



Banc Ceannais na hÉireann  
Central Bank of Ireland

Eurosystem

# AIF Rulebook

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## Definitions

For the purposes of the AIF Rulebook, the following interpretations and definitions shall apply:

<b>AIF</b>	An alternative investment fund as defined in Regulation 5(1) of the AIFM Regulations.
<b>AIFM</b>	An alternative investment fund manager as defined in Regulation 5(1) of the AIFM Regulations.
<b>AIF management company</b>	A company whose regular business is the collective portfolio management of AIFs.
<b>AIFMD</b>	Alternative Investment Fund Managers Directive (Directive 2011/61/EU), as amended.
<b>AIFMD Level 2</b>	Commission Delegated Regulation (EU) No 231/2013.
<b>AIFM Regulations</b>	European Union (Alternative Investment Fund Managers) Regulations 2013 (SI No. 257 of 2013), as amended.
<b>AIF Rulebook</b>	The Central Bank's rulebook in relation to AIFs which contains chapters concerning Retail Investor AIFs, Qualifying Investor AIFs, ELTIFs, AIFMs and AIF Depositaries.
<b>Authorised AIF</b>	An AIF authorised by the Central Bank under investment fund legislation.
<b>Authorised AIFM</b>	An AIFM which has been authorised under the AIFMD.
<b>Base currency</b>	The currency of denomination of the authorised AIF, as set out in the prospectus of the authorised AIF.
<b>Category 1 investment fund</b>	An investment fund which is one of the following: <ul style="list-style-type: none"> <li>• investment funds established in a Member State of the European Union which are authorised under Directive 2009/65/EC;</li> <li>• investment funds established in a Member State of the European Economic Area which are authorised under</li> </ul>

	<p>domestic legislation implementing Directive 2009/65/EC;</p> <ul style="list-style-type: none"> <li>• investment funds established in Guernsey and authorised as Class A Schemes;</li> <li>• investment funds established in Jersey as Recognised Funds;</li> <li>• investment funds established in the Isle of Man as Authorised Schemes;</li> <li>• Retail Investor AIF authorised by the Central Bank;</li> <li>• investment funds established in Hong Kong and authorised by the SFC under section 104 of the Securities and Futures Ordinance.</li> </ul>
<b>Category 2 investment fund</b>	<p>An investment fund which is one of the following and in relation to which an authorised AIF has confirmed to the Central Bank in writing that the investment fund complies in all material respects with requirements applicable to Retail Investor AIF.</p> <p>Investment funds:</p> <ul style="list-style-type: none"> <li>• authorised in a Member State of the European Union;</li> <li>• established in Guernsey and authorised as Class B Schemes;</li> <li>• established in Jersey which are not Recognised Funds;</li> <li>• established in the Isle of Man as unauthorised schemes;</li> <li>• authorised by the US Securities and Exchanges Commission under the Investment Companies Act 1940;</li> <li>• such other funds which the Central Bank may specify upon application and which comply, in all material respects, with the provisions of these requirements in respect of Retail Investor AIF.</li> </ul>
<b>Central Bank</b>	The Central Bank of Ireland.
<b>Class currency</b>	The currency of denomination of the share class of the authorised AIF, as set out in the prospectus of the authorised AIF.

<b>Common Contractual Fund</b>	Common Contractual Fund within the meaning of the Investment Funds, Companies and Miscellaneous Provisions Act 2005, as amended.
<b>Constant net asset value (“NAV”) Money Market Funds</b>	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.
<b>Constitutional document</b>	The trust deed, in the case of a unit trust, the memorandum and articles of association or instrument of incorporation, 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.
<b>Credit ratings</b>	Credit ratings referred to are Standard and Poor’s. An “equivalent rating” for the purposes of the AIF Rulebook is one which has been provided by an internationally recognised credit 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 an authorised 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.
<b>Currency share class</b>	A share class of an authorised AIF denominated in a currency other than the base currency, as set out in the prospectus of the authorised AIF.
<b>Depository of Assets other than Financial Instruments (DAoFI)</b>	A depository for AIFs under Regulation 22(3)(b) of the AIFM Regulations.
<b>Designated Investment Company</b>	Designated Investment Company within the meaning of section 1395 of the Companies Act 2014, as amended.

<b>Directed brokerage services</b>	Brokerage services in relation to an authorised AIF pursuant to which a commission or similar payment is paid to or secured by the entity which issues instructions.
<b>ELTIF Regulation</b>	Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds amended by Regulation (EU) 2023/606 of the European Parliament and of the Council of 15 March 2023.
<b>ESMA</b>	The European Securities and Markets Authority.
<b>ESMA's Remuneration Guidelines</b>	ESMA's Guidelines on sound remuneration policies under the UCITS Directive and AIFMD (ESMA/2016/411).
<b>European Long-term Investment Fund (ELTIF)</b>	A regulated collective investment undertaking which provides investors access to long-term investments in private equity or real assets in accordance with Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds as amended by Regulation (EU) 2023/606 of the European Parliament and of the Council of 15 March 2023.
<b>Governing Documents</b>	The AIF's constitutional document and/or its prospectus.
<b>Group companies</b>	Member companies of a group of associated or related companies.
<b>Hedged currency share class</b>	A currency share class in respect of which the authorised AIF will conduct currency hedging transactions, the benefit and cost of which will accrue solely to the unitholders in that class.
<b>ICAV</b>	An Irish Collective Asset-management Vehicle within the meaning of the ICAV Act 2015.
<b>ICAV Act 2015</b>	The Irish Collective Asset-management Vehicles Act 2015, as amended.
<b>Investment adviser</b>	An entity which provides investment advice only and does not have discretionary powers over any of the assets of the authorised AIF.

<b>Investment Company</b>	An investment company authorised under Part 24 of the Companies Act 2014, or an ICAV authorised under the ICAV Act 2015.
<b>Investment fund legislation</b>	Unit Trusts Act 1990, Part 24 of the Companies Act 2014, Investment Limited Partnerships Act 1994, Investment Funds, Companies and Miscellaneous Provisions Act 2005 and ICAV Act 2015.
<b>Investment Limited Partnership</b>	Investment Limited Partnership within the meaning of the Investment Limited Partnerships Act 1994, as amended.
<b>Investment manager</b>	An entity which is appointed either directly by the AIFM, or indirectly, as sub-investment manager by an investment manager, to manage assets of an authorised AIF on a discretionary basis.
<b>Investment objective</b>	Investment objective means the purpose for which an authorised AIF was established, as set out in the prospectus of the authorised AIF.
<b>Investment policy</b>	Investment policy is the means through which the investment objective of an authorised AIF will be achieved, as set out in the prospectus of the authorised AIF.
<b>Irish resident</b>	A person who is present in Ireland for the whole of 110 business days per year.
<b>Liquid assets</b>	Cash or assets traded on a regulated market or multilateral trading facility with transparent pricing in order that they can be sold quickly at a price that is close to their pre-sale valuation.
<b>MiFID</b>	Markets in Financial Instruments Directive (Directive 2014/65/EU) as amended.
<b>Multilateral trading facility</b>	A multilateral trading facility as defined in Article 4 of MiFID.
<b>NAV</b>	Net asset value.
<b>Periodic reports</b>	The annual and the half-yearly reports, if any.
<b>Professional Investor ELTIF</b>	An ELTIF authorised by the Central Bank which may be marketed solely to professional investors, as defined in Article 2 of Regulation (EU) 2015/760.

