative instruments, deposits and efficient portfolio management techniques must be taken into account.

9. Direct or indirect exposure to equities or commodities, including through financial derivative instruments, is not permitted.
10. 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. Investment in other collective investment Qualifying Investor AIFs is not permitted unless those collective investment Qualifying Investor AIFs are Short-Term Money Market Funds or Money Market Funds.
12. A Money Market Fund must have a fluctuating NAV.

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

1. Short-Term Money Market Funds are 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. This condition is satisfied where:
 - (a) the Short-Term Money Market Fund has obtained a triple-A rating from an internationally recognised 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 exceptional circumstances, the management company or investment manager may provide sufficient information to the Central Bank to demonstrate appropriate expertise in the operation of this type of money market fund. Such applications will be considered on a case-by-case basis and must be submitted in advance of the application for authorisation of the money market fund.
2. The Qualifying Investor AIF must be satisfied 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. If discrepancies in excess of 0.3% between the market value and the amortised cost value of the portfolio occur a daily review must take place. 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 constitutional document must provide for the escalation procedures set out in paragraph 3 and 4 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 must engage in 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.
7. Money Market Funds are not permitted to follow an amortised cost valuation methodology.

iv. European Central Bank reporting requirements

Introduction

1. The objective of this section is to ensure that all Qualifying Investor AIF money market funds are identified to the Central Bank and to ensure that these Qualifying Investor AIFs are aware of their responsibility, under European Community law, to file certain additional periodic returns.

Background

2. On a regular basis the European Central Bank (ECB) prepares a consolidated balance sheet of money-creating financial intermediaries, referred to as Monetary Financial Institutions (MFIs), for the euro area. Statistical information is reported by these MFIs at monthly and

quarterly intervals.

3. The objective is to supply monthly data on the business of MFIs in sufficient detail to provide the ECB with a comprehensive statistical picture of monetary developments in the euro area and to allow flexibility in the calculation of monetary aggregates.
4. MFIs fall into four broad categories. These are:-
 - (a) Central Banks
 - (b) Credit Institutions
 - (c) Other MFIs
 - (d) Money Market Funds
5. Money market funds, which meet the specific criteria listed in paragraph 6 of this section, are defined as MFIs.

*Money Market Funds (MMFs) Defined*³⁶

6. Collective investment undertakings complying with all the following criteria shall be treated as MMFs, where they:
 - (a) pursue the investment objective of maintaining a fund's principal and providing a return in line with the interest rates of money market instruments;
 - (b) invest in money market instruments which comply with the criteria for money market instruments set out in Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)³⁷, or deposits with credit institutions or, alternatively, ensure that the liquidity and valuation of the portfolio in which they invest is assessed on an equivalent basis;
 - (c) ensure that the money market instruments they invest in are of high quality, as determined by the management company. The quality of a money market instrument shall be considered, inter alia, on the basis of the following factors:
 - the credit quality of the money market instrument;
 - the nature of the asset class represented by the money market instrument;
 - for structured financial instruments, the operational and counterparty risk inherent within the structured financial transaction; and
 - the liquidity profile.

³⁶ The definition is 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

³⁷ OJ L 302, 17.11.2009, p.32.

- (d) ensure that their portfolio has a weighted average maturity (WAM) of no more than 6 months and a weighted average life (WAL) of no more than 12 months;
 - (e) provide daily net asset value (NAV) and a price calculation of their shares/units, and daily subscription and redemption of shares/units;
 - (f) limit investment in securities to those 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 rate reset date is less than or equal to 397 days whereby floating rate securities must reset to a money market rate or index;
 - (g) limit investment in other investment funds to those complying with the definition of MMFs;
 - (h) do not take direct or indirect exposure to equity or commodities, including via derivatives and only use derivatives in line with the money market investment strategy of the Qualifying Investor AIF. Derivatives which give exposure to foreign exchange may only be used for hedging purposes. Investment in non-base currency securities is allowed provided the currency exposure is fully hedged;
 - (i) have either a constant or fluctuating NAV.
7. In addition to the above description of a money market fund, the ECB has also provided a more detailed set of definitions which is contained in the Appendix attached to this section.

Application Requirements

8. The Central Bank is required to identify all those collective investment undertakings which are domiciled in the State and which are considered money market funds as defined by the ECB.
9. Guidelines on a common definition of European money market funds were issued on 19 May 2010 by the Committee of European Securities Regulators (CESR) the predecessor of the European Securities and Markets Authority. The population of MMFs for the European System of Central Banks will be aligned with the identification criteria applied for supervisory purposes following the above mentioned CESR guidelines. Any new fund that is authorised by the Funds Authorisation Division (FAD) of the Central Bank must indicate if they are a 'short-term money market fund' or a 'money-market fund' during the authorisation process and these funds will be considered to be in the reporting population of money market funds for the European Central Bank, and must meet the necessary reporting requirements.

Statistical Reports - Content and Deadlines for Submission

10. The Central Bank has prepared a *Statistical Reporting Pack* ('the Pack') which contains copies of the reporting formats which MMFs will be required to use when sending information to the Central Bank. These are simplified versions of the reporting formats which the ECB has issued and which other MFIs are required to use. The Central Bank has attempted to make the reporting formats as short, simple and user friendly as possible, taking account of the specific characteristics of a typical MMF and the minimum mandatory reporting requirements of the ECB.
11. The Pack contains a copy of the monthly and quarterly reporting formats together with detailed guidelines on their completion. The Pack and a copy of all the relevant EU and ECB Regulations (see below) will be provided on request.
12. Each **MMF** domiciled within a Monetary Union Member State (MUMS) must submit two sets of data:³⁸
 - (a) **Monthly Data** - This return must be prepared on a monthly basis and must be received by the Central Bank **within six 6 working days** of the end-month to which it relates. Essentially it consists of aggregated and summarised balance sheet data, e.g. liabilities - net asset value and borrowings; assets - cash, deposits, debt securities (money market paper and other) and equity holdings. All components of assets are broken into three general issuer categories (Irish, other MUMS and the rest of the world).
 - (b) **Quarterly Data** - This return must be prepared on a quarterly basis end March, June, September and December and must be received by the Central Bank **within ten 10 working days** of the end-quarter to which it relates. Essentially it requires a more detailed breakdown of the monthly data. The additional information relates primarily to a profile of the issuers and maturity of the assets held by the MMF.

Processing and Publication of Information

13. General details, e.g. name, address, etc., of each MMF will be sent to the ECB. This information, together with that for all other MFIs, will be available on the ECB's website and will also be published on an annual basis. Individual monthly and quarterly data will be aggregated by the Central Bank. The aggregated data for all MFIs will be transmitted to and

³⁸ The ECB's reporting requirements are set out in Council Regulation (EC) No 25/2009 of the ECB of 19 December 2008 (ECB/2008/32).

published by the ECB. A subset of this data will also be published by the Central Bank, however individual institutions data will not be published and confidentiality is respected at all times.

Relevant Regulations

14. The ECB's statistical reporting system is based on the following regulations:

- (a) Council Regulation [EC] 2533/98 of 23 November 1998 - This Regulation was adopted by the Council of the European Union in late 1998. It provides for the right of the ECB, assisted by the National Central Banks ("NCBs"), to collect statistical information within the limits of the reference reporting population (refer to Article 2.2 of the Regulation).

It provides the ECB with the power to adopt additional Regulations in order to define and impose specific reporting requirements and with powers to compulsorily collect and verify the relevant information. The Regulation also grants the ECB power to impose sanctions on reporting entities who fail to comply with their reporting obligations.

- (b) Council Regulation [EC] 2423/2001 of the European Central Bank of 22 November 2001 (ECB/2001/13) - As required by Council Regulation [EC] 2533 (see above), the Governing Council of the ECB adopted Regulation 2423 in November 2001. It sets out who must submit reports (within the broad parameters set out by Council Regulation 2533/98) and the nature of the information required.
- (c) Council Guideline ECB/2007/9 of 3 September 2007 - This Guideline deals with monetary, financial institutions and markets statistics. In Article 10, the Guideline includes provisions regarding the reporting by the NCBs of statistics on the assets and liabilities of money market funds.
- (d) Council Regulation ECB/2008/32 of 19 December 2008 - Regulation ECB/2001/13 of 22 November 2001 concerning the consolidated balance sheet of the monetary financial institutions sector has been significantly amended on several occasions. Since further amendments to this Regulation were required in 2008 (primarily relating to the reporting obligations of credit institutions), the original and amendments to the regulation were recast in the interests of clarity and transparency.

- (e) Regulation of the European Central Bank ECB/2001/12 of 25 August 2001 - This regulation sets new identification criteria for MMF's for ESCB statistical purposes, such that the population of statistical MMF's is aligned with the identification criteria for supervisory purposes. This change aims to increase market transparency and facilitate management reporting on funds. The regulation sets out criteria to differentiate between "short-term money market funds" and "money market funds", and applies the concepts of WAM and WAL as applicable to both.

Appendix

‘Section 2: Specifications for the MMFs’ identification criteria for the purpose of 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).

- a) the money market instrument shall be considered to be of a high credit quality, if 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 management company’s internal rating process. Where a recognised credit rating agency divides its highest short-term rating into two categories, these two ratings shall be considered as a single category and therefore the highest rating available;
- b) the money market fund may, as an exception to the requirement in paragraph (a), hold sovereign issuance of at least investment grade quality, whereby ‘sovereign issuance’ means money market instruments issued or guaranteed by a central, regional or local authority or central bank of a Member State, the ECB, the European Union or the European Investment Bank;
- c) when calculating WAL for securities, including structured financial instruments, the maturity calculation is based 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:
 - the put option may be freely exercised by the management company at its exercise date,
 - the strike price of the put option remains close to the expected value of the instrument at the next exercise date,
 - the investment strategy of the MMF implies that there is a high probability that the option will be exercised at the next exercise date;
- d) when calculating both WAL and WAM, the impact of financial derivative instruments, deposits and efficient portfolio management techniques shall be taken into account;
- e) ‘weighted average maturity’ (WAM) shall mean a measure of the average length of time to maturity of all of the underlying securities in the fund weighted to reflect the relative holdings

in each instrument, assuming that the maturity of a floating rate instrument is the time remaining until the next interest rate reset to the money market rate, rather than the time remaining before the principal value of the security must be repaid. In practice, WAM is used to measure the sensitivity of a MMF to changing money market interest rates;

- f) 'weighted average life' (WAL) shall mean the weighted average of the remaining maturity of each security held in a fund, meaning the time until the principal is repaid in full, disregarding interest and not discounting. Contrary to the calculation of the WAM, the calculation of the WAL for floating rate securities and structured financial instruments does not permit the use of interest rate reset dates and instead only uses a security's stated final maturity. WAL is used to measure the credit risk, as the longer the reimbursement of principal is postponed, the higher the credit risk. WAL is also used to limit the liquidity risk;
- g) 'money market instruments' means instruments normally traded on the money market which are liquid and have a value which can be accurately determined at any time;
- h) 'management company' means a company, the regular business of which is the management of the portfolio of an MMF.'

Section 2:

Qualifying Investor AIFs which invest more than 50% of net assets in another investment fund

1. A Qualifying Investor AIF may invest up to 100% in other investment funds subject to a maximum of 50% of net assets in any one unregulated investment fund.³⁹ A Qualifying Investor AIF must not make investments which circumvent this restriction, for example, by investing more than 50% of net assets in two or more unregulated investment funds which have identical investment strategies.
2. A Qualifying Investor AIF which invests more than 50% of net assets in one other investment fund is subject to the following rules:
 - the underlying investment fund is authorised in Ireland; or
 - authorised in another jurisdiction by a supervisory authority established in order to ensure the protection of unitholders and which, in the opinion of the Central Bank, provides an equivalent level of investor protection to that provided under Irish laws, regulations and conditions governing Qualifying Investor AIFs.
3. For the purposes of paragraph 2 of this section, acceptable investment funds are:

Category 1

- investment funds established in a Member State of the European Union which are authorised under Directive 2009/65/EC;
- investment funds established in a Member State of the European Economic Area which are authorised under domestic legislation implementing Directive 2009/65/EC;
- investment funds established in Guernsey and authorised as Class A Schemes;
- investment funds established in Jersey as Recognised Funds;
- investment funds established in the Isle of Man as Authorised Schemes;
- Qualifying Investor AIF authorised by the Central Bank.

Category 2

Investment funds:

- authorised in a Member State of the European Union;

³⁹ 'Regulated investment fund' is defined in paragraph 10 of section 1.ii of the Retail Investor AIF Requirements.

- established in Guernsey and authorised as Class B Schemes;
- established in Jersey which are not Recognised Funds;
- established in the Isle of Man as unauthorised schemes;
- authorised by the US Securities and Exchanges Commission under the Investment Companies Act 1940;

and which comply, in all material respects, with the provisions of the AIF Handbook in respect of Qualifying Investor AIFs.

The consideration of “all material respects” should include, *inter alia*, consideration of the following:

- supervision by the regulatory authority of the investment fund;
 - the existence of an independent depositary with similar duties and responsibilities in relation to both safe-keeping and supervision;
 - availability of pricing information and reporting requirements;
 - restrictions in relation to dealings by related parties.
4. In the case of Category 1, the Central Bank must be supplied with the prospectus of the underlying investment fund and any other information which it may request. The Central Bank may impose conditions on, or may object to, the inclusion of a particular underlying investment fund.
5. (a) In the case of Category 2, the Central Bank must be supplied with the prospectus of the underlying investment fund and any other information which it may request. The Central Bank may impose conditions on, or may object to, the inclusion of a particular underlying investment fund.
- (b) The Qualifying Investor AIF must provide a letter to the Central Bank confirming that the underlying investment fund complies in all material respects with the provisions of the AIF Handbook in respect of Qualifying Investor AIFs.
- (c) The Central Bank’s assessment will take into account the totality of the investment fund's arrangements.
- (d) Similarly, the oversight responsibilities, as opposed to the safe-keeping function, of a depositary of an underlying investment fund, may not be equivalent to those of Irish depositaries. The oversight function must, at a minimum, include requirements to:
- ensure that valuations of assets are carried out correctly;
 - ensure that units of the underlying investment fund are issued and redeemed

- correctly; and
 - ensure that the management of the assets is carried out correctly.
- (e) The Qualifying Investor AIF must inform the Central Bank immediately it becomes aware that the underlying investment fund has materially breached any of its legal, regulatory or constitutional obligations.
6. The Central Bank will consider other jurisdictions and types of investment fund on the basis of submissions made for that purpose. Such submissions must be detailed and comprehensive and should contain supporting documentation from the jurisdiction in question.
 7. The periodic reports of the Qualifying Investor AIF must have the periodic reports of the underlying investment fund attached.
 8. 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 manager.
 9. A Qualifying Investor AIF to whom paragraph 2 of this section applies and which proposes to invest in an investment fund that itself invests more than 50% of net assets in another investment fund is not acceptable.
 10. A Qualifying Investor AIF may not retain more than 10% of redemption proceeds and only where this reflects the redemption policy of the underlying investment fund(s) until such time as the full redemption proceeds from the underlying investment fund(s) is received.
 11. The annual report of the Qualifying Investor AIF must have the annual report of the underlying investment fund attached.

Section 3:**Closed-ended Qualifying Investor AIFs and duration of closed-ended Qualifying Investor AIFs****i. General requirements**

1. A closed-ended Qualifying Investor AIF must have a finite closed-ended period, the duration of which must be provided for in the prospectus as a material part of the investment policy.

Accordingly, the constitutional documents must provide that on a future date, specified in either the constitutional document or the prospectus, the Qualifying Investor AIF will undertake one of the following actions:

- (a) wind-up and apply to the Central Bank for a revocation of the authorisation of the Qualifying Investor AIF;
 - (b) redeem all outstanding units and apply to the Central Bank for a revocation of the Qualifying Investor AIF authorisation;
 - (c) convert into an open-ended Qualifying Investor AIF, the relevant details of which must be disclosed in the prospectus; or
 - (d) obtain unitholder approval to extend the closed-ended period for a further finite period.
2. The Central Bank may permit the Qualifying Investor AIF to derogate from paragraph 4 of section 1.iii of Part I, and provide for the issue of units other than at net asset value. The Qualifying Investor AIF must demonstrate that unitholders will not be prejudiced by such a provision.
 3. This section specifies the extent of the disapplication by the Central Bank of Section 12(1) of the Unit Trusts Act 1990, Section 253(2)(b)(ii) of the Companies Act 1990 Part XIII, and Section 14(1) of the Investment Funds Act 2005, in accordance with its powers under Section 12(2) of the Unit Trusts Act 1990, Section 253(2A)(a) of the Companies Act 1990 Part XIII, and Section 14(2) of the Investment Funds Act 2005.

ii. Liquidity

1. For the purposes of sections iii to v, liquidity provisions must realistically contribute to the ability of a unitholder to realise his/her investment prior to the expiry of the closed-ended period.

Examples of realistic liquidity provisions include the following:

- (a) Appointment of market makers (i.e. institutions who would be prepared to make a bid for units presented to it) or other system whereby unitholders would be assured of obtaining a reasonable price for their units within a reasonable time-frame. It is recognised that such a provision does not necessarily entail that a unitholder would receive the prevailing net asset value.
 - (b) Limited redemption facilities which could take the form of a limited period during which requests for redemption may be accepted.
 - (c) Listing on a regulated stock exchange in conjunction with the appointment of brokers who would execute orders on a matched bargain basis. The acceptability of this type of provision would depend on the liquidity provided by the listing (i.e. the extent to which a market in units was likely to develop).
2. It is noted that the appointment of brokers who would execute orders on a matched bargain basis is a desirable feature of a closed-ended Qualifying Investor AIF. However, where a market in units is unlikely to develop, it must be recognised that this provision does not provide realistic liquidity in the units of a Qualifying Investor AIF.

iii. Changes to existing closed-ended Qualifying Investor AIFs*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, 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, votes in favour of the change must represent at least 50% of votes cast.

Changes to the investment objective or material⁴⁰ 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 Qualifying Investor AIF, 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 Qualifying Investor AIF, 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. In the event of non-material changes to investment policies unitholders must notified 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 documents or prospectus, or the maximum annual fee charged by the management company as disclosed in the constitutional documents, 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, 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, votes in favour of the increase must represent at least 50% of the votes cast.

⁴⁰ In accordance with paragraph 5 of section 5.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”

iv. **Other changes**

1. The Central Bank may require the application of the approach set out in paragraph 6 of section 3.iii in the case of other proposed changes depending on the impact of the proposed changes on the unitholders. Circumstances where this approach is likely to be required include changes to the distribution policies of the closed-ended Qualifying Investor AIF or changes to the valuation policies. Proposed changes will be considered by the Central Bank on a case-by-case basis.

v. **Open-ended Qualifying Investor AIFs with limited liquidity**

1. Qualifying Investor AIFs, which are not closed-ended Qualifying Investor AIFs, but which do not provide redemption facilities quarterly, are classified as open-ended Qualifying Investor AIFs with limited liquidity. The extent to which this section applies to open-ended Qualifying Investor AIFs with limited liquidity will be determined by the Central Bank on a case-by-case basis and will depend on the liquidity arrangements which are provided. For example, a Qualifying Investor AIF with very few exit mechanisms will be subject to this section whereas it will not be applicable in the case of a Qualifying Investor AIF which provides regular redemption facilities.

PART III: ADDITIONAL PROVISIONS APPLICABLE TO QUALIFYING INVESTOR AIFs WHICH HAVE A REGISTERED AIFM

Obligations are derived directly from provisions of the investment fund legislation, or are conditions imposed by the Central Bank under powers given to the Central Bank under that legislation.

1. Where a Qualifying Investor AIF has a registered AIFM, the registered AIFM must comply with the following provisions of the Alternative Investment Fund Managers Requirements:
 - vi. Organisational requirements – 6th bullet point of paragraph 6(a) only
 - xi. Liquidity risk management – paragraph 3 only
 - xiv. Relationship with the Central Bank – paragraphs 1, 4 and 6
 - xvii. Valuation – 1st sentence of paragraph 1, paragraphs 2, 3, 4, 5, 6 and 7 only
 - xix. Transparency obligations – all paragraphs excluding paragraphs 2(e), 2(f), 4(e), 4(p), 5, 7 and 8.