<b>Professional Investor Funds</b>	Investment funds authorised by the Central Bank in accordance with Notice NU 12.
<b>Qualifying Investor AIF</b>	An AIF authorised by the Central Bank which may be marketed to investors who meet the criteria set out in the Qualifying Investor AIF chapter.
<b>Qualifying Investor ELTIF</b>	<p>An ELTIF authorised by the Central Bank which may be marketed only to investors who meet the following criteria:</p> <p>(a) is a professional client within the meaning of Annex II of MiFID; or</p> <p>(b) the investor receives an appraisal from an EU credit institution, a MiFID firm or a UCITS management company that the investor has the appropriate expertise, experience and knowledge to adequately understand the investment in the ELTIF; or</p> <p>(c) the investor certifies that they are an informed investor by providing the following:</p> <ul style="list-style-type: none"> <li>• confirmation (in writing) that the investor has such knowledge of and experience in financial and business matters as would enable the investor to properly evaluate the merits and risks of the prospective investment; or</li> </ul> <p>confirmation (in writing) that the investor’s business involves, whether for its own account or the account of others, the management, acquisition or disposal of property of the same kind as the property of the ELTIF.</p>
<b>Real estate</b>	A freehold or leasehold interest in any land or building.
<b>Real estate related assets</b>	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.
<b>Registered AIFM</b>	An AIFM that has been registered with the Central Bank in accordance with Regulation 4(3) of the AIFM Regulations.
<b>Regulated investment fund</b>	A collective investment vehicle that is authorised and supervised by a financial regulatory authority under a defined legal and

	<p>regulatory framework. An investment fund which is either a Category 1 investment fund or a Category 2 investment fund.</p>
<p><b>Regulated market</b></p>	<p>A market which operates regularly and is recognised and open to the public and is understood by reference to the following 4 components, which are not exhaustive and the assessment should include a general overview of the market, having regard to issues which would be relevant to the operation of the market and investments therein:</p> <ul style="list-style-type: none"> <li>(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 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.</li> <li>(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.</li> <li>(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 an authorised AIF in accordance with the conditions set down in the AIFM Regulations.</li> </ul> <p>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</p>

	permitted to invest and any rules which may impede the repatriation of capital or profits must be taken into account.
<b>Related company</b>	This term has the same meaning as that which is specified in Section 2, subsections (10) and (11), Part 1 of the Companies Act 2014. In general this states that companies are related where 50% of the paid up share capital of, or 50% of the voting rights in, one company are owned directly or indirectly by another.
<b>Relevant institutions</b>	Those institutions specified in sub-paragraphs (a), (b) and (c) of paragraph 8 of section 1.ii (Investment restrictions) of Part I of chapter 1 - Retail Investor AIF Restrictions.
<b>Retail investor</b>	An investor who is not eligible to invest in a Qualifying Investor AIF.
<b>Retail Investor AIF</b>	An AIF authorised by the Central Bank that may be marketed to retail investors.
<b>Retail Investor ELTIF</b>	An ELTIF authorised by the Central Bank that may be marketed to retail investors, as defined in Article 2 of Regulation (EU) 2015/760.
<b>Share class</b>	Classes of units or shares created within an authorised AIF, as set out in the prospectus of an authorised AIF.
<b>Structured Retail Investor AIF</b>	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 regulated investment funds with similar features.
<b>Transferable security or money market instrument embedding a FDI</b>	<p>A transferable security or money market instrument which contains a component which fulfils the following criteria:</p> <ul style="list-style-type: none"> <li>(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;</li> </ul>

	<p>(b) its economic characteristics and risks are not closely related to the economic characteristics and risks of the host contract;</p> <p>(c) it has a significant impact on the risk profile and pricing of the transferable security or money market instrument.</p> <p>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.</p>
<b>UCITS Regulations</b>	European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (S.I. No. 352 of 2011), as amended.
<b>Underlying investment funds</b>	This term refers to the underlying investment funds that form the assets of authorised AIFs.
<b>Unhedged currency share class</b>	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.
<b>Unitholder</b>	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.
<b>Units</b>	Shares of an investment company, interests of the partners in an investment limited partnership and units of a unit trust or common contractual fund.
<b>Unit Trust</b>	A unit trust within the meaning of the Unit Trusts Act 1990, as amended.
<b>Votes cast</b>	This means a vote cast at a general meeting, in writing or as otherwise permitted by the AIF's constitutional document.
<b>Weighted Average Life (WAL)</b>	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

	<p>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.</p>
<b>Weighted Average Maturity (WAM)</b>	<p>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.</p>

# Introduction

## i. General

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

- Unit Trusts;
- Designated Investment Companies;
- Investment Limited Partnerships;
- Common Contractual Funds; and
- ICAVs.

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 the AIF Rulebook which supersede all requirements set out in previous Non-UCITS Notices. Each chapter must be read in conjunction with all the other requirements set out in the AIF Rulebook. Each chapter must also be read in conjunction with the investment fund legislation, AIFMD Level 2, the AIFM Regulations and the ELTIF Regulations. In the event of any difference or discrepancy between the AIF Rulebook and the investment fund legislation, AIFMD Level 2, the AIFM Regulations or the ELTIF Regulations, the provisions of the aforementioned legislation will prevail over the AIF Rulebook.

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

Conditions in chapter 1 - Retail Investor AIF Requirements, chapter 2 - Qualifying Investor AIF Requirements, chapter 3 - European Long-Term Investment Fund Requirements and chapter 5 - AIF Depositary

Requirements are conditions imposed by the Central Bank under powers given to the Central Bank under that legislation.

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

## ii. Application of the chapters

AIFMs which:

- (a) come within the scope of the AIFM Regulations and cannot avail of the exemptions from authorisation set out in Regulation 4 of the AIFM Regulations; or
- (b) opt to be authorised under the AIFM Regulations

are subject to chapter 4 – Alternative Investment Fund Manager Requirements.

# Chapter 1 - Retail Investor AIF Requirements

# Introduction

The AIF Rulebook sets out the rules which apply to Retail Investor AIFs. However, the definitive rules for each Retail Investor AIF will be set out in its letter of authorisation.

The AIF Rulebook also outlines the types of conditions which the Central Bank may apply to AIFs established in other jurisdictions which propose to market to retail investors in Ireland. Again, the definitive rules for each such AIF will be set out in its letter of approval from the Central Bank to market its units in Ireland to retail investors.

# Part I: General Rules

## Section 1:

### Retail Investor AIF Restrictions

#### i. General Restrictions

1. The Retail Investor AIF shall not, nor shall it appoint a management company or general partner or AIFM which would, acquire any shares carrying voting rights which would enable it to exercise significant influence over the management of an issuing body. This requirement does not apply to investments in other investment funds. It is also disapplied where the Retail Investor AIF is a venture capital, development capital or private equity Retail Investor AIF provided its prospectus indicates its intention regarding the exercise of legal and management control over underlying investments.
2. The Retail Investor AIF shall not raise capital from the public through the issue of debt securities.
3. The Retail Investor AIF shall only track or gain an exposure to an index where the index complies with all of the following. The index must:
  - (a) be structured in a manner comprehensible 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.

4. The Retail Investor AIF shall ensure that the depositary or a competent person appointed by the AIFM and who is approved for the purpose by the depositary, verifies that there are procedures in place and are effectively implemented to ensure that any performance fees payable and accrued pursuant to the AIF's performance fee payment cycle are calculated in accordance with the governing documents of the Retail Investor AIF.
  
5. The Retail Investor AIF shall specify, in its constitutional document, AIFM agreement or limited partnership agreement, the maximum annual fee<sup>1</sup> charged by, as relevant, an AIFM, a management company and/or a general partner of the Retail Investor AIF. The maximum annual fee of the Retail Investor AIF shall not be increased without approval on the basis of a majority of votes cast at a general meeting.<sup>2</sup> In the event of an increase in the annual fee charged to a Retail Investor AIF 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.