2. Where a Qualifying Investor AIF has a registered AIFM, the registered AIFM must ensure that a single depositary is appointed in accordance with the AIF Depositary Requirements.

3. Where a Qualifying Investor AIF has a registered AIFM, the registered AIFM must 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 net asset value 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

2013

Chapter 3 - Alternative Investment Fund Manager Requirements

TO WHOM THESE REQUIREMENTS APPLY:

These Requirements set out the conditions which the Central Bank of Ireland (“the Central Bank”) imposes on AIFMs (as defined below). These Requirements are imposed by the Central Bank further to the AIFMD Regulations.

The conditions which the Central Bank is imposing are contained in these Requirements. These Requirements on AIFMs must be read in conjunction with all the other requirements set out in the AIF Handbook. These Requirements must also be read in conjunction with the AIFMD Regulations and AIFMD Level 2. In the event of any difference or discrepancy between these Requirements and the AIFMD Regulations and AIFMD Level 2, the provisions of the AIFMD Regulations and AIFMD Level 2 will prevail.

Where a condition set out in these Requirements 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.

All AIFMs established in the State are subject to the AIFMD Regulations. However, to reflect the fact that some AIFMs will be authorised under the AIFMD Regulations while others will be registered, these Requirements are divided into two parts. Part I applies to AIFMs which require or apply for authorisation under the AIFMD Regulations. Part II applies to AIFMs which require registration under the AIFMD Regulations.

In addition to being subject to Part I or Part II of these Requirements (as applicable), AIFMs which manage authorised AIFs are subject to:

- (a) the AIFMD Regulations;
- (b) AIFMD Level 2;
- (c) the investment fund legislation; and
- (d) the Retail Investor AIF Requirements/the Qualifying Investor AIF Requirements (as applicable).

In addition to being subject to Part I or Part II of these Requirements (as applicable), AIFMs which manage AIFs which are not authorised AIFs are subject to:

- (a) the AIFMD Regulations; and
- (b) AIFMD Level 2.

DEFINITIONS

For the purposes of these Requirements the following interpretations and definitions shall apply:

AIF: An alternative investment fund as defined in Regulation [x] of the AIFMD Regulations.

AIF constitutional document: The trust deed, in the case of a unit trust, the memorandum and articles of association, in the case of an investment company, the deed of constitution, in the case of a common contractual fund and the partnership agreement, in the case of an investment limited partnership.

AIF Handbook: The Central Bank's handbook in relation to AIFs which contains chapters concerning Retail Investor AIF, Qualifying Investor AIF, AIF Management Companies, Fund Administrators, Alternative Investment Fund Managers, AIF Depositaries and Grandfathering Arrangements.

AIFM: An alternative investment fund manager as defined in Regulation [x] of the AIFMD Regulations.

AIFMD: Alternative Investment Fund Managers Directive (Directive 2011/61/EU).

AIFMD Level 2: Commission Delegated Regulation (EU) [x].

AIFMD Regulations: European Communities (Alternative Investment Fund Managers Directive) Regulations (SI No. [] of 2012).

Authorised AIF: AIF authorised by the Central Bank under the investment fund legislation.

ESMA's Remuneration Guidelines: ESMA's Guidelines on sound remuneration policies under the AIFMD.

EU AIF: An EU alternative investment fund as defined in Regulation [x] of the AIFMD Regulations.

Investment fund legislation: Unit Trusts Act 1990, Part XIII of the Companies Act 1990, Investment Limited Partnerships Act 1994 and Investment Funds, Companies and Miscellaneous Provisions Act 2005.

Units: Shares of an investment company, interests of the partners in an investment limited

partnership and units of a unit trust or common contractual fund.

Unitholder: A shareholder in the case of an investment company, a limited partner in the case of an investment limited partnership and unitholder in the case of a unit trust or common contractual fund.

PART I: AIFMS WHICH REQUIRE AUTHORISATION OR ARE AUTHORISED UNDER THE AIFMD REGULATIONS

Obligations are derived directly from provisions of the AIFMD Regulations, or are conditions imposed by the Central Bank under Regulation [x] of the AIFMD Regulations.

i. Scope

1. AIFMs which:

- (a) come within the scope of the AIFMD Regulations and cannot avail of the exemptions from authorisation set out in Regulation [x] of the AIFMD Regulations; or
- (b) opt to be authorised under the AIFMD Regulations

are subject to Part I of these Requirements.

ii. Application requirements

1. The Central Bank may not grant authorisation to an AIFM unless *inter alia*:

- (a) the applicant is a body corporate with its registered office and its head office in Ireland;
- (b) it meets with specific capital requirements as set out section viii of Part I;
- (c) its shareholders, directors and managers satisfy the requirements of S.I. No. 437 of 2011 on fitness and probity;
- (d) its directors and managers are sufficiently experienced in relation to the type of AIF to be managed;
- (e) its group structure does not prevent effective supervision by the Central Bank; and
- (f) the Central Bank is satisfied that the AIFM will be able to meet with the conditions of the AIFMD Regulations and AIFMD Level 2.

Requirements in paragraph (c) in relation to shareholders are not applicable to internally managed AIF.

2. An application for authorisation as an AIFM must be made by submitting:

- (a) a completed application form signed by two directors of the applicant AIFM;
- (b) completed individual questionnaires (IQ) in respect of;
 - each director and senior manager;

- each individual who has a direct or indirect holding of shares or other interest in the proposed AIFM, which represents 10% or more of the capital or voting rights in the AIFM;
 - any other individual who is in a position to exercise a significant influence over the management of the AIFM.
- (c) a programme of activity setting out the organisational structure of the AIFM, including information on how the AIFM intends to comply with its obligations under the provisions of the AIFMD Regulations which implement Chapters II, III, IV (and where applicable) Chapters V, VI, VII and VIII of the AIFMD;
- (d) information on the remuneration policies and practices pursuant to Regulation [x] of the AIFMD Regulations;
- (e) information on arrangements made for the delegation and sub-delegation to third parties of functions as referred to in Regulation [x] of the AIFMD Regulations;
- (f) information on the AIFs it intends to manage as specified in Regulation [x] of the AIFMD Regulations;
- (g) the statement of responsibility referenced in paragraph 8 of section vi of this Part, if applicable.

Requirements in paragraph (b) in relation to shareholders are not applicable to internally managed AIF.

iii. Changes in the scope of the authorisation

1. An AIFM must notify the Central Bank in advance of any material changes to the information provided in accordance with paragraph 2 of section ii of this Part and prior to engaging in any significant new activities or establishing new branches, offices or subsidiaries.

iv. Operating conditions

1. An AIFM must:
- (a) act honestly, professionally, independently, with due skill, care and diligence and fairly in conducting its activities and in the interests of the AIF and the unitholders of the AIF;
 - (b) act in the best interests of the AIFs and the unitholders of the AIFs it manages and the integrity of the market;
 - (c) have and employ effectively the resources and procedures that are necessary for the proper performance of its business activities;
 - (d) take all reasonable steps to avoid conflicts of interest and, when they cannot be

- avoided, identify, manage and monitor and, where applicable, disclose, those conflicts of interest in order to prevent them from adversely affecting the interests of the AIFs and their unitholders and ensure that the AIFs it manages are fairly treated;
- (e) comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of the AIFs and the unitholders of the AIFs it manages and the integrity of the market;
 - (f) treat all AIF unitholders fairly;
 - (g) ensure that no unitholder in an AIF obtains preferential treatment unless such preferential treatment is disclosed in the relevant AIF's constitutional document.

Articles 16 to 29 of AIFMD Level 2 are applicable in this regard.

- 2. Half-yearly financial and annual audited accounts of the AIFM must be submitted to the Central Bank. The half-yearly accounts must be submitted within two months and the annual audited accounts within four months of the relevant reporting period. Both half-yearly and annual audited accounts must be accompanied by the Minimum Capital Requirement Report, which forms part of these Requirements. Annual audited accounts of the direct parents of the AIFM must also be submitted together with the accounts of any company within the group specified by the Central Bank. Internally managed Qualifying Investor AIF investment companies are not required to produce half-yearly financial accounts.

v. Remuneration

- 1. AIFMs must have remuneration policies and practices for those categories of staff, including senior management, risk takers, control functions, and any employees receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers, whose professional activities have a material impact on the risk profiles of the AIFMs or of the AIFs they manage, that are consistent with and promote sound and effective risk management and do not encourage risk-taking which is inconsistent with the risk profiles or AIF constitutional document of the AIFs they manage. The AIFM's remuneration policies must be consistent with the AIFMD Regulations and the ESMA's remuneration guidelines.

vi. Organisational requirements

- 1. An AIFM must use, at all times, adequate and appropriate human and technical resources that are necessary for the proper management of the AIFs which it manages.
- 2. An AIFM, having regard to the nature of the AIFs under management, must have sound administrative and accounting procedures, control and safeguard arrangements for electronic

data processing and adequate internal control mechanisms including, in particular, rules for personal transactions by its employees or for the holding or management of investments in order to invest on its own account and ensuring, at least, that each transaction involving the AIFs may be reconstructed according to its origin, the parties to it, its nature, and the time and place at which it was effected and that the assets of the AIFs managed by the AIFM are invested in accordance with the AIF constitutional document and the legal provisions in force.

Articles 57 to 66 of AIFMD Level 2 are applicable in this regard.

3. An AIFM must establish, implement and maintain decision making procedures and an organisational structure which clearly and in a documented manner specifies reporting lines and allocates functions and responsibilities. The board must appoint a Chair on a permanent basis.
4. The organisation of an AIFM must be structured such that no one person can decide on the direction of the AIFM without the endorsement of another.
5. In accordance with good corporate governance principles, the Central Bank considers that the board of an AIFM is responsible as a whole for the following managerial functions:
 - (a) **decision making:** The board must have clear responsibility and competence in relation to all material decisions affecting the operation and conduct of the business of the AIFM;
 - (b) **monitoring of investment policy, investment strategies and performance:** The board must put in place procedures to ensure and verify that the investment policies and strategies of each AIF are complied with and to ensure availability of up to date information on portfolio performance;
 - (c) **monitoring compliance:** The board must put in place procedures designed to ensure compliance with all applicable legal and regulatory requirements of the AIFM itself and all AIFs under management;
 - (d) **risk management:** The board must put in place procedures designed to ensure that all applicable risks pertaining to the AIFM and to AIFs under management can be identified, monitored and managed at all times;
 - (e) **liquidity management:** The board must put in place procedures designed to ensure that all applicable liquidity risks pertaining to the AIFs under management can be identified, monitored and managed at all times;
 - (f) **operational risks:** the board must put in place procedures designated to ensure that all applicable operational risks pertaining to the AIFM can be identified, monitored and managed at all times;

- (g) **conflicts of interest:** The board must put in place procedures designed to ensure that all applicable conflicts of interest pertaining to the AIFM and to AIF under management can be identified, monitored and managed at all times;
 - (h) **supervision of delegates:** The board must have clear structures in place for the on-going monitoring of work delegated to third parties;
 - (i) **financial control:** The board must put in place procedures to ensure all relevant accounting records of the AIFM and of AIF under management are properly maintained and are readily available, including production of annual and half-yearly financial statements;
 - (j) **monitoring of capital:** The board must put in place procedures to ensure compliance with regulatory capital requirements;
 - (k) **internal audit:** The board must put in place procedures to ensure effective internal audit procedures for the AIFM and for AIF under management;
 - (l) **complaints handling:** The board must have arrangements in place to ensure that complaints from investors are addressed promptly and effectively;
 - (m) **accounting policies and procedures:** The board must have procedures in place to ensure that proper accounting policies and procedures are employed in respect of the AIFM and all AIF under management;
 - (n) **recordkeeping:** The board must put in place procedures designed to ensure that all recordkeeping requirements pertaining to the AIFM and to AIF under management can be complied with at all times;
 - (o) **remuneration:** The board must put in place remuneration policies designed to ensure that any relevant conflicts of interest can be managed appropriately at all times;
 - (p) **AIFMD reporting process:** The board must put in place procedures designed to ensure that the AIFM complies with its obligations under the AIFMD Regulations to report to the Central Bank.
6. (a) An AIFM may delegate functions subject to the provisions of the AIFMD Regulations including:
- the AIFM must be able to justify its entire delegation structure on objective reasons;
 - the delegate must dispose of sufficient resources to perform the respective tasks and the persons who effectively conduct the business of the delegate must be of sufficiently good reputation and sufficiently experienced;
 - where the delegation concerns portfolio management or risk management, it must be conferred only on undertakings which are authorised or registered for the purpose of asset management and subject to supervision or, where that condition cannot be met, only subject to prior approval by the Central Bank;
 - where the delegation concerns portfolio management or risk management and is

conferred on a third-country undertaking, in addition to the requirements in point (c) below, cooperation between the Central Bank and the supervisory authority of the undertaking must be ensured;

- the delegation must not prevent the effectiveness of supervision of the AIFM, and, in particular, must not prevent the AIFM from acting, or the AIF from being managed, in the best interests of its unitholders;
 - the AIFM must be able to demonstrate that the delegate is qualified and capable of undertaking the functions in question, that it was selected with all due care and that the AIFM is in a position to monitor effectively at any time the delegated activity, to give at any time further instructions to the delegate and to withdraw the delegation with immediate effect when this is in the interest of investors;
 - the AIFM must review the services provided by each delegate on an on-going basis;
 - the AIFM must monitor effectively at any time the activity of the undertaking to which a mandate is given;
 - the AIFM must not delegate portfolio management or risk management to the depositary or a delegate of the depositary or any other entity whose interests may conflict with those of the AIFM or the unitholders of the AIF, unless such entity has functionally and hierarchically separated the performance of its portfolio management or risk management tasks from its other potentially conflicting tasks, and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the unitholders of the AIF.
- (b) An AIFM must not delegate functions to the extent that in essence it becomes a letterbox entity.
- (c) The liability of an AIFM shall not be affected by the delegation by the AIFM of any functions to third parties.
- (d) Sub-delegation is subject to:
- the prior consent of the AIFM;
 - prior notification to the Central Bank;
 - the conditions set out in paragraph 6(a) of this section where all references to ‘delegate’ are read as references to ‘sub-delegate’;
 - no sub-delegation of portfolio management or risk management may be conferred on the depositary or a delegate of the depositary or any other entity whose interests may conflict with those of the AIFM or the unitholders of the AIF, unless such entity has functionally and hierarchically separated the

performance of its portfolio management or risk management tasks from its other potentially conflicting tasks, and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the unitholders of the AIF.

- the relevant delegate must review the services provided by each sub-delegate on an on-going basis.

Articles 75 to 82 of AIFMD Level 2 are applicable in this regard.

7. Delegates must be appointed by the board of the AIFM acting independently.
8. Where an AIFM delegates activities the programme of activity must 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 5 of this section. The board of the AIFM must formally adopt a statement of responsibility in relation to the functions and the procedures which will apply in each case.
9. Where an AIFM delegates activities, the programme of activity must 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 5:
 - (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.
 - (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.

vii. Directors⁴¹

1. Appointments to the office of director or alternate director require the prior approval of the Central Bank.
2. 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.
3. The board must not have directors in common with the board of the depositary of the AIF under management;
4. A minimum of two directors must be Irish residents;
5. Directors are required to disclose to their board any concurrent directorships which they hold.

viii. Capital

1. An AIFM which is an internally managed AIF must have initial capital of at least €300,000.
2. All other AIFM must have, at all times:
 - (a) initial capital of at least €125,000 (“**Initial Capital Requirement**”) plus the **Additional Amount** (if required), as set out in paragraph 3 of this section; or
 - (b) one quarter of its total expenditure taken from the most recent annual accounts (“**Expenditure Requirement**”). (However the Central Bank reserves the right to increase this amount should it be deemed not to reasonably reflect the current position of the AIFM);

whichever is higher (“**Minimum Capital Requirement**”).

⁴¹ The provisions of footnote 1 in the AIF Management Company Requirements will apply *mutatis mutandis* to directors of AIFM which manage authorised AIF that are in distressed or failing circumstances.

3. When the net asset value of the AIFs under management exceeds €250,000,000, an AIFM must provide an additional amount of capital equal to 0.02% of the amount by which the net asset value exceeds €250,000,000 (“**Additional Amount**”). An AIFM need not provide up to 50% of the **Additional Amount** if it benefits from a guarantee of the same amount given by a credit institution or insurance undertaking and the form of guarantee is approved by the Central Bank.
4. The total of the **Initial Capital Requirement** and the **Additional Amount** required to be held by an AIFM is not required to exceed €10,000,000.
5. All AIFM (whether internally or externally managed) must have additional own funds which are appropriate to cover potential liability risks arising from professional negligence or hold professional indemnity insurance against liability arising from professional negligence which is appropriate to the risks covered.

Articles 12 to 15 of AIFMD Level 2 are applicable in this regard.

6. The **Minimum Capital Requirement**, including any additional amounts under paragraphs 3 and 5, must be invested in liquid assets or assets readily convertible to cash in the short term and must not include speculative positions.
7. An AIFM must be in a position to demonstrate its compliance with the Minimum Capital Requirement throughout the reporting period.
8. Any **Subordinated Loan Capital** or **Eligible Capital Contribution**, (as provided in paragraph 6.4 of *Minimum Capital Requirement Report, Notes on Compilation, (AIFM)*), incorporated in the calculation of Financial Resources (including repayment) is subject to the prior approval of the Central Bank. Subordinated Loan Capital may not be incorporated in the calculation of the Initial Capital Requirement.
9. Specific details and notes in relation to these requirements are contained in *Minimum Capital Requirement Report, Notes on Compilation, (AIFM)*. This document and the *Minimum Capital Requirement Report* are contained in Annex I to these Requirements. These documents may be amended from time to time and form part of these Requirements.

ix. 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 AIFMD Regulations, including conditions imposed by the Central Bank and any records required by the Central Bank under Regulation [x] of the AIFMD Regulations. Original documentation should be retained where appropriate. Any record shall be produced for inspection to the Central Bank within a reasonable period of time and, where it is not retained in legible form, must be capable of being reproduced in that form.

2. In the event of the termination of its authorisation by the Central Bank, an AIFM is required to retain the records referred to in paragraph 1 of this section for the outstanding term of the six year period.

x. Risk management

1. An AIFM shall implement adequate risk management systems in order to identify, measure, manage and monitor appropriately all risk relevant to each AIFM investment strategy and to which each AIF is or may be exposed.
2. An AIFM must review the risk management systems with appropriate frequency, but at least annually, and adapt whenever necessary.
3. An AIFM must functionally and hierarchically separate the functions of risk management from the operating units, including from the functions of portfolio management, in accordance with the principle of proportionality.

Articles 38 to 45 of AIFMD Level 2 are applicable in this regard.

4. An AIFM must at least:
 - (a) implement an appropriate, documented and regularly updated due diligence process when investing on behalf of the AIF, according to the investment strategy, the objectives and risk profile of the AIF;
 - (b) ensure that the risks associated with each investment position of the AIF and their overall effect on the AIF's portfolio can be properly identified, measured, managed and monitored on an on-going basis, including through the use of appropriate stress testing procedures;
 - (c) ensure that the risk profile of the AIF shall correspond to the size, portfolio structure and investment strategies and objectives of the AIF as laid down in the AIF constitutional document, prospectus and offering documents.