## ii. Investment Restrictions

1. A Retail Investor AIF may derogate from the investment restrictions contained in this section for six months following the date of their launch provided they observe the principle of risk spreading.

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<sup>1</sup> The annual fee includes any performance related fee charged by an AIFM, a management company, a general partner or an investment manager.

<sup>2</sup> 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.

2. The limits on investments contained in this chapter and those set down in the Retail Investor AIF’s prospectus shall apply at the time of purchase of the investments and continue to apply thereafter. If these limits are subsequently exceeded for reasons beyond the control of the Retail Investor AIF or as a result of the exercise of subscription rights, the Retail Investor AIF must record such matters and adopt as a priority objective the remedying of that situation, taking due account of the interests of its unitholders.
  
3. Related companies/institutions are regarded as a single issuer for the purposes of paragraphs 5, 6 and 8 of this section.

#### *Securities*

4. A Retail Investor AIF shall 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.
  
5. Subject to paragraph 7, the Retail Investor AIF shall not invest 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, for example in regulated markets where certain transferable securities or money market instruments are highly dominant or other exceptional market conditions.
  
6. Subject to paragraph 1 of section 1.i (*General restrictions*), a Retail Investor AIF shall 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.

7. The Retail Investor AIF may only invest more than 20% and 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 with the prior approval of the Central Bank.

#### *Cash*

8. The Retail Investor AIF shall not keep on deposit more than 10% of its net assets 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) with the prior approval of the Central Bank, a credit institution which is an associated or related company of the depositary.

#### *Investment funds<sup>3</sup>*

9. Subject to paragraph 12, a Retail Investor AIF shall only invest in open-ended investment funds provided the underlying investment funds are regulated investment funds.

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<sup>3</sup> Where an underlying investment fund is an umbrella fund, investment restrictions apply in respect of investment in the individual sub-funds.

10. Subject to paragraph 12 of this section, a Retail Investor AIF shall not invest more than 30% of net assets in any one open-ended investment fund.

11. A Retail Investor AIF which invests more than 30% of net assets in other investment funds shall ensure that the investment funds in which it invests are prohibited from investing more 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.

12. A Retail Investor AIF shall not invest more than 20% of net assets in unregulated open-ended investment funds.

13. The Retail Investor AIF shall only invest in units of an investment fund managed by its management company or AIFM or by an associated or related company or other legal entity of either of these where the AIFM/management company of the investment fund in which the investment is being made has waived the preliminary/ initial/ redemption charge which it would normally charge.

14. The Retail Investor AIF shall ensure that any commission or other fee received by the management company or AIFM must be paid into the property of the Retail Investor AIF.

#### *Financial derivative instruments*

15. The Retail Investor AIF shall not have a risk exposure to a counterparty in an OTC derivative transaction (as defined in paragraph 3 of section 1(iv) (Financial Derivative Instruments) which exceeds the following:

- (a) where the counterparty is a relevant institution, 10% of the Retail Investor AIF's net assets; or
- (b) in any other case, 5% of the Retail Investor AIF's net assets.

16. A Retail Investor AIF shall ensure that its global exposure relating to financial derivative instruments (“FDIs”) does not exceed the total net asset value of its portfolio. When a transferable security or money market instrument contains an embedded derivative<sup>4</sup>, the latter shall be taken into account when complying with this requirement.

### iii. Borrowing powers

1. The Retail Investor AIF is only permitted to:
  - (a) borrow; and
  - (b) secure such borrowing on the assets of the Retail Investor AIF where such activities are permitted by its constitutional document.
  
2. The Retail Investor AIF shall not borrow, or have at any given time borrowings, exceeding 25% of its net assets. The Retail Investor AIF shall not offset credit balances (e.g. cash) against borrowings when determining the percentage of borrowings outstanding.

### iv. Financial derivative instruments

1. Where the Retail Investor AIF engages in transactions in FDIs, whether such transactions are for investment purposes or for hedging purposes, it must comply with this section 1.iv. Paragraphs 18 to 22 of this section (Calculation of global exposure) in relation to the calculation of global exposure are also applicable where a Retail Investor AIF engages in repurchase/reverse repurchase agreements (“repo contracts”)

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<sup>4</sup> As defined in Regulation 69(5) of the UCITS Regulations.

through which additional leverage is generated through the re-investment of collateral.

2. Subject to paragraph 3 below, the Retail Investor AIF shall only engage in transactions in financial derivative instruments, where those instruments are dealt on a market which is regulated, operating regularly, recognised and open to the public in a Member State or non-Member State.
  
3. The 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 shall subject its OTC derivatives to reliable and verifiable valuation on a weekly basis and ensure that it has appropriate systems, controls and processes documented and 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; and
- (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 confirm the valuation;
    - 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. For the purposes of paragraph 15 of section 1.ii (*Investment restrictions*) of this Part, the Retail Investor AIF shall, in calculating its risk exposure to an OTC derivative counterparty, only reduce such an exposure where the counterparty has provided the Retail Investor AIF with collateral which satisfies the criteria identified in paragraph 5 below.
  
5. Collateral received by the Retail Investor AIF 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 depository, 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; and
  - (g) Cash collateral must only be invested in risk-free assets.
  
6. The Retail Investor AIF shall take into account all collateral passed to an OTC derivative counterparty in calculating the exposure of the Retail Investor AIF to counterparty risk.

Collateral passed to an OTC derivative counterparty shall 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. The Retail Investor AIF shall calculate the limits set out in section 1.ii (*Investment restrictions*) of this Part I 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 shall 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 15 of section 1.ii (*Investment restrictions*) of this Part.
10. The Retail Investor AIF, in calculating the limits set out in section 1.ii (*Investment restrictions*) of this Part I must take account of:
  - (a) any net exposure to a counterparty generated through a securities lending or repurchase agreement; and
  - (b) exposures created through the reinvestment of collateral.

Net exposure refers to the amount receivable by a Retail Investor AIF less any collateral provided by the Retail Investor AIF.

11. The Retail Investor AIF shall, when calculating exposures for the purpose of issuer concentration limits, establish whether its exposure is to an OTC counterparty, a broker or a clearing house.

12. The Retail Investor AIF shall not permit position exposures 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 to exceed the investment limits set out in these requirements. Where the Retail Investor AIF invests in index-based FDIs, these investments do not have to be combined with the limits specified in section 1.ii (*Investment restrictions*) of this Part I. When calculating the limits set out in section 1.ii (*Investment restrictions*) of this Part I, 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 Value at Risk (“VaR”) (as defined further at paragraph 19 below) 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 3 of section 1.i (*General restrictions*) of this Part 1.

#### *Cover requirements*

13. The Retail Investor AIF shall, at any given time, be capable of meeting all its payment and delivery obligations incurred by transactions involving FDI.

14. The Retail Investor AIF shall establish and maintain risk management processes which monitor FDI transactions to ensure

they are adequately covered in accordance with these requirements.

15. The Retail Investor AIF shall ensure that 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 Retail Investor AIF must hold, at all times, liquid assets which are sufficient to cover the exposure; and
- (b) in the case of FDI which require physical delivery of the underlying asset, the asset must be held at all times by the 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*

16. A Retail Investor AIF shall, in advance of commencing any FDI activity, establish and thereafter maintain an adequate risk management process vis-à-vis its FDI activity. The Retail Investor AIF shall, in advance of commencing any FDI activity, notify the Central Bank in writing of the risk management processes that have been established and the manner in which they are being maintained. This notification shall include details of the following:

- (a) Permitted types of FDI, including embedded derivatives in transferable securities and money market instruments;
- (b) the underlying risks;

- (c) Relevant quantitative limits and how these will be monitored and enforced; and
- (d) Methods for estimating risks.

Material amendments to the initial filing must be notified to the Central Bank in advance of implementing those changes.

17. The Retail Investor AIF shall submit a report to the Central Bank on its FDI positions on an annual basis. Such a report shall contain:

- (a) information which reflects a true and fair view of the types of FDIs used by the Retail Investor AIF;
- (b) the underlying risks;
- (c) the quantitative limits and how these are monitored and enforced; and
- (d) the methods used to estimate those risks.

The Retail Investor AIF shall submit the report with its annual report.

#### *Calculation of Global Exposure*

18. A Retail Investor AIF shall 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.

19. (a) The Retail Investor AIF shall, in calculating its global exposure, utilise an appropriate risk measurement methodology having regard to 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.

(b) The Retail Investor AIF shall calculate its global exposure by using the commitment method or the VaR methodology. The Retail Investor AIF may only calculate its global exposure using other advanced risk measurement methodologies with the prior approval of the Central Bank. For the purposes of this provision, VaR shall mean a measure of the maximum expected loss at a given confidence level over a specific time period.

20. Where a Retail Investor AIF employs techniques and instruments including repurchase agreements in order to generate additional leverage or exposure to market risk, it shall take these transactions into consideration when calculating global exposure.

21. The Retail Investor AIF shall comply with the limits on global exposure on an on-going basis.

22. A Retail Investor AIF may not use the commitment method where:

- (a) 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
- (b) the Retail Investor AIF has more than a negligible exposure to exotic derivatives; and/or
- (c) that method does not adequately capture the market risk of the Retail Investor AIF's portfolio.

#### *Commitment method*

23. The Retail Investor AIF using the commitment method shall comply with Articles 8, 9, 10 and 11 of AIFMD Level 2.

24. A Retail Investor AIF using the commitment method shall 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.

#### *VaR methodology*

25. The Retail Investor AIF, in calculating its global exposure using the VaR methodology, shall take into account all the positions of the Retail Investor AIF's portfolio.
  
26. The Retail Investor AIF shall set the maximum VaR limit according to its defined risk profile.
  
27. The Retail Investor AIF may use either the relative VaR methodology or the absolute VaR methodology to calculate global exposure as set out in Appendix 1 to this Part. A Retail Investor AIF is responsible for deciding which VaR methodology 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 and the choice of VaR methodology used must be consistent.
  
28. The Retail Investor AIF shall ensure that the VaR methodology utilised takes 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.
  
29. The Retail Investor AIF shall ensure that the VaR methodology utilised provides for completeness and assesses the risks with a high level of accuracy. In particular:
  - (a) all the positions of the Retail Investor AIF's portfolio must be included in the VaR calculation;
  - (b) the model must 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 methodology;

- (c) the quantitative models used within the VaR methodology (pricing tools, estimation of volatilities and correlations, etc.) must provide for a high level of accuracy; and
- (d) all data used within the VaR methodology must provide for consistency, timeliness and reliability.

30. The Retail Investor AIF shall, when assessing the global exposure by means of a relative or absolute VaR methodology, comply with the quantitative and qualitative minimum requirements set out in Appendix 1 to this Part.

#### *Back Testing*

31. A Retail Investor AIF shall monitor the accuracy and performance of its VaR methodology (i.e. prediction capacity of risk estimates) by conducting a back testing program. The back testing program shall 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.

32. A Retail Investor AIF shall 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.

33. A Retail Investor AIF shall 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 number of 'overshootings' that appears to be too high, the Retail Investor

AIF shall review the VaR methodology and make appropriate adjustments.

34. If the number of overshootings for a Retail Investor AIF for the most recent 250 business days exceeds four 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.

#### *Stress testing*

35. A Retail Investor AIF using the VaR methodology shall conduct a rigorous, comprehensive and risk-adequate stress testing program in accordance with the qualitative and quantitative requirements set out in this chapter. Stress tests shall be carried out on a regular basis, at least once a month. Additionally, such stress tests shall 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.
36. The Retail Investor AIF shall establish a stress testing program that measures any potential major depreciation of a Retail Investor AIF value as a result of unexpected changes in the relevant market parameters and correlation factors. In addition the stress testing program shall also measure changes in the relevant market parameters and correlation factors, which could result in major depreciation of a Retail Investor AIF's value.
37. The stress tests shall be adequately integrated into the Retail Investor AIF's risk management process and the results shall be considered when making investment decisions for the Retail Investor AIF. The design of the stress tests shall be adapted in line with the composition of the Retail Investor AIF and the market conditions that are relevant for the Retail Investor AIF.

38. The stress tests shall 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 methodology used, shall be taken into account.
39. The stress tests shall 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).
40. The stress tests shall 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.
41. The Retail Investor AIF shall implement and document 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 a written 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*

42. A Retail Investor AIF which calculates global exposure using a VaR methodology shall regularly monitor its leverage.
43. A Retail Investor AIF shall 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. The Retail Investor AIF shall not enter into efficient portfolio management transactions if such transactions could 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 Securities Lending*

2. Repo contracts and securities lending may only be effected in accordance with normal market practice.
3. Collateral obtained under a repo contract or securities 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; and
  - (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 securities 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 depositaries 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 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 securities 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 (Financial derivative instruments) of this Part 1. 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; and
  - (b) the market value of the instrument concerned if non-cash collateral is held.
11. The counterparty to a repo contract or securities 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 securities 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 five business days or other period as normal market practice dictates.
  
13. Repo contracts, securities borrowing or securities lending do not constitute borrowing or lending for the purposes of paragraph 2 of section 1.iii (*Borrowing powers*) of this Part 1.

**vi. Constitutional document**

1. The Retail Investor AIF shall, at all times, comply with its constitutional document.
  
2. The Retail Investor AIF shall entrust its assets to a depositary for safe-keeping and this must be expressly specified in its constitutional document.
  
3. The Retail Investor AIF shall, in the constitutional document, provide for the remuneration and the expenditure which the AIFM, management company or general partner and depositary are empowered to charge to the Retail Investor AIF, and the method of calculation of such remuneration; and, the costs to be borne by the Retail Investor AIF.

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

4. The Retail Investor AIF shall specify, in its constitutional document, the maximum charge<sup>5</sup> relating to the redemption or repurchase of units. The maximum charge relating to the redemption or repurchase of units shall not be increased without approval on the basis of 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.
  
5. The Retail Investor AIF shall establish in its constitutional document conditions for the creation and cancellation of units or for contributions and withdrawal of contributions of unitholders' capital, as appropriate.
  
6. The Retail Investor AIF shall specify, in its constitutional document, the conditions and manner of application of income.
  
7. The Retail Investor AIF shall, where relevant, specify in its constitutional document the circumstances under which there may be effected, the replacement of the AIFM/management company/general partner with another AIFM/management company/general partner (including such a replacement by the Central Bank) and shall contain provisions to ensure the protection of unitholders in the event of any such replacement.
  
8. The depositary of a Retail Investor AIF may not be replaced without the prior approval of the Central Bank. The Retail Investor AIF shall specify, in its constitutional document, the conditions under which there may be effected, the replacement of the depositary of the Retail Investor AIF with another depositary (including such a replacement by the Central Bank)

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<sup>5</sup> This provision refers to circumstances where the Retail Investor AIF imposes charges on redemptions that are not applied as an LMT in accordance with Annex V of Directive (EU) 2011/61

and shall contain provisions to ensure the protection of unitholders in the event of any such replacement.