5. An AIFM must set a maximum level of leverage which it may employ on behalf of each AIF it manages as well as the extent of the right to reuse collateral or guarantee that could be granted under the leveraging arrangement, taking into account, *inter alia*:
 - (a) the type of the AIF;
 - (b) the investment strategy of the AIF;
 - (c) the sources of leverage of the AIF;
 - (d) any other interlinkage or relevant relationships with other financial services institutions, which could pose systemic risk;
 - (e) the need to limit the exposure to any single counterparty;
 - (f) the extent to which the leverage is collateralised;
 - (g) the asset-liability ratio;
 - (h) the scale, nature and extent of the activity of the AIFM on the markets concerned.

xi. Liquidity risk management

1. An AIFM must, for each AIF that it manages which is not an unleveraged closed-ended AIF, employ an appropriate liquidity management system and adopt procedures which enables it to monitor the liquidity risk of the AIF and to ensure that the liquidity profile of the investments of the AIF complies with its underlying obligations.
2. An AIFM must regularly conduct stress tests, under normal and exceptional liquidity conditions, which enables it to assess the liquidity risk of the AIFs and monitor the liquidity risk of the AIFs accordingly.
3. An AIFM must ensure that, for each AIF that it manages, the investment strategy, the liquidity profile and the redemption policy are consistent.

Articles 46 to 49 of AIFMD Level 2 are applicable in this regard.

xii. Conflict of interests

1. An AIFM must take all reasonable steps to identify conflicts of interest that arise in the course of managing AIFs between:
 - (a) the AIFM, including its managers, employees or any person directly or indirectly linked to the AIFM by control, and the AIF managed by the AIFM or the unitholders in that AIF;

- (b) the AIF or the unitholders in that AIF, and another AIF or the unitholders in that AIF;
- (c) the AIF or the unitholders in that AIF, and another client of the AIFM;
- (d) the AIF or the unitholders in that AIF, and a UCITS managed by the AIFM or the unitholders in that UCITS; or
- (e) two clients of the AIFM.

An AIFM shall maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to identify, prevent, manage and monitor conflicts of interest in order to prevent them from adversely affecting the interests of the AIFs and their unitholders.

2. An AIFM shall segregate, within its own operating environment, tasks and responsibilities which may be regarded as incompatible with each other or which may potentially generate systematic conflicts of interest. AIFMs shall assess whether their operating conditions may involve any other material conflicts of interest and disclose them to the unitholders of the AIFs.
3. Where organisational arrangements made by an AIFM to identify, prevent, manage and monitor conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to investors' interests will be prevented, the AIFM shall clearly disclose the general nature or sources of conflicts of interest to the investors before undertaking business on their behalf, and develop appropriate policies and procedures.
4. Where an AIFM on behalf of an AIF uses the services of a prime broker, the terms shall be set out in a written contract. In particular any possibility of transfer and reuse of AIF assets shall be provided for in that contract and shall comply with the AIF constitutional document. The contract shall provide that the depositary be informed of the contract.
5. AIFMs shall exercise due skill, care and diligence in the selection and appointment of prime brokers with whom a contract is to be concluded.

Articles 30 to 37 of AIFMD Level 2 are applicable in this regard.

xiii. Permitted activities

1. An AIFM must be authorised to perform investment management functions (portfolio management and risk management) and may not engage in activities other than investment management functions and collective portfolio management functions (administration, marketing and / or activities related to the assets of the AIFs) as provided for in Annex 1 to

the AIFMD Regulations and the additional management of UCITS subject to authorisation under the UCITS Directive. By way of derogation from the above, an AIFM can be authorised to perform individual portfolio management services and non-core services as provided for in Regulation [x] of the AIFMD Regulations.

2. An internally managed AIF is only permitted to perform the functions listed in Annex I to the AIFMD Regulations.
3. 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 with the Client Asset Requirements issued by the Central Bank under European Communities (Markets in Financial Instruments) Regulations, 2007 ("the MiFID Regulations"), as applicable and subject to any conditions which may be imposed by the Central Bank pursuant to Regulation [x].
4. An AIFM which is authorised to provide individual portfolio management services must, with respect to the additional activity, comply with the provisions of the European Communities (Markets in Financial Instruments) Regulations 2007 ("the MiFID Regulations"), which are specified in Regulation 16(4).

In addition the AIFM must comply with the Client Asset Requirements, imposed by the Central Bank under Regulation 79 of the MiFID Regulations.

5. An AIFM may not invest all or part of an investor's portfolio in units of AIF under management, unless it receives the prior general approval of the investor.

xiv. Relationship with the Central Bank

1. An AIFM is required to be open and co-operative in its dealings with the Central Bank and with all other relevant supervisory authorities. This requirement includes, but is not limited to, an obligation on the AIFM to notify the Central Bank as soon as it becomes aware of -
 - (a) any breaches of the AIFMD Regulations, AIFMD Level 2 or of the Central Bank's requirements 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 is required to obtain the prior approval of the Central Bank in respect of a proposed change of its name. In addition, an AIFM is required to 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 Article 4(1)(ah) of the AIFMD.
 4. An AIFM is required to participate in such meetings as the Central Bank considers necessary to review its operations and its business developments. The AIFM is required, for the purposes of such meetings to supply any additional material as may be specified by the Central Bank, including internal auditors' reports, operating procedures and management letters issued by the AIFM's auditors and/or by the auditors of AIF under management. In addition, the Central Bank may conduct inspections of the operations of an AIFM if these are deemed necessary or appropriate.
 5. An AIFM is required to state, 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.
 6. An AIFM is required to respond to correspondence and to any requests for information from the Central Bank in a timely and thorough manner and within any period of time that may be specified by the Central Bank.
 7. An AIFM which provides management services to an AIF not authorised by the Central Bank 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 such AIFs, it is required to 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
- (d) total net asset value.

The Central Bank may request information on AIFs not authorised by the Central Bank in order to effectively perform its role as supervisor of Irish service providers. Such requests do not imply any regulatory or supervisory role for the Central Bank in respect of such AIFs.

xv. **Financial control and management information**

1. An AIFM is required to 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;

- (j) other statutory documents required under the Companies Acts 1963 to 2012.
3. An AIFM must notify the Central Bank in advance of any proposed change of auditor and the reasons for the proposed change.

xvi. Investment in securitisation positions

1. Investment by AIFM, on behalf of AIF, in securitisations, is subject to Articles 50 to 56 of AIFMD Level 2.

xvii. Valuation

1. An AIFM is responsible for the proper valuation of AIF assets, the calculation of the net asset value and the publication of the net asset value. The AIFM's liability towards the AIF and its unitholders is not affected by the fact that the AIFM has appointed an external valuer.
2. An AIFM must ensure that, for each AIF that it manages, appropriate and consistent procedures are established so that a proper and independent valuation of the assets of the AIF can be performed in accordance with the AIFMD Regulations and the AIF constitutional document.

Articles 67 to 72 and 74 of AIFMD Level 2 are applicable in this regard.

3. The rules applicable to the valuation of assets and the calculation of the net asset value per unit or share of the AIF must be set down in the AIF constitutional document.
4. An AIFM must ensure that the net asset value per unit or share of AIFs is calculated and disclosed to the unitholders in accordance with the AIFMD Regulations, applicable investment fund legislation and the AIF constitutional document.
5. The valuation procedures used shall ensure that the assets are valued and the net asset value per unit is calculated at least once a year.
6. If the AIF is of the open-ended type, such valuations and calculations must also be carried out on the occasion of each issue or subscription or redemption or cancellation of units.
7. If the AIF is of the closed-ended type, such valuations and calculations must also be carried out in case of an increase or decrease of the capital by the relevant AIF.

8. Valuation may be performed by an external valuer or by the AIFM. The valuation shall be performed impartially and with all due care, skill and diligence.
9. An external valuer must be independent from the AIF, the AIFM and any other persons with close links to the AIF or the AIFM.
10. Where an external valuer performs the valuation function, the AIFM must demonstrate that:
 - (a) the external valuer is subject to mandatory professional registration recognised by law or to legal or regulatory provisions or rules of professional conduct;
 - (b) the external valuer can provide sufficient professional guarantees to be able to perform effectively the relevant valuation function in accordance with paragraphs 2 to 7 of this section; and
 - (c) the appointment of the external valuer complies with the requirements of Regulation [x] and Article 73 of AIFMD Level 2.
11. The appointed external valuer must not delegate the valuation function to a third party.
12. Notwithstanding paragraph 1 of this section and irrespective of any contractual arrangements providing otherwise, the external valuer will be liable to the AIFM for any losses suffered by the AIFM as a result of the external valuer's negligence or intentional failure to perform its tasks.
13. Where the valuation is performed by the AIFM, the task must be functionally independent from the portfolio management. Remuneration policy and other measures must ensure that conflicts of interest are mitigated and that undue influence on employees is prevented.
14. Where the valuation is performed by an external valuer, the appointment of the external valuer must be notified to the Central Bank.

xviii. Depositary

1. For each AIF it manages, an AIFM must ensure that a single depositary is appointed in accordance with Regulation [x] of the AIFMD Regulations.

xix. Transparency obligations

Annual report

1. An AIFM must, for each of the EU AIFs it manages and for each of the AIFs it markets in the Union, make available an annual report for each financial year no later than 6 months following the end of the financial year. The annual report must be provided to unitholders on

request. The annual report must be made available to the Central Bank, and, where applicable, the home Member State of the AIF.

Where the AIF is required to make public an annual financial report in accordance with Directive 2004/109/EC only such additional information referred to in paragraph 2 of this section needs to be provided to unitholders on request, either separately or as an additional part of the annual financial report. In the latter case the annual financial report must be made public no later than 4 months following the end of the financial year.

2. The annual report must at least contain the following:
 - (a) a balance-sheet or a statement of assets and liabilities;
 - (b) an income and expenditure account for the financial year;
 - (c) a report on the activities of the financial year;
 - (d) any material changes in the information listed in paragraph 4 of this section during the financial year covered by the report;
 - (e) the total amount of remuneration for the financial year, split into fixed and variable remuneration, paid by the AIFM to its staff, and number of beneficiaries, and, where relevant, carried interest paid by the AIF;
 - (f) the aggregate amount of remuneration broken down by senior management and members of staff of the AIFM whose actions have a material impact on the risk profile of the AIF.

Article 104 of AIFMD Level 2 is applicable in this regard.

3. The accounting information given in the annual report must be prepared in accordance with the accounting standards of the home Member State of the AIF or in accordance with the accounting standards of the third country where the AIF is established and with the accounting rules laid down in the AIF constitutional document.

The accounting information given in the annual report must be audited by one or more persons empowered by law to audit accounts in accordance with Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts. The auditor's report, including any qualifications, must be reproduced in full in the annual report.

By way of derogation from the second subparagraph, the Central Bank may permit AIFMs marketing non-EU AIFs to subject the annual reports of those AIFs to an audit meeting international auditing standards in force in the country where the AIF has its registered office.

Disclosure to unitholders

4. AIFMs must for each of the EU AIFs that they manage and for each of the AIFs that they market in the Union make available to prospective unitholders, in accordance with the AIF constitutional document, the following information before they invest in the AIF, as well as any material changes thereof:
 - (a) a description of the investment strategy and objectives of the AIF, information on where any master AIF is established and where the underlying funds are established if the AIF is a fund of funds, a description of the types of assets in which the AIF may invest, the techniques it may employ and all associated risks, any applicable investment restrictions, the circumstances in which the AIF may use leverage, the types and sources of leverage permitted and the associated risks, any restrictions on the use of leverage and any collateral and asset reuse arrangements, and the maximum level of leverage which the AIFM are entitled to employ on behalf of the AIF;
 - (b) a description of the procedures by which the AIF may change its investment strategy or investment policy, or both;
 - (c) a description of the main legal implications of the contractual relationship entered into for the purpose of investment, including information on jurisdiction, on the applicable law and on the existence or not of any legal instruments providing for the recognition and enforcement of judgments in the territory where the AIF is established;
 - (d) the identity of the AIFM, the AIF's depositary, auditor and any other service providers and a description of their duties and the unitholders' rights;
 - (e) a description of how the AIFM is complying with the requirements of Regulation [x];
 - (f) a description of any delegated management function as referred to in Schedule [x] of the AIFMD Regulations by the AIFM and of any safe-keeping function delegated by the depositary, the identification of the delegate and any conflicts of interest that may arise from such delegations;
 - (g) a description of the AIF's valuation procedure and of the pricing methodology for valuing assets, including the methods used in valuing hard-to-value assets in accordance with Regulation [x]. Where the rules set out in the constitutional document have not defined a method of valuation in sufficient detail that method of valuation should be defined in the prospectus;
 - (h) a description of the AIF's liquidity risk management, including the redemption rights both in normal and in exceptional circumstances, and the existing redemption arrangements with unitholders;
 - (i) a description of all fees, charges and expenses and of the maximum amounts thereof which are directly or indirectly borne by unitholders;
 - (j) a description of how the AIFM ensures a fair treatment of unitholders and, whenever a unitholder obtains preferential treatment or the right to obtain preferential treatment, a

- description of that preferential treatment, the type of unitholders who obtain such preferential treatment and, where relevant, their legal or economic links with the AIF or AIFM;
- (k) the latest annual report referred to in Regulation [x];
 - (l) the procedure and conditions for the issue and sale of units;
 - (m) the latest net asset value of the AIF or the latest market price of the unit of the AIF, in accordance with Regulation [x];
 - (n) where available, the historical performance of the AIF;
 - (o) the identity of the prime broker and a description of any material arrangements of the AIF with its prime brokers and the way the conflicts of interest in relation thereto are managed and the provision in the contract with the depositary on the possibility of transfer and reuse of AIF assets, and information about any transfer of liability to the prime broker that may exist;
 - (p) description of how and when the information required under paragraphs 7 and 8 of this section will be disclosed.
5. The AIFM must inform the investors before they invest in the AIF of any arrangement made by the depositary to contractually discharge itself of liability in accordance with Regulation [x]. The AIFM must also inform unitholders of any changes with respect to depositary liability without delay.
6. Where the AIF is required to publish a prospectus in accordance with Directive 2003/71/EC or in accordance with national law, only such information referred to in paragraphs 4 and 5 of this section which is in addition to that contained in the prospectus needs to be disclosed separately or as additional information in the prospectus.
7. AIFMs must, for each of the EU AIFs that they manage and for each of the AIFs that they market in the Union, periodically disclose to unitholders:
- (a) the percentage of the AIF's assets which are subject to special arrangements arising from their illiquid nature;
 - (b) any new arrangements for managing the liquidity of the AIF;
 - (c) the current risk profile of the AIF and the risk management systems employed by the AIFM to manage those risks.
- Article 108 of AIFMD Level 2 is applicable in this regard.
8. AIFMs managing EU AIFs employing leverage or marketing in the Union AIFs employing leverage must, for each such AIF disclose, on a regular basis:
- (a) any changes to the maximum level of leverage which the AIFM may employ on behalf

- of the AIF as well as any right of the reuse of collateral or any guarantee granted under the leveraging arrangement;
- (b) the total amount of leverage employed by that AIF.

Article 109 of AIFMD Level 2 is applicable in this regard.

xx. Reporting obligations to competent authorities

1. An AIFM must regularly report to the Central Bank on the principal markets and instruments in which it trades on behalf of the AIFs it manages.

It must provide information on the main instruments in which it is trading, on markets of which it is a member or where it actively trades, and on the principal exposures and most important concentrations of each of the AIFs it manages.

Article 110 of AIFMD Level 2 is applicable in this regard.

2. An AIFM must, for each of the EU AIFs it manages and for each of the AIFs it markets in the Union, provide the following to the Central Bank:
 - (a) the percentage of the AIF's assets which are subject to special arrangements arising from their illiquid nature;
 - (b) any new arrangements for managing the liquidity of the AIF;
 - (c) the current risk profile of the AIF and the risk management systems employed by the AIFM to manage the market risk, liquidity risk, counterparty risk and other risks including operational risk;
 - (d) information on the main categories of assets in which the AIF invested; and
 - (e) the results of the stress tests performed in accordance with Regulations [x] and [x].
3. The AIFM must, on request, provide the following documents to the Central Bank:
 - (a) an annual report of each EU AIF managed by the AIFM and of each AIF marketed by it in the Union, for each financial year, in accordance with Regulation [x];
 - (b) for the end of each quarter a detailed list of all AIFs which the AIFM manages.
4. An AIFM managing AIFs employing leverage on a substantial basis must make available information about the overall level of leverage employed by each AIF it manages, a breakdown between leverage arising from borrowing of cash or securities and leverage embedded in financial derivatives and the extent to which the AIF's assets have been reused under leveraging arrangements to the Central Bank.

That information must include the identity of the five largest sources of borrowed cash or securities for each of the AIFs managed by the AIFM, and the amounts of leverage received from each of those sources for each of those AIFs.

For non-EU AIFMs whose Member State of reference is the State, the reporting obligations referred to in this paragraph are limited to EU AIFs managed by them and non-EU AIFs marketed by them in the Union.

Articles 110(5) and 111 of AIFMD Level 2 are applicable in this regard.

5. Where necessary for the effective monitoring of systemic risk, the Central Bank may require information in addition to that described in paragraphs 1 to 4 of this section, on a periodic as well as on an ad-hoc basis.

xxi. Leveraged AIF

1. An AIFM must demonstrate that the leverage limit set by it for each AIF it manages is reasonable and that it complies with that limit at all times.

xxii. Obligations for AIFMs managing AIFs which acquire control of non-listed companies and issuers

Scope

1. This section applies to the following:
 - (a) AIFMs managing one or more AIFs which either individually or jointly on the basis of an agreement aimed at acquiring control, acquire control of a non-listed company in accordance with paragraph 5 of this section;
 - (b) AIFMs cooperating with one or more other AIFMs on the basis of an agreement pursuant to which the AIFs managed by those AIFMs jointly, acquire control of a non-listed company in accordance with paragraph 5 of this section.
2. This section does not apply where the non-listed companies concerned are:
 - (a) small and medium-sized enterprises within the meaning of Article 2(1) of the Annex to Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises; or
 - (b) special purpose vehicles with the purpose of purchasing, holding or administering real estate.
3. Without prejudice to paragraphs 1 and 2, paragraph 7 applies also to AIFMs managing AIFs

that acquire a non-controlling participation in a non-listed company.

4. Paragraphs 12, 13, 14, 20, 21 and 22 apply also to AIFMs managing AIFs that acquire control over issuers. For the purposes of those paragraphs, paragraphs 1 and 2 apply *mutatis mutandis*.
5. For the purpose of this section, for non-listed companies, control means more than 50 % of the voting rights of the companies.

When calculating the percentage of voting rights held by the relevant AIF, in addition to the voting rights held directly by the relevant AIF, the voting rights of the following must be taken into account, subject to control as referred to in the first subparagraph being established:

- (a) an undertaking controlled by the AIF; and
- (b) a natural or legal person acting in its own name but on behalf of the AIF or on behalf of an undertaking controlled by the AIF.

The percentage of voting rights must be calculated on the basis of all the shares to which voting rights are attached even if the exercise thereof is suspended.

Notwithstanding point (i) of Regulation [x] of the AIFMD Regulations, for the purpose of paragraphs 12, 13, 14, 20, 21 and 22 in regard to issuers control is determined in accordance with Article 5(3) of Directive 2004/25/EC.

6. This section applies subject to the conditions and restrictions set out in Article 6 of Directive 2002/14/EC.

Notification of the acquisition of major holdings and control of non-listed companies

7. When an AIF acquires, disposes of or holds shares of a non-listed company, the AIFM managing such an AIF must notify the Central Bank of the proportion of voting rights of the non-listed company held by the AIF any time when that proportion reaches, exceeds or falls below the thresholds of 10 %, 20 %, 30 %, 50 % and 75 %.
8. When an AIF acquires, individually or jointly, control over a non-listed company pursuant to paragraph 1 of this section, in conjunction with paragraph 5 of this section, the AIFM managing such an AIF must notify the following of the acquisition of control by the AIF:
 - (a) the non-listed company;
 - (b) the shareholders of which the identities and addresses are available to the AIFM or can be made available by the non-listed company or through a register to which the AIFM has or can obtain access; and

- (c) the Central Bank.
9. The notification required under paragraph 8 must contain the following additional information:
- (a) the resulting situation in terms of voting rights;
 - (b) the conditions subject to which control was acquired, including information about the identity of the different shareholders involved, any natural person or legal entity entitled to exercise voting rights on their behalf and, if applicable, the chain of undertakings through which voting rights are effectively held;
 - (c) the date on which control was acquired.
10. In its notification to the non-listed company, the AIFM must request the board of directors of the company to inform the employees' representatives or, where there are none, the employees themselves, without undue delay of the acquisition of control by the AIF managed by the AIFM and of the information referred to in paragraph 9. The AIFM must use its best efforts to ensure that the employees' representatives or, where there are none, the employees themselves, are duly informed by the board of directors in accordance with paragraphs 7 to 11.
11. The notifications referred to in paragraphs 7, 8 and 9 must be made as soon as possible, but no later than 10 working days after the date on which the AIF has reached, exceeded or fallen below the relevant threshold or has acquired control over the non-listed company.