9. The Retail Investor AIF may issue registered certificates where such activity is permitted by its constitutional document.
10. The Retail Investor AIF shall attach rights in proportion to the fraction of a unit held except for voting rights which can only be exercised by whole units. The Retail Investor AIF shall ensure that the certificates are signed by the depository. This signature may be reproduced mechanically.
11. The Retail Investor AIF shall specify, in its constitutional documents, the stock exchanges and markets (including derivative markets) on which securities and FDI of the Retail Investor AIF are listed or traded.

The Retail Investor AIF shall, as an alternative to the above, include the following in its constitutional document:

*“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 derivatives markets) which meets with the regulatory criteria (regulated, operate regularly, be recognised and open to the public) and which is listed in the prospectus.”*

12. The Retail Investor AIF is prohibited from making distributions from or charging fees and expenses to capital in the absence of provisions to this effect in its constitutional document. The Retail Investor AIF shall only make distributions from or charge fees and expenses to capital, in accordance with express provisions contained in its constitutional document.

13. The Retail Investor AIF shall ensure that where its constitutional document provides for subscription in specie, the following provisions must also be included in its constitutional document:

- the nature of the assets to be transferred into the 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.

14. The Retail Investor AIF shall ensure that where its constitutional document provides for a distribution of assets on a winding up<sup>6</sup> the following provisions must also be included in its constitutional document:

- 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 Retail Investor AIF shall specify, in its constitutional document, the rules for the valuation of its assets. These rules shall clearly and unambiguously define an expected method of

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<sup>6</sup> A distribution of assets on a winding up does not constitute a liquidity management tool under Annex V of Directive (EU) 2011/61.

valuation and shall set out a framework for variation from this method of valuation.

2. The Retail Investor AIF shall only purchase and sell assets at prices which conform with the rules in the constitutional document.
3. The Retail Investor AIF shall only issue or sell its units at a price arrived at by dividing the net asset value of the Retail Investor AIF (calculated in accordance with the valuation rules set out in paragraphs 5 to 9 of this section) by the number of units outstanding; such price may be increased by duties and charges.
4. The Retail Investor AIF shall only redeem or repurchase its units 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.
5. The Retail Investor AIF shall value its assets 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. The Retail Investor AIF may use an offer price or offer quotation in the context of dual pricing or to value a short position.
    - 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 management company/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 person appointed by the Retail Investor AIF, and approved for the purpose by the depositary.
- 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 shall be satisfied that (i) the counterparty to an OTC derivative contract will value the contract with reasonable accuracy and on a reliable basis; and (ii) the OTC derivative can be sold, liquidated or closed by an offsetting transaction at fair value<sup>7</sup>, at any time at the initiative of the Retail Investor AIF. A Retail Investor AIF must not enter into an OTC derivative if both of these 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 request of the Retail Investor AIF at fair value unless the Retail Investor AIF is satisfied (and documents the process by which it is so satisfied) that such a clause is not required.
- A Retail Investor AIF shall value an OTC derivative using either the counterparty valuation or an

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<sup>7</sup> 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.

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 shall value an OTC derivative contract on at least a weekly basis.<sup>8</sup>

- 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 the final position documented
- Where a Retail Investor AIF values 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 counterparty<sup>9</sup>; and

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<sup>8</sup> Closed-ended Retail Investor AIFs are permitted to value OTC derivative contracts on at least a monthly basis.

<sup>9</sup> 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.

- the independent verification must be carried out at least monthly<sup>10</sup>.

(g) Forward foreign exchange and interest rate swap contracts:

- Valuation of these OTC derivative contracts must be in accordance with the sub-paragraph (f) 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.

6. The Retail Investor AIF shall, in its constitutional document, specify that, notwithstanding the expected valuation method set out in the above 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 and methodologies used are clearly documented.

7. The Retail Investor AIF shall not adjust the value of an asset, save 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.

8. A Retail Investor AIF which is a Short-Term Money Market Fund (as defined in paragraph 1 of section 2(i) (*Short Term Money Market Funds*) 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 (*Short-Term*

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<sup>10</sup> A closed-ended Retail Investor AIF which values OTC derivatives on a monthly basis (see footnote 8) must carry out the independent verification procedure at least on a quarterly basis.

*Money Market Funds – valuation on the basis of amortised cost*) of Part II, as applicable.

Money Market Funds (as defined in paragraph 1 of section 2(ii) (*Money Market Funds*) 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.

9. Dealing in the units of a Retail Investor AIF shall be carried out at forward prices i.e. the Net Asset Value next computed after receipt of subscription and redemption requests.

10. Closed-ended Retail Investor AIF and open-ended Retail Investor AIF with limited liquidity shall value their portfolios on a monthly basis.

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

1. Where the Retail Investor AIF is an open-ended Retail Investor AIF it shall:

- (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 charge on redemptions in excess of 3% of NAV per unit<sup>11</sup>.

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<sup>11</sup> This provision refers to circumstances where the Retail Investor AIF imposes charges on redemptions that are not applied as an LMT in accordance with Annex V of Directive (EU) 2011/61.

## 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 calendar days between the dealing deadline and the payment of redemption proceeds, will not be subject to any regulatory parameters in terms of dealing frequency, minimum redemption quotas or timeframe for settlement provided they classify themselves as open-ended Retail Investor AIFs with limited liquidity.

## ix. Share classes

### *General*

1. Subject to paragraphs 3 and 4 below, a Retail Investor AIF shall only create one or more share classes within the Retail Investor AIF, or within a sub-fund of an umbrella Retail Investor AIF, where the following requirements are satisfied:
  - (a) the constitutional document of the Retail Investor AIF 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 thereof must consist of a single common pool of assets;
  - (c) assets may not be allocated to individual share classes;
  - (d) the capital gains/losses and income arising from that pool of assets must be distributed and/or must accrue equally to each unitholder relative to their participation in the Retail Investor AIF or sub-fund thereof;
  - (e) unitholders in a share class must be treated equally; and
  - (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 shall ensure that all share classes within the Retail Investor AIF or sub-funds thereof have the same dealing procedures and frequencies.
3. A Retail Investor AIF or sub-fund thereof shall only provide for the creation of a hedged currency share class or a hedged interest rate share class where the constitutional document of the Retail Investor AIF clearly establishes how the resultant costs and gains/losses will be charged to the relevant share class.
4. A Retail Investor AIF shall only use FDIs at share class level to provide a different level of participation in the performance of an underlying portfolio or different levels of capital protection where:
  - (a) the FDI 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' 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' 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.

## x. Umbrella Retail Investor AIFs

1. 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.
2. Where the Retail Investor AIF is constituted as an umbrella Retail Investor AIF, it shall ensure that each of its sub-funds complies with the requirements to which it is subject.
3. Where the Retail Investor AIF is an umbrella Retail Investor AIF it shall, as appropriate, provide in its constitutional document that separate records will be maintained for each sub-fund with the assets and liabilities being allocated to each sub-fund.
4. The Retail Investor AIF shall ensure that, where relevant, its constitutional document provides 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.
5. 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.
6. 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) where a sub-fund (the “Investing Fund”) of an umbrella Retail 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 Retail Investor AIF; and
- (c) investment by way of transfer for consideration is subject to prior notification to the Central Bank<sup>12</sup>.

#### **xi. Investment through subsidiary companies**

1. A Retail Investor AIF shall 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;

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<sup>12</sup> Section 1399(2) of the Companies Act 2014 and section 47(2) of the ICAV Act 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.

- (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; and
  - (g) the assets held by the subsidiary must be valued in accordance with the Retail Investor AIF’s valuation rules.
- xii. Dealings by the Retail Investor AIF with (i) unitholders or (ii) the AIFM, management company, general partner, investment manager, depositary or their delegates or associated or group companies**

1. The Retail Investor AIF shall only enter into a transaction with:

- (i) a unitholder; or
- (ii) the AIFM, management company, general partner, investment manager, depositary, or their delegates or associated or group companies

where it is negotiated at arm’s length. Transactions must be in the best interests of the unitholders<sup>13</sup>.

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<sup>13</sup> This requirement does not apply to transactions by unitholders in relation to their units. This includes subscriptions, redemptions, conversions or dividend payments.

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.

### **xiii. Directed brokerage services and similar arrangements**

1. The Retail Investor AIF shall ensure that where a person, acting on its behalf, 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, the rebated commission shall be paid to the Retail Investor AIF.
2. The Retail Investor AIF shall not reimburse out of its assets the operator of the directed brokerage services or similar arrangement for reasonable properly vouched costs, fees and expenses directly incurred by the operator in relation to the services or arrangement unless the prospectus disclosure required by paragraph 1 of section 3.xiv (*Directed brokerage programmes and similar arrangements*) of this Part 1 has been made. The Retail Investor AIF must be separately invoiced for these fees and expenses by the operator of the directed brokerage services.

## Appendix 1

### Calculation of Global Exposure using the VaR methodology

#### *Relative VaR methodology*

1. Under the relative VaR methodology 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 shall 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; and
    - 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 methodology*

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

#### *VaR methodology: 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 shall be carried out in accordance with the following parameters:
  - (a) one-tailed confidence interval of 99%;
  - (b) holding period equivalent to one month (20 business days);
  - (c) effective observation period (history) of risk factors of at least one 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 one month (20 days).
  
7. For Retail Investor AIF referring to an absolute VaR methodology, 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 methodology: Qualitative requirements*

8. The AIFM Regulations 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 methodology 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 methodology;
  - (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; and
  - (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 methodology and the related outputs shall represent an integral part of the daily risk management work. In addition, they should be integrated in the regular investment process led 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 shall undergo a validation by a party independent of the building process to ensure 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, for example, might include 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 shall perform on-going validation of the VaR methodology (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, together with the results of the review, shall be documented.

#### *Documentation of VaR methodology*

12. Where a Retail Investor AIF uses a VaR methodology, it shall adequately document the VaR methodology and the related

processes and techniques in the risk management process referred to in paragraph 16 of section 1.iv (*Financial derivative instruments*) of Part I of this chapter. This shall include, 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:

### Supervisory requirements

#### i. General conditions

1. A Retail Investor AIF shall have an authorised AIFM.
2. The Retail Investor AIF shall notify the Central Bank of any proposed amendments to its prospectus. The Central Bank may object to the amendments notified to it and amendments objected to by the Central Bank shall not be made.
3. The Retail Investor AIF shall not alter its constitutional document or change its name without the prior approval of the Central Bank.
4. The Retail Investor AIF shall notify the Central Bank 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. The Retail Investor AIF shall notify the Central Bank promptly of any material breach of the investment fund legislation, the requirements imposed on it by the Central Bank or provisions of its prospectus.

#### ii. Offer period

1. The Retail Investor AIF shall ensure that the offer period does not 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.

2. 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. Where the Retail Investor AIFs have multiple closings, this period must commence no later than the date of first closing.
3. The Retail Investor AIF may extend the initial offer period without prior notification to the Central Bank provided that no subscriptions have been received at the date of the proposed extension. The Retail Investor AIF shall notify the Central Bank of any such extensions on an annual basis.
4. The Retail Investor AIF may only extend the initial offer period, where subscriptions have been received, if it has received the prior written approval of the Central Bank for such an extension.
5. The Retail Investor AIF shall only launch share classes at a fixed price after the initial offer period where it has been confirmed to the Central Bank that existing unitholders in the Retail Investor AIF are not prejudiced.

### **iii. Directors of Retail Investor AIF investment companies**

1. Where the Retail Investor AIF is an investment company, departures from the office of director and the reason for the departure shall be notified to the Central Bank immediately by filing the relevant Central Bank form. In all cases where a director wishes to resign and prior to completing the relevant

Central Bank form, the Retail Investor AIF (at Board or its Chair level) must form a view as to the impact of the resignation on the Retail Investor AIF having regard to the current and prospective financial state of the Retail Investor AIF. 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. Where the Retail Investor AIF is an investment company it shall ensure that it does not have directors in common with the board of directors of its depositary.
3. Where the Retail Investor AIF is an investment company a minimum of two directors shall be Irish resident.
4. Where the Retail Investor AIF is an investment company it shall ensure that each of its directors is required to disclose to the board of the Retail Investor AIF any concurrent directorships which they hold.

#### **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 AIFM/management company or the general partner. Where the Retail Investor AIF replaces its depositary, the Retail Investor AIF must ensure that the Central Bank receives, as required, confirmation from both the retiring depositary and new depositary that they are satisfied with the transfer of assets.

2. The Retail Investor AIF shall only terminate the appointment of the depositary:

- (a) upon the appointment of a successor depositary; or
- (b) upon the revocation of the authorisation of the Retail Investor AIF.

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

1. The Retail Investor AIF shall only replace its AIFM or management company with the prior approval of the Central Bank.

2. The Central Bank shall 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.

3. 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 and documented by the Retail Investor AIF.

**vi. Reporting requirements**

1. The Retail Investor AIF shall submit to the Central Bank periodic returns in accordance with the requirements specified on the Central Bank's website.

**vii. Amalgamation of Retail Investor AIFs with other investment funds**

1. A Retail Investor AIF shall only merge or amalgamate with another investment fund where the proposed merger or amalgamation has received the prior approval of the Central Bank.

## Section 3:

### Prospectus requirements

#### i. General requirements

1. The 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 Regulation 24 of the AIFM Regulations regarding disclosure to unitholders obligations. The information set out in Regulation 24(1) to (3) of the AIFM Regulations, which AIFMs are required to make available to prospective investors before they invest, must be disclosed in a Retail Investor AIF's prospectus. For Regulations 24(1)(k), (m) and (n), the prospectus can disclose where the relevant documentation or information is available.
4. The Retail Investor AIF shall offer, free of charge, the prospectus to every prospective unitholder before a contract for the acquisition of units is entered into.
5. The Retail Investor AIF shall ensure that where the prospectus is translated into a language other than English, 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 Retail Investor AIF shall comply with the terms of its prospectus.
  
7. The Retail Investor AIF shall not change its investment objectives or effect a material change to its investment policies, as disclosed in the prospectus without the prior written approval of all unitholders or without approval on the basis of a majority of votes cast at general meeting. “Material” shall be taken to mean, inter alia:

*”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, the Retail Investor AIF shall provide a reasonable notification period<sup>14</sup> to enable unitholders redeem their units prior to implementation of these changes.

8. The Retail Investor AIF shall include details of derogations granted by the Central Bank in its prospectus.

## **ii. General information concerning the Retail Investor AIF**

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

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<sup>14</sup> 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.

- (a) 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.
- (b) The date of establishment, incorporation or registration of the Retail 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 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.
- (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 base currency of the Retail Investor AIF.

- (l) The types and main characteristics of the units and in particular:
- (i) the nature of the right (real, personal or other) represented by the unit;
  - (ii) whether there are original securities or certificates providing evidence of title;
  - (iii) whether there is entry in a register or in an account;
  - (iv) the characteristics of the registered units;
  - (v) indication of any denominations which may be provided for;
  - (vi) an indication of unitholders' voting rights; and
  - (vii) 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.
- (m) Where applicable, indication of stock exchanges or markets where the units are listed or dealt in;
- (n) description of the AIFM's remuneration policies and practices pursuant to Regulation 14 of the AIFM Regulations.