Disclosure in case of acquisition of control

12. When an AIF acquires, individually or jointly, control of a non-listed company or an issuer pursuant to paragraph 1, in conjunction with paragraph 5, the AIFM managing such AIF must make the information referred to in paragraph 13 available to:
- (a) the company concerned;
 - (b) the shareholders of the company of which the identities and addresses are available to the AIFM or can be made available by the company or through a register to which the AIFM has or can obtain access; and
 - (c) the Central Bank.

The Central Bank may require that the information referred to in paragraph 13 is also made available to the competent authorities of the non-listed company.

13. The AIFM must make available:
- (a) the identity of the AIFMs which either individually or in agreement with other AIFMs manage the AIFs that have acquired control;

- (b) the policy for preventing and managing conflicts of interest, in particular between the AIFM, the AIF and the company, including information about the specific safeguards established to ensure that any agreement between the AIFM and/or the AIF and the company is concluded at arm's length; and
 - (c) the policy for external and internal communication relating to the company in particular as regards employees.
14. In its notification to the company pursuant to point (a) of paragraph 12, the AIFM must request the board of directors of the company to inform the employees' representatives or, where there are none, the employees themselves, without undue delay of the information referred to in paragraph 12. The AIFM must use its best efforts to ensure that the employees' representatives or, where there are none, the employees themselves, are duly informed by the board of directors in accordance with paragraphs 12 to 16.
15. When an AIF acquires, individually or jointly, control of a non-listed company pursuant to paragraph 1, in conjunction with paragraph 5, the AIFM managing such AIF must ensure that the AIF, or the AIFM acting on behalf of the AIF, disclose its intentions with regard to the future business of the non-listed company and the likely repercussions on employment, including any material change in the conditions of employment, to:
- (a) the non-listed company; and
 - (b) the shareholders of the non-listed company of which the identities and addresses are available to the AIFM or can be made available by the non-listed company or through a register to which the AIFM has or can obtain access.

In addition, the AIFM managing the relevant AIF must request and use its best efforts to ensure that the board of directors of the non-listed company makes available the information set out in the first subparagraph to the employees' representatives or, where there are none, the employees themselves, of the non-listed company.

16. When an AIF acquires control of a non-listed company pursuant to paragraph 1, in conjunction with paragraph 5, the AIFM managing such an AIF provide the Central Bank and the AIF's unitholders with information on the financing of the acquisition.

Specific provisions regarding the annual report of AIFs exercising control of non-listed companies

17. When an AIF acquires, individually or jointly, control of a non-listed company pursuant to paragraph 1, in conjunction with paragraph 5, the AIFM managing such an AIF must either:
- (a) request and use its best efforts to ensure that the annual report of the non-listed company drawn up in accordance with paragraph 18 is made available by the board of

- directors of the company to the employees' representatives or, where there are none, to the employees themselves within the period such annual report has to be drawn up in accordance with the national applicable law; or
- (b) for each such AIF, include in the annual report provided for in section xix of these Requirements the information referred to in paragraph 18 of this section relating to the relevant non-listed company.
18. The additional information to be included in the annual report of the company or the AIF, in accordance with paragraph 17, must include at least a fair review of the development of the company's business representing the situation at the end of the period covered by the annual report. The report must also give an indication of:
- (a) any important events that have occurred since the end of the financial year;
- (b) the company's likely future development; and
- (c) the information concerning acquisitions of own shares prescribed by Article 22(2) of Council Directive 77/91/EEC.
19. The AIFM managing the relevant AIF must either:
- (a) request and use its best efforts to ensure that the board of directors of the non-listed company makes available the information referred to in point (b) of paragraph 17 of this section relating to the company concerned to the employees' representatives of the company concerned or, where there are none, to the employees themselves within the period referred to in paragraph 1 of section xix of this Part; or
- (b) make available the information referred to in point (a) of paragraph 17 of this section to the unitholders of the AIF, in so far as already available, within the period referred to in paragraph 1 of section xix of this Part and, in any event, no later than the date on which the annual report of the non-listed company is drawn up in accordance with the national applicable law.

Asset stripping

20. When an AIF, individually or jointly, acquires control of a non-listed company or an issuer pursuant to paragraph 1, in conjunction with paragraph 5, the AIFM managing such an AIF must for a period of 24 months following the acquisition of control of the company by the AIF:
- (a) not facilitate, support or instruct any distribution, capital reduction, share redemption and/or acquisition of own shares by the company as described in paragraph 21;
- (b) in so far as the AIFM is authorised to vote on behalf of the AIF at the meetings of the governing bodies of the company, not vote in favour of a distribution, capital reduction, share redemption and/or acquisition of own shares by the company as described in paragraph 21; and

- (c) in any event use its best efforts to prevent distributions, capital reductions, share redemptions and/or the acquisition of own shares by the company as described in paragraph 21.
21. The obligations imposed on AIFMs pursuant to paragraph 20 relate to the following:
- (a) any distribution to shareholders made when on the closing date of the last financial year the net assets as set out in the company's annual accounts are, or following such a distribution would become, lower than the amount of the subscribed capital plus those reserves which may be not distributed under the law or the statutes, on the understanding that where the uncalled part of the subscribed capital is not included in the assets shown in the balance sheet, this amount must be deducted from the amount of subscribed capital;
 - (b) any distribution to shareholders the amount of which would exceed the amount of the profits at the end of the last financial year plus any profits brought forward and sums drawn from reserves available for this purpose, less any losses brought forward and sums placed to reserve in accordance with the law or the statutes;
 - (c) to the extent that acquisitions of own shares are permitted, the acquisitions by the company, including shares previously acquired by the company and held by it, and shares acquired by a person acting in his own name but on the company's behalf, that would have the effect of reducing the net assets below the amount mentioned in point (a).
22. For the purposes of paragraph 21:
- (a) the term 'distribution' referred to in points (a) and (b) of paragraph 21 includes, in particular, the payment of dividends and of interest relating to shares;
 - (b) the provisions on capital reductions do not apply on a reduction in the subscribed capital, the purpose of which is to offset losses incurred or to include sums of money in a non-distributable reserve provided that, following that operation, the amount of such reserve is not more than 10 % of the reduced subscribed capital; and
 - (c) the restriction set out in point (c) of paragraph 21 is subject to points (b) to (h) of Article 20(1) of Directive 77/91/EEC.

PART II: AIFMS WHICH REQUIRE REGISTRATION UNDER THE AIFMD REGULATIONS

Obligations are derived directly from provisions of the AIFMD Regulations, or are conditions imposed by the Central Bank under Regulation [x] of the AIFMD Regulations.

i. Scope

1. This Part applies to the following AIFMs:
 - (a) AIFMs which either directly or indirectly, through a company with which the AIFM is linked by common management or control, or by a substantive direct or indirect holding, manage portfolios of AIFs whose assets under management, including any assets acquired through use of leverage, in total do not exceed a threshold of €100 million; or
 - (b) AIFMs which either directly or indirectly, through a company with which the AIFM is linked by common management or control, or by a substantive direct or indirect holding, manage portfolios of AIFs whose assets under management in total do not exceed a threshold of €500 million when the portfolios of AIFs consist of AIFs that are unleveraged and have no redemption rights exercisable during a period of 5 years following the date of initial investment in each AIF.

Articles 2 to 5 of AIFMD Level 2 are applicable in this regard.

ii. Registration

1. AIFMs to which this Part applies must:
 - (a) register with the Central Bank;
 - (b) identify themselves and the AIFs that they manage to the Central Bank at the time of registration;
 - (c) provide information on the investment strategies of the AIFs that they manage to the Central Bank at the time of registration;
 - (d) regularly provide the Central Bank with information on the main instruments in which they are trading and on the principal exposures and most important concentrations of the AIFs that they manage in order to enable the Central Bank to monitor systemic risk effectively; and
 - (e) notify the Central Bank in the event that they no longer meet the conditions referred to in paragraph 1. In this case, the AIFM must apply for authorisation within 30 days in accordance with the relevant procedures set out in Part I of these Requirements.

Article 5 of AIFMD Level 2 is applicable in this regard.

Annex I**MINIMUM CAPITAL REQUIREMENT REPORT****NOTES ON COMPILATION****(AIFM)**

1. This Minimum Capital Requirement Report must be submitted to the Central Bank by an external AIFM with the half yearly and annual audited accounts at the reporting intervals specified in paragraph 2 of section iv of Part I. The Minimum Capital Requirement Report and these Notes on Compilation thereto form part of these Requirements. The Minimum Capital Requirement Report must be signed by a director or a senior manager of the AIFM.

2. **Initial Capital Requirement**
 - 2.1 The **Initial Capital Requirement** specified in paragraph 2 of section viii of Part I is €125,000.

3. **Additional Amount**
 - 3.1 When the net asset value of the AIF under management exceeds €250,000,000, an AIFM must provide an additional amount of capital equal to 0.02% of the amount by which the net asset value exceeds €250,000,000 (“**Additional Amount**”).

 - 3.2 An AIFM need not provide up to 50% of the Additional Amount if:
 - (i) it benefits from a guarantee of the same amount given by a credit institution or insurance undertaking; and
 - (ii) the form of guarantee is approved by the Central Bank.

 - 3.3 The total of the **Initial Capital Requirement** and the **Additional Amount** required to be held by an AIFM is not required to exceed €10,000,000.

 - 3.4 An AIFM is required to provide the total of its assets under management at each reporting date to facilitate assessment of whether it is required to provide the Additional Amount.

4. **Expenditure Requirement**
 - 4.1 The Expenditure Requirement is calculated as one quarter of an AIFM’s total fixed expenditure taken from the most recent annual accounts. However, the Central Bank reserves the right to increase this amount should it be deemed not to reasonably reflect

the current position of the AIFM.

4.2 Total expenditure includes all expenditure incurred by an AIFM. 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 AIFM) 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.

4.3 All deductions from the total expenditure figure should be either clearly identified in the most recent audited annual accounts or supported with a letter from the auditors confirming the figures.

4.4 AIFMs must have additional own funds which are appropriate to cover potential liability risks arising from professional negligence or hold professional indemnity insurance against liability arising from professional negligence which is appropriate to the risks covered.

5. **Minimum Capital Requirement**

5.1 An AIFM's **Minimum Capital Requirement** is the higher of:

- the Initial Capital Requirement plus the Additional Amount (if required); or
- the Expenditure Requirement

plus, if relevant, own funds which are appropriate to cover potential liability risks arising from professional negligence.

6. **Financial Resources**

6.1 An AIFM is required to have **Financial Resources** at least equal to its Minimum Capital Requirement.

6.2 Financial Resources for an AIFM will be based on the half yearly accounts or the annual audited accounts, whichever is most recent.

6.3 Financial Resources are calculated as the aggregate of:

- Fully paid up equity capital;
- Perpetual non-cumulative preference shares;

- **Eligible Capital Contribution** (see 6.4 below);
- Qualifying **Subordinated Loan Capital** (see 6.4 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.

6.4 **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 AIFM.
- (c) The AIFM 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	

7. **Liquid Assets**

- 7.1 The Minimum Capital Requirement must be invested in liquid assets or assets readily convertible to cash in the short term and must not include speculative positions.

8. Eligible Assets

8.1 An AIFM is required to hold the higher of the **Expenditure Requirement** or the **Initial Capital Requirement** in the form of **Eligible Assets**. Eligible Assets must be liquid assets or assets readily convertible to cash in the short term and must not include speculative positions.

8.2 The Central Bank requires Eligible Assets to be held in an account that is separate to the account(s) used by an AIFM for the day-to-day running of its business.

8.3 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 fund investments which are not daily dealing (see 7.4 below)
- Any other assets which are not easily accessible not included above.

8.4 When an AIFM invests all or part of its capital in one or more investment fund, the Central Bank reviews the relationships linking the investment fund and the AIFM. It is the Central Bank's view that it is likely that where the AIFM 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 firm gets into difficulty. Accordingly, investments in such investment funds will not rank as Eligible Assets for the purposes of satisfying the AIFM's Minimum Capital Requirement.

9. An AIFM must be in a position to demonstrate its on-going compliance with the capital adequacy requirements outlined in this document. Where an AIFM's financial position changes materially at any time between reporting dates, which would impact on its compliance with its regulatory capital requirements, it must notify the Central Bank immediately and take any necessary steps to rectify its position.

MINIMUM CAPITAL REQUIREMENT REPORT⁴²
AIFM

NAME OF FIRM: _____

Period under review: _____ **Currency:** _____

1. INITIAL CAPITAL REQUIREMENT PLUS ADDITIONAL AMOUNT

AIFM

Initial Capital Requirement	€125,000 (A)	
Assets under Management at Reporting Date	_____	
Excess over €250,000,000 (if applicable)	_____	
Additional Amount (if applicable) [0.02% of Excess over €250m]	<div style="border: 1px solid black; width: 100px; height: 20px; display: inline-block;"></div>	(B)
Initial Capital Requirement (A) plus Additional Amount (B) (if applicable) (The amount to be included at (C) is not required to exceed €10,000,000.)		<div style="border: 1px solid black; width: 100px; height: 20px; display: inline-block;"></div>
Additional Amount to cover potential liability risks arising from professional negligence		

2. EXPENDITURE REQUIREMENT

Total Expenditure (taken from P&L Account)	_____	
LESS:		
Depreciation	_____	
Profit Shares, Bonuses, etc	_____	
Net losses on translation of foreign currency balances	_____	
Shared Commissions paid (Note 4.2(d))	_____	
Exceptional and Extraordinary Items (Note 4.2e))	_____	
Any other Non-recurring Expense (Note 4.2(e))	_____	
Net Qualifying Expenditure	<div style="border: 1px solid black; width: 100px; height: 20px; display: inline-block;"></div>	
EXPENDITURE REQUIREMENT [One quarter of Net Qualifying Expenditure]		<div style="border: 1px solid black; width: 100px; height: 20px; display: inline-block;"></div>

⁴² This Minimum Capital Requirement Report and the Notes on Compilation hereto form part of these Requirements.

3. <u>MINIMUM CAPITAL REQUIREMENT</u>	
AIFM	
Higher of initial capital requirement plus Additional Amount (if applicable) (C) and Expenditure Requirement (D)	

MINIMUM CAPITAL REQUIREMENT – [Higher of (C) and (D)]	<input type="text"/> (E)
4. <u>FINANCIAL RESOURCES</u>	
Equity Capital fully paid up	_____
Perpetual Non-cumulative Preference Shares	_____
Eligible Capital Contributions	_____
Qualifying Subordinated Loan Capital (See 'Note on Qualifying Subordinated Loan Capital' below)	_____
Share Premium Account	_____
Disclosed Revenue and Capital Reserves (excluding Revaluation Reserves) (from most recent audited figures)	_____
Audited Interim Net Profits (Note 6.3)	_____
Other Reserves	_____
Total	<input type="text"/>
<i>LESS: Current Year Losses not included in Disclosed Reserves and Capital Reserves above</i>	_____
FINANCIAL RESOURCES	<input type="text"/> (F)

5. <u>ELIGIBLE ASSETS</u> (Must be held outside the Group)	
Total Non-current Assets (taken from Balance Sheet)	_____
Current Assets (taken from Balance Sheet)	_____
TOTAL ASSETS	<input type="text"/>
Less: Ineligible Assets	
Fixed Assets	_____
Intangible Assets	_____
Cash held with group companies	_____
Debtors	_____
Bad Debt Provisions	_____
Prepayments	_____
Intercompany Amounts (gross)	_____
Loans	_____
Collective investment schemes which are not daily dealing (Note 8.4)	_____

Any other assets which are not easily accessible not included above	_____	_____	
Total Ineligible Assets			
ELIGIBLE ASSETS			(G)

Are Financial Resources (F) at least equal to Minimum Capital Requirement (E)?	<u> YES / NO </u>
Are Eligible Assets (G) at least equal to the higher (D) or (A)?	<u> YES / NO </u>
Where are Eligible Assets held? (Attach recent independent statement evidencing location)	
Was the firm in compliance with the capital adequacy requirements throughout the period under review? (Note 9)	<u> YES / NO </u>

<u>Note on Qualifying Subordinated Loan Capital</u>	
The qualifying amount of redeemable subordinated debt is calculated as follows:	
Remaining term to maturity	_____
Gross Amount	_____
Less Amortisations	_____
= Qualifying Amount	_____

Signature, Position and Date
<i>(Director / Senior Manager)</i>

Chapter 4 - AIF Management Company Requirements

TO WHOM THESE REQUIREMENTS APPLY:

These Requirements set out the conditions which the Central Bank of Ireland (“the Central Bank”) imposes on AIF Management Companies (as defined below) which do not require authorisation or are not authorised under the AIFMD Regulations. These AIF Management Companies will be subject to Part II of the Alternative Investment Fund Managers Requirements if they are also an AIFM which does not exceed the thresholds detailed therein. These Requirements are imposed by the Central Bank further to the investment fund legislation.

The conditions which the Central Bank is imposing are contained in these Requirements which supersede all requirements on non-UCITS management companies set out in previous Notices. These Requirements on AIF Management Companies must be read in conjunction with all the other requirements set out in this AIF Handbook. These Requirements must also be read in conjunction with the investment fund legislation. In the event of any difference or discrepancy between these Requirements and the investment fund legislation, the provisions of the investment fund legislation will prevail.

Where a condition set out in these Requirements 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.

As stated above, this chapter applies to AIF Management Companies which do not require authorisation or are not authorised under the AIFMD Regulations. These companies are also subject to Part II of the Alternative Investment Fund Managers Requirements. AIF Management Companies which require authorisation or are authorised under the AIFMD Regulations are subject to Part I of the Alternative Investment Fund Managers Requirements.

DEFINITIONS

For the purposes of these Requirements the following interpretations and definitions shall apply:

AIF: An alternative investment fund as defined in Regulation [x] of the AIFMD Regulations.

AIF Handbook: The Central Bank's handbook in relation to AIFs which contains chapters concerning Retail Investor AIF, Qualifying Investor AIF, AIF Management Companies, Fund Administrators, Alternative Investment Fund Managers, AIF Depositaries and Grandfathering Arrangements.

AIFM: An alternative investment fund manager as defined in the AIFMD.

AIF Management Company: A company whose regular business is the collective portfolio management of AIFs.

AIFMD: Alternative Investment Fund Managers Directive (Directive 2011/61/EU) as amended.

AIFMD Regulations: European Communities (Alternative Investment Fund Managers Directive) Regulations 2012 (SI No. [] of 2012).

Investment fund legislation: Unit Trusts Act 1990, Part XIII of the Companies Act 1990, Investment Limited Partnerships Act 1994 and Investment Funds, Companies and Miscellaneous Provisions Act 2005.

Unitholder: A shareholder in the case of an investment company, a limited partner in the case of an investment limited partnership and unitholder in the case of a unit trust or common contractual fund.