### iii. Investment policy

1. The Retail Investor AIF shall, in its prospectus, disclose the quantitative parameters on the extent of leverage which will be engaged in by the Retail Investor AIF.
2. The Retail Investor AIF shall, in its prospectus, include a list<sup>15</sup> of those stock exchanges and markets (including derivatives

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<sup>15</sup> 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.

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.

3. The Retail Investor AIF shall make a full disclosure in its prospectus of the states, local authorities and public international bodies in the securities of which it is intended to invest more than 20% of its net assets in accordance with the provision of paragraph 7 of section 1.ii (Investment restrictions) of this Part 1.

#### **iv. Investment in other investment funds**

1. The Retail Investor AIF shall, in its prospectus, 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 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 Retail Investor AIF shall only invest in a jurisdiction and/or type of underlying investment where both have been clearly disclosed in its prospectus. 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 specified by the Retail Investor AIF in its prospectus.

## v. Efficient portfolio management

1. The Retail Investor AIF shall specify, in its prospectus, the techniques and instruments that it will utilise for efficient portfolio management purposes. The use of these techniques and instruments must be in line with the best interests of the Retail Investor AIF.
  
2. The Retail Investor AIF shall disclose in its 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 shall 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 Retail Investor AIF shall, in its prospectus, disclose the methodology for calculating the sale or issue price and the repurchase or redemption price of units. This disclosure shall 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; and
  - (d) the means, places and frequency of the publication of those prices.

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

1. The Retail Investor AIF shall, in its prospectus, disclose the manner, amount and calculation of remuneration payable by the Retail Investor AIF to, where relevant, the management company, AIFM, 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, AIFM, directors of the investment company, general partners, the depositary or to third parties.
2. The Retail Investor AIF shall disclose (and quantify to the extent possible), in its prospectus, 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 Retail Investor AIF shall disclose, in its prospectus, the initial offer period.
2. The Retail Investor AIF shall disclose, in its prospectus, the procedures and conditions for subscription, repurchase or redemption of units, including the period within which redemption proceeds will normally be paid or discharged to unitholders. It must also disclose the circumstances in which subscription, repurchase or redemption may be suspended.
3. Where a Retail Investor AIF is an open-ended investment fund with limited liquidity, it shall, in its prospectus, specify the limited nature of the redemption facilities.

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

1. The Retail Investor AIF shall, in its prospectus, disclose the name, form in law, registered office and head office, if different from the registered office, of the AIFM/management company or general partner. If the AIFM/management company or general partner is part of a group, the name of that group must be disclosed. The date of incorporation of the company and indication of duration, if limited, must also be included.
2. The Retail Investor AIF shall, in its prospectus, disclose the names and positions in the AIFM/management company or general partner of the members of the administrative, management and supervisory functions; their experience, both current and past, which is relevant to the 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 AIFM/management company or general partner.
3. The Retail Investor AIF shall, in its prospectus, disclose the amount of the prescribed capital of the AIFM/management company or general partner with an indication of the capital paid-up.

**x. Information concerning AIFM/management company and other service providers**

1. The Retail Investor AIF shall, in its prospectus, disclose the details of service providers.
2. The Retail Investor AIF shall, in its prospectus, disclose the material provisions of the contracts with the

AIFM/management company, general partner or investment company which may be relevant to the unitholders, excluding those relating to remuneration.

3. The Retail Investor AIF shall, in its prospectus, disclose the other significant activities engaged in by its AIFM/management company and any entity performing investment management functions on its behalf.

**xi. Authorisation status**

1. The Retail Investor AIF shall, in its prospectus, state that its authorisation 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, by virtue of its authorisation of this Retail Investor AIF or by reason of its exercise of functions conferred on it by legislation in relation to this Retail Investor AIF, be liable 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.”**

**xii. Risk disclosures**

1. The Retail Investor AIF shall, in its prospectus, 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. The Retail Investor AIF shall, where relevant, contain in its prospectus a prominent risk warning which will make specific reference to the following:
    - (a) any potential for above average risk involved; and
    - (b) the suitability of this type of investment with the potential for above average risk only for people who are in a position to take such a risk.
  3. The Retail Investor AIF shall, in its prospectus, 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 may have on the performance of the Retail Investor AIF.
  4. A Retail Investor AIF which invests in emerging stock exchanges and markets shall include in its prospectus a recommendation that unitholders should not invest a substantial proportion of their investment portfolio in the Retail Investor AIF. This recommendation shall be set out in bold type at the beginning of the prospectus and must cross refer 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 shall set out in bold type the following statement at the beginning of its prospectus:

**“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. The Retail Investor AIF which proposes to make distributions out of capital and which invests greater than 20% in fixed income instruments must highlight, in its prospectus, 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.

### **xiii. Conflicts of interest**

1. The Retail Investor AIF shall, in its prospectus, include a description of the potential conflicts of interest<sup>16</sup> which could arise between:

- (i) the Retail Investor AIF and a unitholder; or
- (ii) the Retail Investor AIF and its AIFM, management company, general partner, investment manager, depository, or their delegates or associated or group companies and the Retail Investor AIF

with details, where applicable of how these are going to be resolved. The Retail Investor AIF shall, in its prospectus, include a description of soft commission arrangements which may be entered into by the Retail Investor AIF.

2. The Retail Investor AIF shall only enter into a transaction with:

- (i) a unitholder; or

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<sup>16</sup> This requirement does not apply to transactions by unitholders in relation to their units. This includes subscriptions, redemptions, conversions or dividend payments.

(ii) the AIFM, management company, general partner, investment manager, depositary, or their delegates or associated or group companies

where there has been full disclosure in the Retail Investor AIF's prospectus.

#### xiv. Directed brokerage services and similar arrangements

1. The Retail Investor AIF shall, in its prospectus, disclose full details of any directed brokerage services or similar arrangement operated in relation to a Retail Investor AIF (including details of services provided).

#### xv. Umbrella Retail Investor AIFs

1. An umbrella Retail Investor AIF, which is an Investment Company, Investment Limited Partnership, Unit Trust or Common Contractual Fund shall, in its prospectus, 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 the Retail Investor AIF, which is an umbrella Retail Investor AIF, issues a supplement to its prospectus, it shall state, in the supplement, that it 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. Where the Retail Investor AIF is an umbrella Retail Investor AIF, it shall, in its prospectus, disclose the extent to which one

sub-fund can invest in another and the conditions which apply to such investments.

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

#### **xvi. Structured Retail Investor AIFs**

1. Where the Retail Investor AIF is a structured Retail Investor AIF it 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.

#### **xvii. Warehousing**

1. The Retail Investor AIF shall only acquire assets pursuant to a warehousing arrangement where the use of such arrangements is fully disclosed in its 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.

#### **xviii. Distributions out of and charging of fees and expenses to capital**

1. The Retail Investor AIF may only make distributions out of capital where its prospectus has included the following disclosures:
  - (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. The Retail Investor AIF shall only charge fees and expenses, including management fees, to capital where its prospectus has included the following disclosures:
  - (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. Where the Retail Investor AIFs invests more than 20% in fixed income instruments, and the priority of the Retail Investor AIF

is the generation of income rather than capital growth this priority shall be specified in the prospectus. 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.