AIF MANAGEMENT COMPANIES WHICH DO NOT REQUIRE AUTHORISATION OR ARE NOT AUTHORISED UNDER THE AIFMD REGULATIONS

Obligations are derived directly from provisions of the investment fund legislation, or are conditions imposed by the Central Bank under powers given to the Central Bank under that legislation.

i. Capital requirements

1. An AIF Management Company must 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**”) (However the Central Bank reserves the right to increase this amount should it be deemed not to reasonably reflect the current position of the AIF Management Company);whichever is higher (“**Minimum Capital Requirement**”).
2. An AIF Management Company is required to have financial resources, calculated in accordance with paragraph 5 of Annex 1 - *Minimum Capital Requirement Report, Notes on Compilation*, at least equal to its Minimum Capital Requirement (“**Financial Resources**”).
3. An AIF Management Company’s Minimum Capital Requirement must be held in the form of Eligible Assets, as specified in paragraph 6 of Annex 1 - *Minimum Capital Requirement Report, Notes on Compilation*. **Eligible Assets** must be easily accessible and must be free from any liens or charges and maintained outside of the AIF Management Company’s group.
4. An AIF Management Company must be in a position to demonstrate its compliance with the Minimum Capital Requirement throughout the reporting period.
5. Any **Subordinated Loan Capital** or **Eligible Capital Contribution**, (as provided in paragraph 5.4 of Annex 1 - *Minimum Capital Requirement Report, Notes on Compilation*), incorporated in the calculation of Financial Resources (including repayment) is subject to the prior approval of the Central Bank. Subordinated Loan Capital may not be incorporated in the calculation of the Initial Capital Requirement.

6. Specific details and notes in relation to these capital requirements are contained in Annex 1 - *Minimum Capital Requirement Report, Notes on Compilation*. This document and the Minimum Capital Requirement Report are contained in Annex 1. These documents may be amended from time to time and form part of these Requirements.

ii. Operating conditions

1. The AIF Management Company must act honestly, fairly, professionally, independently and in the interest of the AIF and the unitholders of the AIF.

iii. Organisational requirements

1. An AIF Management Company is required to identify an individual at management level, who must be located in the State, with responsibility for compliance with all legal and regulatory requirements and for co-operation 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 must 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, but at least quarterly.
2. An AIF Management Company must satisfy the Central Bank, on a continuing basis, that it has 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 a position to satisfy the Central Bank's supervisory and reporting requirements and compliance with these Requirements.
3. An AIF Management Company is required to develop 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.
4. An AIF Management Company must ensure that all relevant persons are aware of the procedures which must be followed for the proper discharge of their responsibilities.
5. An AIF Management Company must establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the AIF Management Company.

6. An AIF Management Company must 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.
7. An AIF Management Company must maintain adequate and orderly records of its business and internal organisation.
8. An AIF Management Company must 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.
9. An AIF Management Company must 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.
10. An AIF Management Company must 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.
11. An AIF Management Company must monitor and, on a regular basis, evaluate the adequacy and effectiveness of its systems, internal control mechanisms and arrangements established in accordance with these Requirements and to take appropriate measures to address any deficiencies.
12. Half-yearly financial and annual audited accounts of the AIF Management Company must be submitted to the Central Bank. The half-yearly accounts must be submitted within two months and the annual accounts within four months of the relevant reporting period. Both half-yearly and annual accounts must be accompanied by the Minimum Capital Requirement Report, which forms part of these Requirements. Annual audited accounts of the direct parents of the AIF Management Company must also be submitted together with the accounts of any company within the group specified by the Central Bank.

iv. Directors of AIF Management Companies¹

1. Appointments to the office of director or alternate director require the prior approval of the Central Bank.
2. 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 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.
3. The Board must not have directors in common with the board of the depositary of the AIFs under management.
4. A minimum of two directors must be Irish residents.

¹ 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.

5. Directors are required to disclose to their board any concurrent directorships which they hold.

v. **Resources**

1. An AIF Management Company must:
 - (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.

vi. **Relationship with the Central Bank**

1. In addition to the provisions of the investment fund legislation, an AIF Management Company is required to consult with the Central Bank prior to -
 - (a) engaging in any significant new activities; or
 - (b) establishing new branches, offices or subsidiaries.
2. An AIF Management Company is required to be open and co-operative in its dealings with the Central Bank and with all other relevant supervisory authorities. This requirement includes, but is not limited to, an obligation on the AIF Management Company to notify the Central Bank as soon as it becomes aware of -
 - (a) any breaches of investment fund legislation or of the Central Bank's requirements which are applicable to the 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 AIF Management Company;
 - (c) the commencement of any significant legal proceedings by or against the AIF Management Company;
 - (d) any situations or events which impact, or potentially impact, on the AIF Management Company to a significant extent;
 - (e) the imposition on the AIF Management Company of fines by another supervisory authority; or
 - (f) a visit to the AIF Management Company by another supervisory authority.

3. An AIF Management Company is required to obtain the prior approval of the Central Bank in respect of a proposed change of its name. In addition, an AIF Management Company is required to notify the Central Bank promptly of any change to the AIF Management Company's address, telephone number or facsimile number.
4. An AIF Management Company is required to participate in such meetings as the Central Bank considers necessary to review its operations and its business developments. The AIF Management Company is required, for the purposes of such meetings to supply any additional material as may be specified by the Central Bank, including internal auditors' reports, operating procedures and management letters issued by the AIF Management Company's auditors and/or by the auditors of AIFs under management. In addition, the Central Bank may conduct inspections of the operations of an AIF Management Company if these are deemed necessary or appropriate.
5. An AIF Management Company is required to state, on its headed paper, that it is regulated by the Central Bank. An AIF Management Company must ensure that any references in publicity material to the role of the Central Bank in relation to its supervision of the AIF Management Company's activities are not misleading.
6. 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.
7. An AIF Management Company is required to respond to correspondence and to any requests for information from the Central Bank in a timely and thorough manner and within any period of time that may be specified by the Central Bank.
8. An AIF Management Company which provides management services to AIFs not authorised by the Central Bank 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 administration services to such AIFs, it is required to 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 net asset value.

The Central Bank may request information on AIFs not authorised by the Central Bank in order to effectively perform its role as supervisor of Irish service providers. Such requests do not imply any regulatory or supervisory role for the Central Bank in respect of such AIFs.

vii. Financial control and management information

1. An AIF Management Company is required to maintain records that are adequate for the purposes of financial control and management information.
2. The AIF Management Company must maintain appropriate internal control systems to ensure that records clearly identify client funds and the assets in which they have been invested.
3. An AIF Management Company must ensure that its records contain at a minimum the following:

Financial

- (a) 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;
- (b) a record of all income and expenditure of the AIF Management Company explaining its nature;
- (c) 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;
- (d) 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;
- (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 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

- (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;
 - (j) other statutory documents required under the Companies Acts.
4. An AIF Management Company must notify the Central Bank in advance of any proposed change of auditor and the reasons for the proposed change.

ANNEX 1

MINIMUM CAPITAL REQUIREMENT REPORT - NOTES ON COMPILATION

1. This Minimum Capital Requirement Report must be submitted to the Central Bank by an AIF Management Company with the half yearly and annual audited accounts at the reporting intervals specified in paragraph 12 of section iii of the AIF Management Company Requirements. The Minimum Capital Requirement Report and these Notes on Compilation thereto form part of the AIF Management Company Requirements. The Minimum Capital Requirement Report must be signed by a director or a senior manager of the AIF Management Company.
2. **Initial Capital Requirement**
 - 2.1 The **Initial Capital Requirement** specified in paragraph 1 of section i of these Requirements is €125,000.
3. **Expenditure Requirement**
 - 3.1 The **Expenditure Requirement** is calculated as one quarter of an AIF Management Company's total expenditure taken from the most recent annual accounts. However, the Central Bank reserves the right to increase this amount should it be deemed not to reasonably reflect the current position of the AIF Management Company.
 - 3.2 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.
 - 3.3 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.

4. Minimum Capital Requirement

4.1 An AIF Management Company's **Minimum Capital Requirement** is the higher of:

- the Initial Capital Requirement; or
- the Expenditure Requirement.

5. Financial Resources

5.1 An AIF Management Company is required to have **Financial Resources** at least equal to its Minimum Capital Requirement.

5.2 Financial Resources for an AIF Management Company will be based on the half yearly accounts or the annual audited accounts, whichever is most recent.

5.3 Financial Resources are calculated as the aggregate of:

- Fully paid up equity capital;
- Perpetual non-cumulative preference shares;
- **Eligible Capital Contribution** (see 5.4 below);
- Qualifying **Subordinated Loan Capital** (see 5.4 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.

5.4 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	_____

6. Eligible Assets

- 6.1 An AIF Management Company is required to 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.
- 6.2 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.
- 6.3 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 6.4 below)
 - Any other assets which are not easily accessible not included above.

- 6.4 When an AIF Management Company invests all or part of its capital in one or more investment funds, the Central Bank reviews 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.
7. An AIF Management Company must be in a position to demonstrate its ongoing 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 regulatory capital requirements, it must notify the Central Bank immediately and take any necessary steps to rectify its position.

MINIMUM CAPITAL REQUIREMENT REPORT AIF Management Company

NAME OF FIRM: _____

Period under review: _____ **Currency:** _____

1. INITIAL CAPITAL REQUIREMENT

AIF MANAGEMENT COMPANY

Initial Capital Requirement _____ €125,000 (A)

2. EXPENDITURE REQUIREMENT

Total Expenditure (taken from P&L Account) _____

LESS:

Depreciation _____

Profit Shares, Bonuses, etc _____

Net losses on translation of foreign currency balances _____

Shared Commissions paid (Note 3.2(d)) _____

Exceptional and Extraordinary Items (Note 3.2(e)) _____

Any other Non-recurring Expense (Note 3.2(e)) _____

Net Qualifying Expenditure _____

EXPENDITURE REQUIREMENT [One quarter of Net Qualifying Expenditure] _____ (B)

3. MINIMUM CAPITAL REQUIREMENT

Higher of **Initial Capital Requirement (A)** and **Expenditure Requirement (B)**

MINIMUM CAPITAL REQUIREMENT – [Higher of (A) and (B)] _____ (C)

4. FINANCIAL RESOURCES

Equity Capital fully paid up	_____
Perpetual Non-cumulative Preference Shares	_____
Eligible Capital Contributions	_____
Qualifying Subordinated Loan Capital (See 'Note on Qualifying Subordinated Loan Capital' below)	_____
Share Premium Account	_____
Disclosed Revenue and Capital Reserves (excluding Revaluation Reserves) (from most recent audited figures)	_____
Audited Interim Net Profits (Note 5.3)	_____
Other Reserves	_____
Total	<input type="text"/>

LESS: *Current Year Losses not included in Disclosed Reserves and Capital Reserves above* _____

FINANCIAL RESOURCES

(D)

5. ELIGIBLE ASSETS (Must be held outside the Group)

Total Non-current Assets (taken from Balance Sheet)	_____
Current Assets (taken from Balance Sheet)	_____
TOTAL ASSETS	<input type="text"/>
Less: Ineligible Assets	
Fixed Assets	_____
Intangible Assets	_____
Cash held with group companies	_____
Debtors	_____
Bad Debt Provisions	_____
Prepayments	_____
Intercompany Amounts (gross)	_____
Loans	_____
Collective investment schemes which are not daily dealing (Note 6.4)	_____
Any other assets which are not easily accessible not included above	_____
Total Ineligible Assets	<input type="text"/>

ELIGIBLE ASSETS

(E)

Are Financial Resources (D) at least equal to Minimum Capital Requirement (C)? YES / NO

Are Eligible Assets (E) at least equal to (C)? YES / NO

Where are Eligible Assets held?
(Attach recent independent statement evidencing location)

Was the AIF Management Company in compliance with the capital adequacy requirements throughout the period under review? (Note 7) YES / NO

Note on Qualifying Subordinated Loan Capital

The qualifying amount of **redeemable subordinated debt** is calculated as follows:

Remaining term to maturity	_____
Gross Amount	_____
Less Amortisations	_____
= Qualifying Amount	_____

Signature, Position and Date

(Director / Senior Manager)

2013

Chapter 5 – Fund Administrator Requirements

TO WHOM THESE REQUIREMENTS APPLY:

These Requirements set out the conditions which the Central Bank of Ireland (“the Central Bank”) imposes on Fund Administrators (as defined below). These Requirements are imposed by the Central Bank under Section 14 of the Investment Intermediaries Act, 1995 (“the IIA”). Fund Administrators are also required to comply with the Prudential Handbook for Investment Firms imposed by the Central Bank under the IIA.

The IIA sets out a list of activities, termed investment business services¹, for which authorisation under that Act is required. The provision of administration services to investment funds² is one of those activities. Fund Administrators require specific authorisation under the IIA to carry on that particular investment business service.

The conditions which the Central Bank is imposing are contained in these Requirements which supersede all requirements on Fund Administrators set out in previous Notices. These Requirements on Fund Administrators must be read in conjunction with the Prudential Handbook for Investment Firms and all the other requirements set out in this AIF Handbook and in the UCITS Notices. These Requirements must be read in conjunction with the IIA. In the event of any difference or discrepancy between these Requirements and the IIA, the provisions of the IIA will prevail.

Where a condition set out in these Requirements 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.

¹ *Investment business service* is defined by Section 2(1) of the Investment Intermediaries Act, 1995.

² Section 2(1) (g) of the Investment Intermediaries Act, 1995; “ *the administration of collective investment schemes, including the performance of valuation services or fund accounting services or acting as transfer agents or registration agents for such funds;*”

DEFINITIONS

For the purposes of these Requirements the following interpretations and definitions shall apply:

AIF Handbook: The Central Bank's handbook in relation to AIFs which contains chapters concerning Retail Investor AIF, Qualifying Investor AIF, AIF Management Companies, Fund Administrators, Alternative Investment Fund Managers, AIF Depositaries and Grandfathering Arrangements.

Chain outsourcing: Outsourcing where the outsourcing service provider subcontracts elements of the service to other service providers.

Core administration activities: The final checking and release of the investment fund's NAV calculation for dealing purposes and the maintenance of the shareholder register.

Fund Administrator: An entity which undertakes the administration of UCITS and/or other investment funds including the performance of valuation services or fund accounting services or acting as transfer agent or registration agent for such investment funds.

Investment fund legislation: European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (S.I. No. 352 of 2011), Unit Trusts Act 1990, Part XIII of the Companies Act 1990, Investment Limited Partnerships Act 1994 and Investment Funds, Companies and Miscellaneous Provisions Act 2005.

NAV: Net asset value.

Outsourcing: A Fund Administrator's use of a third party to perform administration activities that would normally be undertaken by the Fund Administrator, now or in the future. The outsourcing service provider may itself be an authorised or unauthorised entity. The purchasing by the Fund Administrator of services, goods or facilities without information about, or belonging to, the Fund Administrator coming within the control of the supplier or the purchasing by the Fund Administrator of standardised products, such as market information or office inventory does not constitute outsourcing and is not subject to these Requirements.

Outsourcing service provider: The supplier of goods, services or facilities, including another Fund Administrator, and/or an affiliated entity within a corporate group.

Senior management: Persons who effectively direct the business of the Fund Administrator; this includes the Fund Administrator's board of directors and other persons who effectively direct the business of the Fund Administrator.

CONDITIONS RELATING TO FUND ADMINISTRATORS

Obligations are conditions imposed by the Central Bank under powers given to the Central Bank under section 14 of the IIA.

i. Capital requirements

1. A Fund Administrator must have at all times:
 - (a) initial capital of at least €125,000 (“**Initial Capital Requirement**”); or
 - (b) one quarter of its total expenditure taken from the most recent annual accounts (“**Expenditure Requirement**”) (However the Central Bank reserves the right to increase this amount should it be deemed not to reasonably reflect the current position of the Fund Administrator);whichever is higher (“**Minimum Capital Requirement**”).
2. A Fund Administrator is required to have financial resources, calculated in accordance with paragraph 5 of Annex I, at least equal to its Minimum Capital Requirement (“**Financial Resources**”).
3. A Fund Administrator’s Minimum Capital Requirement must be held in the form of Eligible Assets, as specified in paragraph 6 of Annex I. **Eligible Assets** must be easily accessible and must be free from any liens or charges and maintained outside of the Fund Administrator’s group.
4. A Fund Administrator must be in a position to demonstrate its compliance with the Minimum Capital Requirement throughout the reporting period.
5. Any **Subordinated Loan Capital** or **Eligible Capital Contribution**, (as provided in paragraph 5.4 of Annex I), incorporated in the calculation of Financial Resources (including repayment) is subject to the prior approval of the Central Bank. Subordinated Loan Capital may not be incorporated in the calculation of the Initial Capital Requirement.
6. Specific details and notes in relation to these capital requirements are contained in Annex I. The Minimum Capital Requirement Report is also contained in Annex I. These documents may be amended from time to time and form part of these Requirements.

ii. Organisational requirements

1. In accordance with paragraph 2.3 of the Prudential Handbook for Investment Firms, a Fund Administrator must, additionally, be in a position to comply with the AIF Handbook requirements.
2. For the purposes of paragraph 2.5 of the Prudential Handbook for Investment Firms, a Fund Administrator is required ensure that the compliance officer has the freedom to report to the board of the Fund Administrator at all times.
3. A Fund Administrator must comply with the Central Bank's requirements on outsourcing of administration activities, as set out in Annex II to these Requirements, in relation to investment funds to which it directly or indirectly provides fund administration services.
4. A Fund Administrator must establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the Fund Administrator.
5. A Fund Administrator must establish, implement and maintain effective internal reporting and communication of information at all levels of the Fund Administrator as well as effective information flows with any third party involved.
6. A Fund Administrator must maintain adequate and orderly records of its business and internal organisation.
7. A Fund Administrator must maintain appropriate internal control systems to ensure that records clearly identify client funds and the assets in which they have been invested. Where a Fund Administrator maintains client asset accounts for processing subscriptions and redemption monies, it shall comply with the Client Asset Requirements issued by the Central Bank under European Communities (Markets in Financial Instruments) Regulations 2007, as applicable and subject to any conditions which may be imposed by the Central Bank pursuant to Regulation [x].
8. A Fund Administrator must 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.
9. A Fund Administrator must 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. The business continuity policy must be subject to annual testing.

10. (a) A Fund Administrator must establish, implement and maintain accounting policies and procedures that enables the Fund Administrator 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.
 - (b) Half-yearly financial and annual audited accounts of the Fund Administrator must be submitted to the Central Bank. The half-yearly accounts must be submitted within two months and the annual audited accounts within four months of the relevant reporting period. Both half-yearly and annual audited accounts must be accompanied by the Minimum Capital Requirement Report, which forms part of this chapter. Annual audited accounts of the direct parents of the Fund Administrator must also be submitted together with the accounts of any company within the group specified by the Central Bank.
11. A Fund Administrator must 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.

iii. Directors

1. (a) The board of the Fund Administrator must not have directors in common with the board of the depositary of the investment funds under administration;
- (b) A minimum of two directors must be Irish residents;
- (c) Directors are required to disclose to the board any concurrent directorships which they hold on the boards of investment funds and/or related entities which supply services to such investment funds.

iv. Resources

1. A Fund Administrator must 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 IIA, a Fund Administrator is required to consult with the Central Bank prior to:
 - (a) engaging in any significant new activities; or
 - (b) establishing new branches, offices or subsidiaries.
2. In accordance with paragraph 1.2 of the Prudential Handbook for Investment Firms, the Fund Administrator is additionally required to notify the Central Bank as soon as it becomes aware of any breaches of these requirements.
3. A Fund Administrator is required, for the purposes of the meetings referred to in paragraph 1.4 of the Prudential Handbook for Investment Firms, to supply any additional material as may be specified by the Central Bank, including internal auditors' reports, operating procedures and management letters issued by the Fund Administrator's auditors and/or by the auditors of investment funds under administration. In addition, the Central Bank may conduct inspections of the operations of a Fund Administrator if these are deemed necessary or appropriate.
4. A Fund Administrator is required to state, on its headed paper, that it is regulated by the Central Bank. A Fund Administrator must ensure that any references in publicity material to the role of the Central Bank in relation to its supervision of the Fund Administrator's activities are not 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 a Fund Administrator.
6. A Fund Administrator is required to respond to correspondence and to any requests for information from the Central Bank in a timely and thorough manner and within any period of time that may be specified by the Central Bank.
7.
 - (a) A Fund Administrator which provides administration services to investment funds not authorised by the Central Bank must be satisfied that the prospectus issued by the investment funds does not imply, in any way, that the investment funds are regulated by the Central Bank.
 - (b) A Fund Administrator is required to submit a quarterly return containing the

following aggregate information for all such investment funds under administration, within each base currency category:

- domicile of the investment funds
- number of investment funds
- number of unitholders
- total net asset value.

ANNEX I

MINIMUM CAPITAL REQUIREMENT REPORT - NOTES ON COMPILATION

1. This Minimum Capital Requirement Report must be submitted to the Central Bank by a Fund Administrator with the half yearly and annual audited accounts at the reporting intervals specified in paragraph 10 of section ii of the Fund Administrator Requirements. The Minimum Capital Requirement Report and these Notes on Compilation thereto form part of the Fund Administrator Requirements. The Minimum Capital Requirement Report must be signed by a director or a senior manager of the Fund Administrator.

2. **Initial Capital Requirement**
 - 2.1 The **Initial Capital Requirement** specified in paragraph 1 of section i of the Fund Administrator Requirements is €125,000.

3. **Expenditure Requirement**
 - 3.1 The **Expenditure Requirement** is calculated as one quarter of a Fund Administrator's total expenditure taken from the most recent annual accounts³. However, the Central Bank reserves the right to increase this amount should it be deemed not to reasonably reflect the current position of the Fund Administrator.

 - 3.2 Total expenditure includes all expenditure incurred by a Fund Administrator. 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 Fund Administrator) 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.

 - 3.3 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.

³ The Minimum Capital Requirement Report submitted with the audited annual accounts must take the total expenditure figure from those accounts. For example, the Minimum Capital Requirement Report submitted with the audited annual accounts for 2012 will take the total expenditure figure from those 2012 audited annual accounts.

4. Minimum Capital Requirement

4.1 A Fund Administrator's **Minimum Capital Requirement** is the higher of:

- the Initial Capital Requirement; or
- the Expenditure Requirement.

5. Financial Resources

5.1 A Fund Administrator is required to have **Financial Resources** at least equal to its Minimum Capital Requirement.

5.2 Financial Resources for a Fund Administrator will be based on the half yearly accounts or the annual audited accounts, whichever is most recent.

5.3 Financial Resources are calculated as the aggregate of:

- Fully paid up equity capital;
- Perpetual non-cumulative preference shares;
- **Eligible Capital Contribution** (see 5.4 below);
- Qualifying **Subordinated Loan Capital** (see 5.4 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.

5.4 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 evidence⁴ that the Eligible Capital Contribution or Subordinated Loan Capital has been received by the Fund Administrator.

⁴ Documentary evidence should include a copy of the original bank statement showing receipt of the relevant funds by the Fund Administrator. The Central Bank may request independent confirmation of the receipt of additional capital, for example, auditor confirmation.

- (c) The Fund Administrator 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	_____

6. Eligible Assets

6.1 A Fund Administrator is required to 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 Fund Administrator's group.

6.2 The Central Bank requires Eligible Assets to be held in an account that is separate to the account(s) used by a Fund Administrator for the day-to-day running of its business.

6.3 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 6.4 below)
- Any other assets which are not easily accessible not included above.

6.4 When a Fund Administrator invests all or part of its capital in one or more investment funds, the Central Bank reviews the relationships linking the investment funds and the Fund Administrator. It is the Central Bank's view that it is likely that where the Fund

Administrator 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 Fund Administrator gets into difficulty. Accordingly, investments in such investment funds will not rank as Eligible Assets for the purposes of satisfying the Fund Administrator's Minimum Capital Requirement.

7. A Fund Administrator must be in a position to demonstrate its on-going compliance with the capital adequacy requirements outlined in this chapter. Where a Fund Administrator's financial position changes materially at any time between reporting dates, which would impact on its compliance with its regulatory capital requirements, it must notify the Central Bank immediately and take any necessary steps to rectify its position.

**MINIMUM CAPITAL REQUIREMENT REPORT
ADMINISTRATOR**

NAME OF ADMINISTRATOR: _____

Period under review: _____ **Currency:** _____

1. INITIAL CAPITAL REQUIREMENT

FUND ADMINISTRATOR

Initial Capital Requirement _____ €125,000 (A)

2. EXPENDITURE REQUIREMENT

Total Expenditure (taken from P&L Account) _____

LESS:

Depreciation _____

Profit Shares, Bonuses, etc _____

Net losses on translation of foreign currency balances _____

Shared Commissions paid (Note 3.2(d)) _____

Exceptional and Extraordinary Items (Note 3.2(e)) _____

Any other Non-recurring Expense (Note 3.2(e)) _____

Net Qualifying Expenditure _____

EXPENDITURE REQUIREMENT [One quarter of Net Qualifying Expenditure] _____ (B)

3. MINIMUM CAPITAL REQUIREMENT

Higher of **Initial Capital Requirement (A)** and **Expenditure Requirement (B)**

MINIMUM CAPITAL REQUIREMENT – [Higher of (A) and (B)] _____ (C)

4. FINANCIAL RESOURCES

Equity Capital fully paid up	_____
Perpetual Non-cumulative Preference Shares	_____
Eligible Capital Contributions	_____
Qualifying Subordinated Loan Capital (See 'Note on Qualifying Subordinated Loan Capital' below)	_____
Share Premium Account	_____
Disclosed Revenue and Capital Reserves (excluding Revaluation Reserves) (from most recent audited figures)	_____
Audited Interim Net Profits (Note 5.3)	_____
Other Reserves	_____
Total	<input type="text"/>

LESS: Current Year Losses not included in Disclosed Reserves and Capital Reserves above _____

FINANCIAL RESOURCES (D)

5. ELIGIBLE ASSETS (Must be held outside the Group)

Total Non-current Assets (taken from Balance Sheet)	_____
Current Assets (taken from Balance Sheet)	_____
TOTAL ASSETS	<input type="text"/>
Less: Ineligible Assets	
Fixed Assets	_____
Intangible Assets	_____
Cash held with group companies	_____
Debtors	_____
Bad Debt Provisions	_____
Prepayments	_____
Intercompany Amounts (gross)	_____
Loans	_____
Collective investment schemes which are not daily dealing (Note 6.4)	_____
Any other assets which are not easily accessible not included above	_____
Total Ineligible Assets	<input type="text"/>

ELIGIBLE ASSETS (E)

Are Financial Resources (D) at least equal to Minimum Capital Requirement (C)?	<u>YES / NO</u>
Are Eligible Assets (E) at least equal to (C)?	<u>YES / NO</u>
Where are Eligible Assets held? (Attach recent independent statement evidencing location)	<div style="border: 1px solid black; width: 100%; height: 30px;"></div>
Was the Fund Administrator in compliance with the capital adequacy requirements throughout the period under review? (Note 7)	<u>YES / NO</u>

Note on Qualifying Subordinated Loan Capital

The qualifying amount of **redeemable subordinated debt** is calculated as follows:

Remaining term to maturity	_____
Gross Amount	_____
Less Amortisations	_____
= Qualifying Amount	_____

Signature, Position and Date

(Director / Senior Manager)

ANNEX II

REQUIREMENTS ON OUTSOURCING OF ADMINISTRATION ACTIVITIES IN RELATION TO INVESTMENT FUNDS

Introduction

These requirements incorporate and are consistent with the rules on outsourcing contained in MiFID Directive 2004/39/EC and MiFID implementing Directive 2006/73/EC and with the Committee of European Banking Supervisors (“CEBS”) Guidelines on Outsourcing published on 14 December 2006.

Fund Administrators are authorised and supervised by the Central Bank under the IIA. These firms are appointed by management companies and boards of directors of Irish authorised and non-Irish investment funds who retain responsibility for the delegated functions and who must ensure that the regulatory requirements applicable to the functions are complied with on an on-going basis.

The purpose of these requirements is to promote greater consistency of approach and certainty in relation to the principles applied by the Central Bank in relation to outsourcing by Fund Administrators of services provided to investment funds.

Requirements on outsourcing addressed to Fund Administrators

Requirement 1

The ultimate responsibility for the proper management of the risks associated with outsourcing or the outsourced activities lies with the Fund Administrator’s senior management.

- 1.1 All outsourcing regimes must ensure that the outsourcing of functions to an outsourcing service provider does not impair the ability of the Central Bank to supervise the Fund Administrator.
- 1.2 Responsibility for outsourced functions must always be retained by the Fund Administrator. The outsourcing of functions does not relieve the Fund Administrator of its regulatory responsibilities for its authorised activities or the function concerned.
- 1.3 The Fund Administrator must retain adequate core competence at a senior operational level in-house to enable them to have the capability to resume the performance of an outsourced activity, in extremis.

- 1.4 Outsourcing shall not affect the Fund Administrator's full and unrestricted responsibilities under, and its ability to comply with, applicable investment fund legislation and the conditions with which the Fund Administrator must comply in order to be authorised by the Central Bank.
- 1.5 The relationship and obligations of the Fund Administrator towards its investment fund clients must not be altered.

Requirement 2

Outsourcing arrangements can never result in the delegation of senior management's responsibility.

- 2.1 The outsourcing of core management functions is considered generally to be incompatible with the senior management's obligation to run the enterprise under their own responsibility. Core management functions include, inter alia, setting the risk strategy, the risk policy, and, accordingly, the risk-bearing capacity of the Fund Administrator. Hence, management functions such as the setting of strategies and policies in respect of the Fund Administrator's risk profile and control, the oversight of the operation of the Fund Administrator's processes and the final responsibility towards clients and the Central Bank must not be outsourced. With respect to mind and management of the Fund Administrator, adequate and effective control and decision-making must continue to be exercised by the Fund Administrator.

Requirement 3

- 3(a) **A Fund Administrator may not outsource services and activities unless the outsourcing service provider has the appropriate authorisation to carry out the outsourced services and activities if required by the outsourcing service providers national legal framework.**
- 3(b) **The responsibilities and obligations identified in Requirement 1 and 2 may not be outsourced.**
- 3(c) **Core administration activities may not be outsourced.**
- 3(d) **Any area of activity of a Fund Administrator other than those identified in 3(b) and 3(c) may be outsourced provided that such outsourcing does not impair:**
 - (i) **the orderliness of the conduct of the Fund Administrator's business or of the financial services provided;**
 - (ii) **the senior management's ability to manage and monitor the Fund Administrator's business and its authorised activities;**
 - (iii) **the ability of other internal governance bodies, such as the board of directors or the audit committee, to fulfil their oversight tasks;**

- (iv) **the supervision of the Fund Administrator by the Central Bank; and**
- (v) **the Fund Administrator's ability to have full access and control over the administration systems and to generate a full set of the books and records for each investment fund serviced.**

- 3.1 These Requirements do not affect the principle of the Fund Administrator's ultimate responsibility (Requirement 1) for all authorised activities. The senior management of the Fund Administrator shall be responsible for any outsourced activity. Senior management must therefore take suitable measures to ensure that the outsourced activities continue to meet the performance and quality standards that would apply if their own institution were to perform the relevant activities in house. These measures must include, but are not necessarily limited to, having a detailed Service Level Agreement in place, continuously monitoring and checking the quality of the outsourced activities and reviewing the systems and processes that the outsourcing service provider has in place and any SAS 70 audits carried out.
- 3.2 The final check and release of each investment fund NAV is a core administration activity which must be performed by the Fund Administrator. This review must be completed prior to the release of the NAV for dealing purposes and should be completed, signed and dated by a senior staff member within the Fund Administrator. In exceptional circumstances the Fund Administrator may release the NAV for dealing purposes provided the final check is performed on the following day⁴⁸. Documentary evidence of this review must be maintained by the Fund Administrator and made available to the Central Bank on request.*
- 3.3 The shareholder register for each investment fund must be maintained by the Fund Administrator. This means that the Fund Administrator maintains oversight and control of the register and can reproduce the full register at any time.
- 3.4 The Fund Administrator must inform the Central Bank in writing of any activity to be outsourced. This notification must afford the Central Bank sufficient time to consider the proposal and should include the following information:
- The activities to be outsourced;
 - The identity of the impacted investment funds;
 - The name of the outsourcing service provider (indicating whether this firm is part of the Fund Administrator's group and its regulatory status, if any);
 - The location where the outsourced activity will be carried out.

*See answer to question 15 in the Feedback Statement on CP60.

⁴⁸ Where the NAV calculation is released by the outsourcing service provider the final check must be completed by the administration company on the following day.

The Fund Administrator must also submit written confirmation from senior management that these Requirements have been fully complied with in relation to the outsourced activities. In the event that the Fund Administrator does not comply with any of these Requirements, the Central Bank may require the outsourcing arrangement to be terminated and the Fund Administrator may face administrative sanction.

It is not necessary to notify the Central Bank when additional investment funds are added to a previously cleared outsourcing arrangement. The Central Bank may request up-to-date details of all outsourcing arrangements including the impacted investment funds at any time. Any change to the activities which are outsourced must be notified to the Central Bank in accordance with the procedure outlined above.

- 3.5 Within one month of receipt of the proposed outsourcing notification the Central Bank will inform the Fund Administrator whether further information regarding the outsourcing arrangement is required or whether the Fund Administrator may proceed with its proposals. The Central Bank may impose, at its discretion, specific conditions on the outsourcing activities, in addition to these Requirements. In doing so, the Central Bank will consider factors such as the size of the Fund Administrator and its compliance history, the nature of the outsourced activity, the characteristics and market position of the outsourcing service provider, the duration of the contract and the potential for the outsourcing arrangement to generate conflicts of interest.
- 3.6 If the outsourcing proposal does not proceed within 12 months of the Central Bank's confirmation that it may proceed, the Central Bank will view the proposal as lapsed. The Fund Administrator must resubmit the notification of the outsourcing proposals if it is intended to proceed with them at a later date.
- 3.7 A Fund Administrator must inform the Central Bank of any material development affecting the outsourcing service provider and its ability to fulfil its obligations to customers. In this regard, the outsourcing service provider must be required to disclose to the Fund Administrator any development that may have a material impact on its ability to carry out the outsourced functions effectively and in compliance with applicable laws and regulatory requirements.
- 3.8 Due to possible data protection risks and risks to effective supervision by the Central Bank, Fund Administrators must take special care when entering into and managing outsourcing agreements in order to ensure that it can comply with these Requirements and with legal obligations under data protection legislation.

- 3.9 Intra-group outsourcing is also covered by these Requirements. The Central Bank will take specific circumstances into consideration, including the extent to which the Fund Administrator controls the service provider or has the ability to influence its actions and the extent to which the service provider is included in the consolidated supervision of the group, when assessing the risks associated with an intra-group outsourcing arrangement and the treatment to apply to such arrangements.
- 3.10 The service provider must have the ability and capacity to perform the outsourced functions, services or activities reliably and professionally.

Requirement 4

- 4(a) The Fund Administrator must have a documented policy on its approach to outsourcing, including contingency plans and exit strategies.**
- 4(b) A Fund Administrator must conduct its business in a controlled and sound manner at all times.**

- 4.1 The Fund Administrator must have a documented policy that covers all aspects of outsourcing, whether the outsourcing takes place within the Fund Administrator's group or not.
- 4.2 When drawing up the policy the Fund Administrator must recognise that no form of outsourcing is risk free. The policy must recognise that the management of intra-group outsourcing must be proportionate to the risks presented by these arrangements.
- 4.3 The policy must explicitly consider the potential effects of outsourcing on certain significant functions (e.g. the ability of the internal audit and compliance function to carry out their roles) when conducting the risk analysis prior to outsourcing.
- 4.4 The policy must ensure that the outsourcing service provider's financial performance and essential changes in the service provider's organisation structure and ownership structure are appropriately monitored and assessed by the Fund Administrator's management so that any necessary corrective measures can be taken promptly.
- 4.5 The Fund Administrator must specify the internal units or individuals that are responsible for monitoring and managing each outsourcing arrangement.
- 4.6 The policy must address the main phases that make up the life cycle of the Fund

Administrator's outsourcing arrangements:

- (a) the decision to outsource or change an existing outsourcing arrangement (the decision making phase);
- (b) due diligence checks on the outsourcing service provider, including both pre-contractual and on-going due diligence checks. These checks should include periodic visits to the outsourcing service provider. The extent to which periodic visits are required will depend on the nature, scale and complexity of the outsourced task. For example, such periodic visits may not be necessary where a basic task, such as printing, has been outsourced;
- (c) drafting a written outsourcing contract and service level agreement (the pre contractual drafting phase);
- (d) the implementation, monitoring, and management of an outsourcing arrangement (the contractual phase). This may include the following up of changes affecting the outsourcing service provider (e.g. major change in ownership, strategies, profitability of operations);
- (e) dealing with the expected or unexpected termination of a contract and other service interruptions (the post contractual phase). In particular, Fund Administrators must plan and implement arrangements to maintain the continuity of their business in the event that the provision of services by an outsourcing service provider fails or deteriorates to an unacceptable degree, or the firm experiences other changes. This policy must include contingency planning and a clearly defined exit strategy.

4.7 The Fund Administrator's existing clients must be made aware of the outsourcing arrangement, if applicable, and future clients must be advised of the arrangement prior to the commencement of business.

Requirement 5

A Fund Administrator must appropriately manage the risks associated with its outsourcing arrangements.

5.1 Compliance with this Requirement must include an on-going assessment by the Fund Administrator of the operational risks and the concentration risk associated with all of its outsourcing arrangements. A Fund Administrator must inform the Central Bank of any material development in relation to the management of these risks.

Requirement 6

6(a) All outsourcing arrangements must be subject to a formal and comprehensive contract or service level agreement. The outsourcing contract must oblige the outsourcing service

provider to protect confidential information.

6(b) In managing its relationship with an outsourcing service provider the Fund Administrator must ensure that the contract or service level agreement includes details of the responsibilities of both parties and provides that a quality control description is put in place.

6.1 Any outsourcing arrangement must be based on a clear written legally binding contract or service level agreement.

6.2 A Fund Administrator must ensure that the written contract or service level agreement takes account of the following (bearing in mind other specific national rules and legislation):

- (a) The operational activity that is to be outsourced must be clearly defined;
- (b) The precise requirements concerning the performance of the service must be specified and documented, taking account of the objective of the outsourcing solution. The outsourcing service provider's ability to meet performance requirements in both quantitative and qualitative terms and its ability to meet these Requirements must be assessable in advance;
- (c) The respective rights and obligations of the Fund Administrator and the outsourcing service provider must be precisely defined and specified. This must also serve to ensure compliance with laws and supervisory regulations and guidelines for the duration of the outsourcing arrangement;
- (d) In order to underpin an effective policy for managing and monitoring the outsourced activities, the contract or service level agreement must include a termination and exit management clause, where proportionate and if deemed necessary, which allows the activities being provided by the outsourcing service provider to be transferred to another outsourcing service provider or to be reincorporated into the Fund Administrator;
- (e) The contract or service level agreement must cover the protection of confidential information and any other specific provisions relating to handling confidential information. Whenever information is subject to confidentiality rules at the level of the Fund Administrator, at least the same level of confidentiality must be ensured by the outsourcing service provider;
- (f) The contract must ensure that the outsourcing service provider's performance is continuously monitored and assessed so that any necessary corrective measures can be taken promptly;
- (g) The contract or service level agreement must include an obligation on the outsourcing

service provider to allow the Fund Administrator's compliance and internal audit departments complete access to its data and its external auditors full and unrestricted rights of inspection and auditing of that data;

- (h) The contract or service level agreement must include an obligation on the outsourcing service provider to allow direct access by the Central Bank and its authorised officers and agents to relevant data and its premises as required;
- (i) The contract or service level agreement must include an obligation on the outsourcing service provider to immediately inform the Fund Administrator of any material changes in circumstances which could have a material impact on the continuing provision of services. This may require obtaining consents from affected parties such as the parent company and relevant home supervisory authority;
- (j) The outsourcing contract or service level agreement shall contain provisions allowing the Fund Administrator to terminate the contract or service level agreement if so required by the Central Bank.

- 6.3 When drafting the contract or service level agreement the Fund Administrator must bear in mind that the level of monitoring, assessment, inspection and auditing required by the contract or service level agreement must be proportionate to the risks involved and the size and complexity of the outsourced activity.
- 6.4 The contract or service level agreement should normally contain a mixture of quantitative and qualitative performance targets, to enable a Fund Administrator to assess the adequacy of service provision.
- 6.5 In addition to the Fund Administrator evaluating the outsourcing service provider on an on-going basis, the Fund Administrator must also consider the need to evaluate the performance of its outsourcing service provider using mechanisms such as key performance indicators (including price delivery times, error rates and reconciliation breaks), service delivery reports, self-certification or independent review by the Fund Administrator, or the outsourcing service provider's, internal and/or external auditors. The extent of this evaluation and the mechanisms to be used will depend on the nature, scale and complexity of the outsourced task. In particular and for all but the most basic outsourced tasks (e.g. printing), the Central Bank requires that the Fund Administrator's internal auditors will examine the operation of the outsourcing arrangement within the first 12 months of its operation and a copy of their report sent to the Central Bank. In addition, the compliance function of the Fund Administrator will be requested to submit a similar review of the outsourcing arrangement to the Central Bank. Additional periodic reports may be required by the Central Bank during the course of any outsourcing arrangement.

- 6.6 The Fund Administrator must be prepared to take remedial action if the outsourcing service provider's performance is inadequate. In this regard, the Fund Administrator must have sufficiently detailed knowledge of the outsourcing service provider's processes and the necessary resources to enable it to take such remedial action.

Requirement 7

- 7(a) The Fund Administrator must take account of the risks associated with “chain” outsourcing.**
- 7(b) The Fund Administrator must only agree to chain outsourcing if the sub-contractor will also fully comply with the obligations existing between the Fund Administrator and the outsourcing service provider, including obligations and commitments to the Central Bank.**
- 7(c) The Fund Administrator must take appropriate steps to address the risk of any weakness or failure in the provision of the sub-contracted activities having a significant effect on the outsourcing service provider's ability to meet its responsibilities under the outsourcing agreement.**
- 7.1 The sub-outsourcing of outsourced activities and functions to third parties (sub-contractors) must be treated by the Fund Administrator like a primary outsourcing measure. Compliance with these conditions must be ensured contractually, for example by a clause in the outsourcing contract requiring the prior consent of the Fund Administrator to the possibility and the modalities of sub-outsourcing.
- 7.2 The Fund Administrator must ensure that the outsourcing service provider agrees that the contractual terms agreed with the sub-contractor will always conform, or at least not be contradictory, to the provisions of the agreement with the Fund Administrator.

Requirement 8

The Fund Administrator must provide the Central Bank with access to relevant data held by the outsourcing service provider and the right for the Central Bank to conduct onsite inspections at an outsourcing service provider's premises.

- 8.1 The Fund Administrator must ensure that contracts with outsourcing service providers grant the Central Bank the right to information and to inspection, admittance and access (including access to databases), as well as the right to give directions or instructions, which the Central

Bank needs in order to exercise its supervisory functions.

- 8.2 The Fund Administrator must seek to ensure that information be made available to the Central Bank by the outsourcing service provider's external auditor.
- 8.3 The Fund Administrator must ensure that, in relation to any outsourced activity, it and its outsourcing service provider can comply with formal orders or instructions issued by the Central Bank to the Fund Administrator.
- 8.4 The Fund Administrator must ensure that the Central Bank can obtain detailed information about any outsourcing processes which might undermine the stability of the consolidated group.
- 8.5 In the case of outsourcing to service providers abroad, the Fund Administrator is responsible for ensuring that the Central Bank can exercise its information gathering rights, including its right to demand documents and audits and compatible with the overall legal framework, its inspection rights.
- 8.6 The Fund Administrator must, prior to engaging in outsourcing, consider and set out in a risk management document what alternative measures could adequately mitigate the risks involved.

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Chapter 6 - AIF Depositary Requirements

TO WHOM THESE REQUIREMENTS APPLY:

These Requirements set out the conditions which the Central Bank of Ireland (“the Central Bank”) imposes on depositaries of

- AIF that have a full AIFM;
- Professional Investor Funds that have a registered AIFM; and
- Qualifying Investor AIFs that have a registered AIFM.

Depositaries of AIFs which have a full AIFM and depositaries of Qualifying Investor AIFs authorised by the Central Bank before 22 July 2013 which have a registered AIFM must comply with all of the conditions contained in these Requirements except paragraphs 6 to 8 of section vi. Depositaries of Qualifying Investor AIF authorised by the Central Bank on or after 22 July 2013 which have a registered AIFM and Professional Investor Funds which have a registered AIFM must comply with all of the conditions contained in these Requirements except paragraphs 1 to 5 of section vi.

The conditions which the Central Bank is imposing are contained in these Requirements which supersede all requirements on depositaries/trustees set out in previous Non-UCITS Notices. These Requirements on depositaries must be read in conjunction with all the other requirements set out in this AIF Handbook. These Requirements must be read in conjunction with the AIFMD Regulations and AIFMD Level 2. In the event of any difference or discrepancy between these Requirements and the AIFMD Regulations and AIFMD Level 2, the provisions of the AIFMD Regulations and AIFMD Level 2 will prevail.

Where a condition set out in these Requirements 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.

DEFINITIONS

For the purposes of these Requirements the following interpretations and definitions shall apply:

AIF: An alternative investment fund as defined in Regulation [x] of the AIFMD Regulations.

AIF constitutional document: The trust deed, in the case of a unit trust, the memorandum and articles of association, in the case of an investment company, the deed of constitution, in the case of a common contractual fund and the partnership agreement, in the case of an investment limited partnership.

AIF Handbook: The Central Bank's handbook in relation to AIFs which contains chapters concerning Retail Investor AIF, Qualifying Investor AIF, AIF Management Companies, Fund Administrators, Alternative Investment Fund Managers, AIF Depositaries and Grandfathering Arrangements.

AIFM: An alternative investment fund manager as defined in the AIFMD Regulations.

AIFMD: Alternative Investment Fund Managers Directive (Directive 2011/61/EU).

AIFMD Level 2: Commission Delegated Regulation (EU) No [x].

AIFMD Regulations: European Communities (Alternative Investment Fund Managers Directive) Regulations (SI No. [] of 2012).

Authorised AIF: AIF authorised by the Central Bank under the investment fund legislation.

Central Bank's Licensing Requirements: The Licensing and Supervision Requirements and Standards for Credit Institutions as issued by the Central Bank from time to time.

Financial instrument: An instrument as specified in Section C of Annex 1 to the Markets in Financial Instruments Directive (Directive 2004/39/EC).

Full AIFM: An AIFM which has been authorised under the AIFMD.

Investment fund legislation: Unit Trusts Act 1990, Part XIII of the Companies Act 1990, Investment Limited Partnerships Act 1994 and Investment Funds, Companies and Miscellaneous Provisions Act 2005.

Professional Investor Funds: Investment funds authorised by the Central Bank in accordance with Notice NU 12.

Registered AIFM: An AIFM which has been registered with the Central Bank in accordance with Regulation [x] of the AIFMD Regulations.

Units: Shares of an investment company, interests of the partners in an investment limited partnership and units of a unit trust or common contractual fund.

Unitholder: A shareholder in the case of an investment company, a limited partner in the case of an investment limited partnership and unitholder in the case of a unit trust or common contractual fund.

DEPOSITARY REQUIREMENTS

Obligations are derived directly from provisions of the AIFMD Regulations, or are conditions imposed by the Central Bank under Regulation [x] of the AIFMD Regulations.

i. Eligibility criteria

1. Entities eligible to act as depository are:
 - (a) a credit institution authorised in accordance with Directive 2006/48/EC;
 - (b) an investment firm, subject to capital adequacy requirements in accordance with Article 20(1) of Directive 2006/49/EC including capital requirements for operational risks and authorised in accordance with Directive 2004/39/EC and which also provides the ancillary service of safe-keeping and administration of financial instruments for the account of clients in accordance with point (1) of Section B of Annex I to Directive 2004/39/EC; such investment firms shall in any case have own funds not less than the amount of initial capital referred to in Article 9 of Directive 2006/49/EC; or
 - (c) a company incorporated in the State which:
 - (i) is wholly owned by a credit institution, provided the liabilities of the depository are guaranteed by the credit institution and the credit institution has paid-up share capital which is not less than the limit specified in the Central Bank's Licensing Requirements; or
 - (ii) is wholly owned by an institution in a non-Member State which is deemed by the Central Bank to be the equivalent of such a credit institution, provided the liabilities of the depository are guaranteed by the parent institution and the parent institution has a paid-up share capital which is not less than the limit specified in the Central Bank's Licensing Requirements; or
 - (iii) is wholly owned by an institution or company either in a Member State or in a non-Member State which is deemed by the Central Bank to be an institution or company which provides unitholders with protection equivalent to that provided by a depository under paragraph 1 (a) or (b) and provided the liabilities of the company acting as depository are guaranteed by the institution or company and the institution or company has a paid-up share capital which is not less than the limit specified in the Central Bank's Licensing Requirements.

2. In order to avoid conflicts of interest between the depository, the AIFM and/or the AIF and/or its unitholders:
 - (a) an AIFM, management company, investment company or general partner must not act as depository;
 - (b) a prime broker acting as counterparty to an AIF must not act as depository for that AIF, unless it has functionally and hierarchically separated the performance of its depository functions from its tasks as prime broker and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the unitholders of the AIF. Delegation by the depository to such prime broker of its custody tasks in accordance with section v is allowed if the relevant conditions are met.
3. The depository must be established in the State.
4. A depository must satisfy the Central Bank that it has the appropriate expertise and experience to carry out its functions as set out in these Requirements, the AIFMD Regulations and AIFMD Level 2. The depository must satisfy the Central Bank on a continuing basis that it has sufficient management resources to effectively conduct its business. In addition, its directors and managers should be persons of integrity and have an appropriate level of knowledge and experience. The depository must organise and control its internal affairs in a reasonable manner with proper records and adequate arrangements for ensuring that employees are suitable, adequately trained and properly supervised. There should be well defined procedures in place to ensure compliance with regulations.

ii. Conditions applicable to depositaries which fall within paragraph 1(c) of section i

1. A depository which falls within paragraph 1(c) of section i must comply with the following conditions:
 - (a) The firm must have at all times:
 - initial capital of at least €125,000 (“**Initial Capital Requirement**”); or
 - one quarter of its total expenditure taken from the most recent annual accounts (“**Expenditure Requirement**”). (However, the Central Bank reserves the right to increase this amount should it be deemed not to reasonably reflect the current position of the depository),whichever is higher (“**Minimum Capital Requirement**”).

A firm is required to have financial resources, calculated in accordance with paragraph 5 of the *Minimum Capital Requirement Report, Notes on Compilation (AIF*

Depositary), at least equal to its Minimum Capital Requirement (“**Financial Resources**”).

The firm’s Minimum Capital Requirement must be held in the form of Eligible Assets, as specified in paragraph 6 of the *Minimum Capital Requirement Report, Notes on Compilation (AIF Depositary)*. Eligible Assets must be easily accessible and must be free from any liens or charges and maintained outside the firm’s group.

The firm must be in a position to demonstrate its compliance with the Minimum Capital Requirement throughout the reporting period.

Any **Subordinated Loan Capital** or **Eligible Capital Contribution** (as provided for in paragraph 5.4 of the *Minimum Capital Requirement Report, Notes on Compilation (AIF Depositary)*) incorporated in the calculation of Financial Resources (including repayment) is subject to the prior approval of the Central Bank. Subordinated Loan Capital may not be incorporated in the calculation of the Initial Capital Requirement.

Specific details and notes in relation to these requirements are contained in the *Minimum Capital Requirement Report, Notes on Compilation (AIF Depositary)*. This document and the Minimum Capital Requirement Report are contained in Annex 1. These documents may be amended from time to time and form part of these Requirements.

- (b) Appointments to the office of director or alternate director require the prior approval of the Central Bank. Departures from the office of director must be notified to the Central Bank immediately.
- (c) A minimum of two directors must be Irish residents.
- (d) Approval of the Central Bank is required in respect of any proposed change in ownership or in significant shareholdings. A significant shareholding for the purpose of this condition is defined as a shareholding of 10 % or more in the company.
- (e) Half-yearly financial and annual audited accounts of the company must be submitted to the Central Bank. The half-yearly accounts must be submitted within two months and the annual accounts within four months of the relevant reporting period. Annual audited accounts of the corporate shareholder(s) of the company must also be submitted.

iii. Depository tasks

1. The depository must in general ensure that the AIF's cash flows are properly monitored, and must in particular ensure that all payments made by or on behalf of unitholders upon the subscription of units of an AIF have been received and that all cash of the AIF has been booked in cash accounts opened in the name of the AIF or in the name of the AIFM acting on behalf of the AIF or in the name of the depository acting on behalf of the AIF at an entity referred to in points (a), (b) and (c) of Article 18(1) of Directive 2006/73/EC, or another entity of the same nature, in the relevant market where cash accounts are required provided that such entity is subject to effective prudential regulation and supervision which have the same effect as Union law and are effectively enforced and in accordance with the principles set out in Article 16 of Directive 2006/73/EC.

Where the cash accounts are opened in the name of the depository acting on behalf of the AIF, cash of the entity referred to in the first subparagraph and the depository's own cash must not be booked on such accounts.

Articles 85 to 87 of AIFMD Level 2 are applicable in this regard.

2. The assets of the AIF or the AIFM acting on behalf of the AIF must be entrusted to the depository for safe-keeping, as follows:
 - (a) for financial instruments that can be held in custody:
 - (i) the depository must hold in custody all financial instruments that can be registered in a financial instruments account opened in the depository's books and all financial instruments that can be physically delivered to the depository;
 - (ii) for that purpose, the depository must ensure that all those financial instruments that can be registered in a financial instruments account opened in the depository's books are registered in the depository's books within segregated accounts in accordance with the principles set out in Article 16 of Directive 2006/73/EC, opened in the name of the AIF or the AIFM acting on behalf of the AIF, so that they can be clearly identified as belonging to the AIF in accordance with the applicable law at all times;
 - (b) for other assets:
 - (i) the depository must verify the ownership of the AIF or the AIFM acting on behalf of the AIF of such assets and must maintain a record of those assets for which it is satisfied that the AIF or the AIFM acting on behalf of the AIF holds

- the ownership of such assets;
- (ii) the assessment whether the AIF or the AIFM acting on behalf of the AIF holds the ownership must be based on information or documents provided by the AIF or the AIFM and, where available, on external evidence;
- (iii) the depository must keep its record up-to-date.

Article 88 to 90 of AIFMD Level 2 is applicable in this regard.

3. In addition to the tasks referred to in paragraphs 5 and 6, the depository must:
 - (a) ensure that the sale, issue, re-purchase, redemption and cancellation of units of the AIF are carried out in accordance with the AIFMD Regulations, AIFMD Level 2, the AIF Handbook and the AIF constitutional document;
 - (b) ensure that the value of the units of the AIF is calculated in accordance with the AIFMD Regulations, AIFMD Level 2, the AIF Handbook, the AIF constitutional document and the procedures laid down in section xvii, entitled ‘Valuation’, of the Alternative Investment Fund Manager Requirements;
 - (c) carry out the instructions of the AIFM, management company, investment company and general partner, unless they conflict with the AIFMD Regulations, AIFMD Level 2, the AIF Handbook or the AIF constitutional document or the depository contract;
 - (d) ensure that in transactions involving the AIF’s assets any consideration is remitted to the AIF within the usual time limits;
 - (e) ensure that an AIF’s income is applied in accordance with the AIFMD Regulations, AIFMD Level 2, the AIF Handbook and the AIF constitutional document.

Articles 92 to 97 of AIFMD Level 2 are applicable in this regard.

4. Where the depository is acting as depository for an authorised AIF, the depository must enquire into the conduct of the AIFM and the management company, investment company or general partner in each annual accounting period and report thereon to the unitholders. The depository’s report shall be delivered to the AIFM in good time to enable the AIFM to include a copy of the report in the annual report of the authorised AIF. The depository’s report shall state whether in the depository’s opinion the authorised AIF has been managed in that period:
 - (a) in accordance with the limitations imposed on the investment and borrowing powers of the authorised AIF by the AIF constitutional document and by the Central Bank under

the powers granted to the Central Bank by the investment fund legislation; and

- (b) otherwise in accordance with the provisions of the AIF constitutional document and the investment fund legislation.

If the AIFM and the management company, investment company or general partner has not complied with (a) or (b) above, the depository must state why this is the case and outline the steps which the depository has taken to rectify the situation.

Where there has been a change of depository during the accounting period, the annual report must include a depository report from both the retiring and new depository to cover their respective periods of appointment.

5. The depository must notify the Central Bank promptly of any material breach of the investment fund legislation, the AIFMD Regulations or AIFMD Level 2, the AIF Handbook or provisions of the AIF's prospectus.
6. Where a depository acts in relation to a Retail Investor AIF or Qualifying Investor AIF which invests more than 30% or 50% of net assets respectively in another investment fund, it must confirm in writing to the Central Bank that:
 - the authorised AIF has procedures in place to ensure that the underlying investment fund meets the Central Bank's regulatory requirements; and
 - it will regularly review the operation of these procedures to ensure that the underlying investment fund continues to meet the Central Bank's regulatory requirements.

iv. Operating conditions

1. The depository shall act honestly, fairly, professionally, independently and in the interest of the AIF and the unitholders of the AIF.

A depository must not carry out activities with regard to the AIF or the AIFM on behalf of the AIF that may create conflicts of interest between the AIF, the unitholders in the AIF, the AIFM and itself, unless the depository has functionally and hierarchically separated the performance of its depository tasks from its other potentially conflicting tasks, and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the unitholders of the AIF.

The assets referred to in paragraph 2 of section iii must not be reused by the depositary unless it has obtained the prior consent of the AIF or the AIFM acting on behalf of the AIF.

2. The depositary appointed for an AIF must not be appointed as external valuer of that AIF, unless it has functionally and hierarchically separated the performance of its depositary functions from its tasks as external valuer and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the unitholders of the AIF.
3. The board of directors of the depositary appointed for an AIF must not have directors in common with the board of directors of the AIFM or the management company, the fund administrator, the investment company or the general partner.
4. Where the depositary is replaced, the Central Bank requires confirmation from both the retiring depositary and new depositary that they are satisfied with the transfer of assets.
5. A depositary must review the list of stock exchanges and markets in the Retail Investor AIF prospectus to ascertain if it can provide, at the date of the prospectus, for the safe-keeping of the assets of a Retail Investor AIF, which may be traded on these exchanges or markets, in accordance with the conditions set down in these Requirements. If the depositary cannot provide custody in accordance with these Requirements it must consult with the Retail Investor AIF in order that the relevant exchanges or markets be removed from the list.
6. A depositary must confirm to the Central Bank, in writing as part of the application for authorisation of a Retail Investor AIF, that it can provide for the safe-keeping of the assets of the Retail Investor AIF, in relation to each of the stock exchanges and markets provided for in the prospectus, in accordance with the conditions set down in these Requirements.
7. A depositary must ensure that a Retail Investor AIF keeps the list of permitted stock exchanges and markets in the prospectus under review to ensure that the markets meet with the regulatory criteria on an ongoing basis.
8. Subscriptions and redemptions of units of AIF on an in specie basis may only be accepted if the depositary is satisfied that the terms of the exchange will not be such as are likely to result in any prejudice to the AIF unitholders.
9. A depositary must ensure that no performance fees are paid by or on behalf of AIFs unless the calculation of the fee has been verified by it or by a competent person appointed by the AIFM and approved for the purpose by the depositary.

v. **Delegation**

1. The depository must not delegate to third parties its functions as described in these Requirements, except for those referred to in paragraph 2 of section iii. These duties must be carried out in the State.

The depository may not delegate to third parties the functions referred to in paragraph 2 of section iii unless the following conditions are satisfied:

- (a) the tasks are not delegated with the intention of avoiding the requirements of the AIFMD Regulations or AIFMD Level 2 or the AIF Handbook;
- (b) the depository can demonstrate that there is an objective reason for the delegation;
- (c) the depository has exercised all due skill, care and diligence in the selection and the appointment of any third party to whom it wants to delegate parts of its tasks, and keeps exercising all due skill, care and diligence in the periodic review and ongoing monitoring of any third party to whom it has delegated parts of its tasks and of the arrangements of the third party in respect of the matters delegated to it; and
- (d) the depository ensures that the third party meets the following conditions at all times during the performance of the tasks delegated to it:
 - (i) the third party has the structures and the expertise that are adequate and proportionate to the nature and complexity of the assets of the AIF or the AIFM acting on behalf of the AIF which have been entrusted to it;
 - (ii) for custody tasks referred to in point (a) of paragraph 2 of section iii, the third party is subject to effective prudential regulation, including minimum capital requirements, and supervision in the jurisdiction concerned and the third party is subject to an external periodic audit to ensure that the financial instruments are in its possession;
 - (iii) the third party segregates the assets of the depository's clients from its own assets and from the assets of the depository in such a way that they can at any time be clearly identified as belonging to clients of a particular depository;
 - (iv) the third party does not make use of the assets without the prior consent of the AIF or the AIFM acting on behalf of the AIF and prior notification to the depository; and
 - (v) the third party complies with the general obligations and prohibitions set out in paragraph 2 of section iii and paragraph 1 of section iv.

Notwithstanding point (d)(ii) of this paragraph, where the law of a third country requires that certain financial instruments be held in custody by a local entity and no local entities satisfy the delegation requirements laid down in that point, the depository may delegate its functions to such a local entity only to the extent required by the law of the third country and only for as long as there are no local entities that satisfy the delegation requirements, subject to the following requirements:

- (e) the unitholders of the relevant AIF must be duly informed that such delegation is required due to legal constraints in the law of the third country and of the circumstances justifying the delegation, prior to their investment; and
- (f) the AIF, or the AIFM on behalf of the AIF, must instruct the depository to delegate the custody of such financial instruments to such local entity.

The third party may, in turn, sub-delegate those functions, subject to the same requirements. In such a case, paragraph 4 of section vi shall apply *mutatis mutandis* to the relevant parties.

For the purposes of this paragraph, the provision of services as specified by Directive 98/26/EC by securities settlement systems as designated for the purposes of that Directive or the provision of similar services by third-country securities settlement systems shall not be considered a delegation of its custody functions.

Articles 98 and 99 of AIFMD Level 2 are applicable in this regard.

vi. **Liability**

Depositaries of AIFs which have a full AIFM and depositaries of Qualifying Investor AIFs authorised by the Central Bank before 22 July 2013 which have a registered AIFM

1. A depository of
 - an AIF which has a full AIFM; or
 - a Qualifying Investor AIF authorised by the Central Bank before 22 July 2013 which has a registered AIFM

must comply with paragraphs 2 to 5 of this section.

2. The depository will be liable to the AIF, or to the unitholders of the AIF, for the loss by the depository or a third party to whom the custody of financial instruments held in custody in accordance with point (a) of paragraph 2 of section iii has been delegated.

In the case of such a loss of a financial instrument held in custody, the depository must return a financial instrument of identical type or the corresponding amount to the AIF or the AIFM acting on behalf of the AIF without undue delay. The depository will not be liable if it can prove that the loss has arisen as a result of an external event beyond its reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary.

The depository will also be liable to the AIF, or to the unitholders of the AIF, for all other losses suffered by them as a result of the depository's negligent or intentional failure to properly fulfil its obligations pursuant to the AIFMD Regulations, AIFMD Level 2 or the AIF Handbook.

Articles 100 and 101 of AIFMD Level 2 are applicable in this regard.

3. The depository's liability shall not be affected by any delegation referred to in section v.

Notwithstanding the first subparagraph of this paragraph, in case of a loss of financial instruments held in custody by a third party pursuant to section v, the depository may discharge itself of liability if it can prove that:

- (a) all requirements for the delegation of its custody tasks set out in the second subparagraph of section v are met;
- (b) a written contract between the depository and the third party expressly transfers the liability of the depository to that third party and makes it possible for the AIF or the AIFM acting on behalf of the AIF to make a claim against the third party in respect of the loss of financial instruments or for the depository to make such a claim on their behalf; and
- (c) a written contract between the depository and the AIF or the AIFM acting on behalf of the AIF, expressly allows a discharge of the depository's liability and establishes the objective reason to contract such a discharge.

Article 102 of AIFMD Level 2 is applicable in this regard.

4. Where the law of a third country requires that certain financial instruments are held in custody by a local entity and there are no local entities that satisfy the delegation requirements laid down in paragraph 1(d)(ii) of section v, the depository can discharge itself of liability provided that the following conditions are met:
 - (a) the AIF constitutional document expressly allows for such a discharge under the conditions set out in this paragraph;
 - (b) the unitholders of the relevant AIF have been duly informed of that discharge and of the circumstances justifying the discharge prior to their investment;
 - (c) the AIF or the AIFM on behalf of the AIF instructed the depository to delegate the custody of such financial instruments to a local entity;
 - (d) there is a written contract between the depository and the AIF or the AIFM acting on behalf of the AIF, which expressly allows such a discharge; and
 - (e) there is a written contract between the depository and the third party that expressly transfers the liability of the depository to that local entity and makes it possible for the AIF or the AIFM acting on behalf of the AIF to make a claim against that local entity in respect of the loss of financial instruments or for the depository to make such a claim on their behalf.

5. Liability to the unitholders of the AIF may be invoked directly or indirectly through the AIFM, depending on the legal nature of the relationship between the depository, the AIFM and the investors.

Depositaries of Qualifying Investor AIFs authorised by the Central Bank on or after 22 July 2013 which have a registered AIFM and Professional Investor Funds which have a registered AIFM

6. A depository of
 - a Qualifying Investor AIF authorised by the Central Bank on or after 22 July 2013 which has a registered AIFM; or
 - a Professional Investor Fund which has a registered AIFM

must comply with paragraphs 7 and 8 of this section.

7. The trust deed in the case of a unit trust scheme, the deed of constitution in the case of a common contractual fund or the depositary agreement in the case of an investment company or investment limited partnership must state that the depositary must exercise due care and diligence in the discharge of its duties and will be liable to the management company, investment company or general partner and the unitholders for any loss arising from negligence, fraud, bad faith, wilful default or recklessness in the performance of those duties. Unitholders may enforce this liability either directly or indirectly through the management company, depending on the legal nature of the relationship between the depositary, the management company and the unitholders.
8. The trust deed in the case of a unit trust scheme, the deed of constitution in the case of a common contractual fund or the depositary agreement in the case of an investment company or investment limited partnership must state that the liability of a depositary will not be affected by the fact that it has entrusted to a third party some or all of the assets in its safe-keeping.

In order to discharge its responsibility under this chapter, the depositary must exercise care and diligence in choosing and appointing a third party as a safe-keeping agent so as to ensure that the third party has and maintains the expertise, competence and standing appropriate to discharge the responsibilities concerned. The depositary must maintain an appropriate level of supervision over the safe-keeping agent and make appropriate enquiries from time to time to confirm that the obligations of the agent continue to be competently discharged.

vii. Depositary contract

1. The appointment of the depositary must be evidenced by written contract. The contract shall, *inter alia*, regulate the flow of information deemed necessary to allow the depositary to perform its functions for the AIF for which it has been appointed as depositary, as set out in these Requirements, the AIFMD Regulations and AIFMD Level 2.

In the case of depositaries of AIFs which have a full AIFM or Qualifying Investor AIFs authorised by the Central Bank before 22 July 2013 which have a registered AIFM, Article 83 of AIFMD Level 2 is applicable in this regard.

In the case of depositaries of Qualifying Investor AIFs authorised by the Central Bank on or after 22 July 2013 which have a registered AIFM and Professional Investor Funds which have a registered AIFM, Article 83 of AIFMD Level 2 excluding Article 83(1)(c) is applicable in this regard.

viii. Relationship with the Central Bank

1. A depository must send to the Central Bank any information and returns which are specified by the Central Bank. The depository must make available to the Central Bank, on request, all information which it has obtained while performing its duties and that may be necessary for competent authorities of AIF or AIFM.
2. The depository should deal with competent authorities in an open and co-operative manner.
3. Review meetings will be held by the Central Bank with the depository as required by the Central Bank. A depository is required, for the purposes of such meetings, to supply any additional material as may be specified by the Central Bank, including internal auditors' reports, operating procedures and management letters issued by the depository's auditors.
4. Depositories providing depository services to an investment fund not authorised by the Central Bank must be satisfied that the prospectus issued by the investment fund does not does not imply, in any way, that the investment fund is regulated by the Central Bank.

The depository is required to 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
- total net asset value.

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 7 of section xiv of the Alternative Investment Fund Manager Requirements, paragraph 7 of section v of the Fund Administrator Requirements or paragraph 8 of section vi of the AIF Management Company Requirements.

Annex 1**MINIMUM CAPITAL REQUIREMENT REPORT****NOTES ON COMPILATION****(AIF Depositary)**

1. This Minimum Capital Requirement Report must be submitted to the Central Bank by the AIF Depositary (a “Firm” for the purposes of these Notes) with the half yearly and annual audited accounts at the reporting intervals specified in paragraph 5(e) of section ii of the AIF Depositary Requirements. The Minimum Capital Requirement Report and these Notes on Compilation thereto form part of these Requirements. The Minimum Capital Requirement Report must be signed by a director or a senior manager of the Firm.
2. **Initial Capital Requirement**
 - 2.1 The **Initial Capital Requirement** specified in these Requirements is €125,000.
3. **Expenditure Requirement**
 - 3.1 The **Expenditure Requirement** is calculated as one quarter of the Firm’s total expenditure taken from the most recent annual accounts. However, the Central Bank reserves the right to adjust this amount should it be deemed not to reasonably reflect the current position of the Firm.
 - 3.2 Total expenditure includes all expenditure incurred by the Firm. 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 Firm) 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.
 - 3.3 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.

4. **Minimum Capital Requirement**

- 4.1 The Firm's **Minimum Capital Requirement** is the higher of:
- the Initial Capital Requirement; or
 - the Expenditure Requirement.

5. **Financial Resources**

- 5.1 A Firm is required to have **Financial Resources** at least equal to its Minimum Capital Requirement.

- 5.2 Financial Resources for a Firm will be based on the half yearly accounts or the annual audited accounts, whichever is most recent.

- 5.3 Financial Resources are calculated as the aggregate of:

- Fully paid up equity capital;
- Perpetual non-cumulative preference shares;
- **Eligible Capital Contribution** (see 5.4 below);
- Qualifying **Subordinated Loan Capital** (see 5.4 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.

5.4 **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 Firm.
- (c) The Firm 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	

6. Eligible Assets

6.1 A Firm is required to 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 Firm's group.

6.2 The Central Bank requires Eligible Assets to be held in an account that is separate to the account(s) used by a Firm for the day-to-day running of its business.

6.3 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
- Collective investment schemes which are not daily dealing (see 6.4 below)
- Any other assets which are not easily accessible not included above.

6.4 When a Firm invests all or part of its capital in one or more investment fund, the Central Bank reviews the relationships linking the investment fund and the Firm. It is the Central Bank's view that it is likely that where the Firm 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 Firm gets into difficulty. Accordingly, investments in such investment funds will not rank as Eligible Assets for the purposes of satisfying the Firm's Minimum Capital Requirement.

7. The Firm must be in a position to demonstrate its ongoing compliance with the capital adequacy requirements outlined in this document. Where a Firm's financial position changes materially at any time between reporting dates, which would impact on its compliance with its regulatory capital requirements, it must notify the Central Bank immediately and take any necessary steps to rectify its position.

**MINIMUM CAPITAL REQUIREMENT REPORT
AIF DEPOSITARY**

NAME OF FIRM: _____

Period under review: _____ **Currency:** _____

1. INITIAL CAPITAL REQUIREMENT

AIF DEPOSITARY

Initial Capital Requirement	€125,000 (A)
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2. EXPENDITURE REQUIREMENT

Total Expenditure (taken from P&L Account) _____

LESS:

Depreciation _____

Profit Shares, Bonuses, etc _____

Net losses on translation of foreign currency balances _____

Shared Commissions paid (Note 3.2(d)) _____

Exceptional and Extraordinary Items (Note 3.2(e)) _____

Any other Non-recurring Expense (Note 3.2(e)) _____

Net Qualifying Expenditure

EXPENDITURE REQUIREMENT [One quarter of Net Qualifying Expenditure] (B)

3. MINIMUM CAPITAL REQUIREMENT

Higher of **Initial Capital Requirement (A)** and **Expenditure Requirement (B)**

MINIMUM CAPITAL REQUIREMENT – [Higher of (A) and (B)] (C)

4. <u>FINANCIAL RESOURCES</u>	
Equity Capital fully paid up	_____
Perpetual Non-cumulative Preference Shares	_____
Eligible Capital Contributions	_____
Qualifying Subordinated Loan Capital (See 'Note on Qualifying Subordinated Loan Capital' below)	_____
Share Premium Account	_____
Disclosed Revenue and Capital Reserves (excluding Revaluation Reserves) (from most recent audited figures)	_____
Audited Interim Net Profits (Note 5.3)	_____
Other Reserves	_____
Total	<input type="text"/>
<i>LESS: Current Year Losses not included in Disclosed Reserves and Capital Reserves above</i>	_____
FINANCIAL RESOURCES	<input type="text"/> (D)

5. <u>ELIGIBLE ASSETS</u> (Must be held outside the Group)	
Total Non-current Assets (taken from Balance Sheet)	_____
Current Assets (taken from Balance Sheet)	_____
TOTAL ASSETS	<input type="text"/>
Less: Ineligible Assets	
Fixed Assets	_____
Intangible Assets	_____
Cash held with group companies	_____
Debtors	_____
Bad Debt Provisions	_____
Prepayments	_____
Intercompany Amounts (gross)	_____
Loans	_____
Investment funds which are not daily dealing (Note 6.4)	_____
Any other assets which are not easily accessible not included above	_____
Total Ineligible Assets	<input type="text"/>
ELIGIBLE ASSETS	<input type="text"/> (E)

Are Financial Resources (D) at least equal to Minimum Capital Requirement (C)?	<u> YES / NO </u>
Are Eligible Assets (E) at least equal to the C(C)?	<u> YES / NO </u>
Where are Eligible Assets held? (Attach recent independent statement evidencing location)	<div style="border: 1px solid black; height: 20px; width: 100%;"></div>
Was the firm in compliance with the capital adequacy requirements throughout the period under review? (Note 7)	<u> YES / NO </u>

Note on Qualifying Subordinated Loan Capital

The qualifying amount of **redeemable subordinated debt** is calculated as follows:

Remaining term to maturity	_____
Gross Amount	_____
Less Amortisations	_____
= Qualifying Amount	_____

Signature, Position and Date

(Director / Senior Manager)

2013

Chapter 7 – Grandfathering Arrangements

TO WHOM THESE REQUIREMENTS APPLY:

These Requirements set out the conditions which the Central Bank of Ireland (“the Central Bank”) applies to Professional Investor Funds, certain existing closed-ended AIF and certain existing authorised AIF which invest in unregulated investment funds.

The conditions which the Central Bank is imposing are contained in these Requirements which supersede all requirements set out in previous Non-UCITS Notices. These Requirements must be read in conjunction with all the other requirements set out in this AIF Handbook. These Requirements must be read in conjunction with the AIFMD Regulations and AIFMD Level 2. In the event of any difference or discrepancy between these Requirements and the AIFMD Regulations and AIFMD Level 2, the provisions of the AIFMD Regulations and AIFMD Level 2 will prevail.

Where a condition set out in these Requirements 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.

DEFINITIONS

For the purposes of these Requirements the following interpretations and definitions shall apply:

AIF Handbook: The Central Bank’s handbook in relation to AIFs which contains chapters concerning Retail Investor AIF, Qualifying Investor AIF, AIF Management Companies, Fund Administrators, Alternative Investment Fund Managers, AIF Depositaries and Grandfathering Arrangements.

AIF: An alternative investment fund as defined in Regulation [x] of the AIFMD Regulations.

AIFM: An alternative investment fund manager as defined in the AIFMD Regulations.

AIF management company: A company whose regular business is the collective portfolio management of AIFs.

AIFMD: Alternative Investment Fund Managers Directive (Directive 2011/61/EU).

AIFMD Level 2: Commission Delegated Regulation (EU) [x].

AIFMD Regulations: European Communities (Alternative Investment Fund Managers Directive) Regulations (SI No. [] of 2012).

Authorised AIF: AIF authorised by the Central Bank under the investment fund legislation.

Existing Professional Investor Funds: Professional Investor Funds authorised before 22 July 2013.

Full AIFM: An AIFM which has been authorised under the AIFMD.

Investment fund legislation: Unit Trusts Act 1990, Part XIII of the Companies Act 1990, Investment Limited Partnerships Act 1994 and Investment Funds, Companies and Miscellaneous Provisions Act 2005.

Professional Investor Funds: Investment funds authorised by the Central Bank in accordance with Notice NU 12.

Registered AIFM: An AIFM which has been registered with the Central Bank in accordance with Regulation [x] of the AIFMD Regulations.

GRANDFATHERING ARRANGEMENTS

Obligations are derived directly from provisions of the investment fund legislation and the AIFMD Regulations or are conditions imposed by the Central Bank under powers given to the Central Bank under that legislation.

i. Professional Investor Funds

1. New Professional Investor Funds will not be authorised.
2. Existing Professional Investor Funds will be permitted to continue in existence but they are not be permitted to establish new sub-funds or new share classes.
3. The AIFM and the management company in the case of a unit trust or common contractual fund, the general partner in the case of an investment limited partnership and the investment company must comply with the terms of the prospectus issued by the Existing Professional Investor Fund.
4. Each Existing Professional Investor Fund must have an AIFM which will be subject to either Part I or Part II of the Alternative Investment Fund Managers Requirements.
5. A Professional Investor Fund which has a registered AIFM must ensure that a single depositary is appointed in accordance with the AIF Depositary Requirements.
6. If an Existing Professional Investor Fund has an AIF management company which is not a full AIFM that AIF management company must comply with the AIF Management Company Requirements.
7. Fund administrators of Existing Professional Investor Funds must comply with the Fund Administrator Requirements.
8. Depositaries of Existing Professional Investor Funds must comply with the AIF Depositary Requirements.

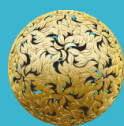
ii **Existing closed-ended AIF**

1. The AIFM and the management company in the case of a unit trust or common contractual fund, the general partner in the case of an investment limited partnership and the investment company must comply with the terms of the prospectus issued by the an authorised AIF of the closed-ended type before 22 July 2013 which do not make any additional investments after 22 July 2013.
2. The AIFM and the management company in the case of a unit trust or common contractual fund, the general partner in the case of an investment limited partnership and the investment company must comply with the terms of the prospectus issued by an authorised AIF of the closed-ended type whose subscription period for investors has closed prior to the entry into force of the AIFMD and are constituted for a period of time which expires at the latest 3 years after 22 July 2013.

iii. **Existing authorised AIF investing in unregulated investment funds**

1. Authorised AIF who received a derogation in accordance with the provisions of section D of Annex 1 to Guidance Note 1/01 may continue to operate notwithstanding that this derogation is no longer available.

T +353 1 XXX XXXX F +353 1 XXX XXXX www.centralbank.ie xxxxxxxxxxxx@centralbank.ie



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

Bosca PO 559, Sráid an Dáma, Baile Átha Cliath 2, Éire
PO. Box No 559, Dame Street, Dublin 2, Ireland