**xix. Hedged and unhedged Retail Investor AIF and share classes**

1. The Retail Investor AIF shall, in its prospectus, 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 Retail Investor AIF shall ensure that its prospectus discloses 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 Retail Investor AIF shall, in its prospectus, disclose the general costs and/or exchange rate risks associated with the currency strategy.
3. The Retail Investor AIF shall, where it deals with an unhedged currency share class, disclose, in its prospectus, that a currency conversion will take place on subscription, redemption and distributions at prevailing exchange rates. The Retail Investor AIF shall, where appropriate, 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 Retail Investor AIF shall indicate in its prospectus 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. The Retail Investor AIF shall, where it deals with hedged currency share classes, disclose, in its prospectus, the implications of the hedging policy. This disclosure shall, at a minimum, 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); and
  - (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 shall only engage in interest rate hedging at share class level where the benefits and costs of such hedging are to be accrued and attributed solely to unitholders in a hedged share class. Such arrangements shall be effected in accordance with the principles established in paragraphs 1 to 4.

**xx. Investment through subsidiaries**

1. The Retail Investor AIF may only invest through one or more subsidiaries where its prospectus discloses:
  - (a) the name of the subsidiary; and
  - (b) that the subsidiary is wholly owned by the Retail Investor AIF.

## Section 4:

### General operational requirements

#### i. Dealing

1. The Retail Investor AIFs shall make the issue and redemption prices of their units available promptly to unitholders on request.
2. The Retail Investor AIF shall not issue units, or if issued shall cancel such units, 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.

#### ii. Hedged share classes

1. The Retail Investor AIF shall ensure that, prior to and during the course of providing currency hedging at class level, the valuation systems operated by the management company, AIFM, investment company or fund administration company is capable of processing and identifying the relevant hedge transactions at share class level. The Retail Investor AIF shall establish and maintain adequate systems that enable a review of the hedge to be undertaken in the light of on-going flows into and out of the share class.

#### iii. Regulated markets

1. The Retail Investor AIF shall ensure that the stock exchanges and markets included on the list contained in the prospectus meet the regulatory criteria (i.e. they must be regulated,

operate regularly, be recognised and open to the public) on an on-going basis.

2. The Retail Investor AIF shall only amend its prospectus to include additional stock exchanges or markets where:
  - (a) those additional stock exchanges meet with the regulatory criteria (i.e. they must be regulated, operate regularly, be recognised and open to the public); and
  - (b) the depositary has confirmed in writing that adequate custody arrangements are in place.

#### **iv. Directed brokerage services or similar arrangements**

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

## Section 5:

### Annual and half-yearly reports

#### i. Publication of annual and half-yearly reports

1. The Retail Investor AIF shall publish an annual report for each financial year. The accounting information given in the annual report must be audited by one or more persons empowered to audit accounts in accordance with the Companies Act 2014. The auditor's report to unitholders, including any qualifications, shall be reproduced in full in the annual report.
2. The Retail Investor AIF shall include the information specified as being required under the AIFM Regulations and the information specified in this section in its annual report.
3. 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.
4. The Retail Investor AIF shall prepare its first set of accounts (whether annual or half-yearly) to a reporting date within nine months of the first issuance of units by the Retail Investor AIF and publish and submit it to the Central Bank within two months if half-yearly or six months if annual. The first annual reports must be prepared to a reporting date within 18 months of incorporation/establishment of the Retail Investor AIF and published and submitted to the Central Bank within six months.

5. The Retail Investor AIF shall publish and submit to the Central Bank its annual report within six months of the end of the financial period to which it relates. The Retail Investor AIF shall publish and submit to the Central Bank its half-yearly report within two months of the end of the reporting period to which it relates.
6. The Retail Investor AIF shall, on request, supply unitholders with copies of the annual and half-yearly reports free of charge.
7. Where the Retail Investor AIF is an umbrella Retail Investor AIF constituted as a unit trust, common contractual fund, investment limited partnership or ICAV, it may produce separate periodic reports for individual sub-funds. In such cases, the report of each sub-fund must name the other sub-funds and state that the reports of such sub-fund are available free of charge on request from the Retail Investor AIF.
8. In accordance with company law, an investment company, other than an ICAV, 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 Retail Investor AIF must indicate, in its annual report, how any transactions undertaken to provide protection against exchange rate risks have been utilised.
2. The Retail Investor AIF must, where relevant, disclose, in its annual report, if distributions have been made out of the capital of the Retail Investor AIF.

3. The Retail Investor AIF shall disclose the details of all sub-investment managers in its annual reports issued.
  
4. The Retail Investor AIF shall include the following in its annual report as well as any significant information which will enable unitholders to make an informed judgement on the development of the Retail Investor AIF and its results:
  - (a) number of units in circulation;
  - (b) NAV per unit, where relevant;
  - (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. Material changes 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 the largest 20 sales by value 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 net 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 net assets in deposits or other accounts with credit institutions shall 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. 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 management companies 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 depositaries systems, the name of the central securities depositary 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 NAV;
- (m) the NAV per unit;
- (n) depositary’s report;
- (o) the annual report must state whether:
  - the Retail Investor AIF is satisfied that there are arrangements (evidenced by written procedures) in place, to ensure that the obligations set out in paragraph 1 of section 1. *xii Dealings by the Retail Investor AIF with (i) unitholders or (ii) the AIFM, management company, general partner, investment manager, depositary, or their delegates or associated or group companies of these of this Part* are applied to all transactions with connected parties; and
  - the Retail Investor AIF is satisfied that transactions with connected parties entered into during the period complied with the obligations set out in paragraph 1 of section 1. *xii Dealings by the Retail Investor AIF with (i) unitholders or (ii) the AIFM, management company, general partner, investment manager, depositary, or their*

*delegates or associated or group companies of these of this Part 1*<sup>17</sup>.

- (p) full details of the amounts paid under any directed brokerage services or similar arrangements; and
- (q) details of any distributions out of capital.

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

1. The Retail Investor AIF shall include the following in its half-yearly report:

- (a) a balance sheet or statement of assets and liabilities;
- (b) number of units in circulation;
- (c) NAV per unit, where relevant;
- (d) 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;
- (e) 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

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<sup>17</sup> This requirement does not apply to transactions by unitholders in relation to their units. This includes subscriptions, redemptions, conversions or dividend payments.

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;

- (f) where a Retail Investor AIF holds more than 10% of its net 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 net assets in deposits or other accounts with credit institutions must submit the relevant details to the Central Bank with their reports;
- (g) investments by sub-funds within an umbrella investment company in the units of other sub-funds within the umbrella shall be disclosed. The policies adopted to disclose cross-investments must be explained in a note to the accounts;
- (h) 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;
- (i) a description of soft commission arrangements affecting the Retail Investor AIF during the reference period;
- (j) 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;

- (k) a description of any material changes in the prospectus during the reporting period;
- (l) a list of exchange rates used in the report;
- (m) 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;
- (n) the half-yearly report must state whether:
  - the Retail Investor AIF is satisfied that there are arrangements (evidenced by written procedures) in place, to ensure that the obligations set out in paragraph 1 of section 1.xii *Dealings by the Retail Investor AIF with (i) unitholders or (ii) the AIFM, management company, general partner, investment manager, depository, or their delegates or associated or group companies of these* of this Part 1 are applied to all transactions with connected parties; and
  - the Retail Investor AIF is satisfied that transactions with connected parties entered into during the period complied with the obligations set out in paragraph 1 of section 1.xii *Dealings by the Retail Investor AIF with (i)*

*unitholders or (ii) the AIFM, management company, general partner, investment manager, depositary, or their delegates or associated or group companies of these of this Part 1<sup>18</sup>; and*

(o) details of any distributions out of capital.

#### iv. Liquidity Management Tools<sup>19</sup>

##### *General operational requirements*

1. The Retail Investor AIF shall disclose in its governing documents the selected liquidity management tools (LMTs) and the terms and conditions under which an LMT can be activated and deactivated.
2. In selecting the two minimum mandatory LMTs per the requirements of Annex V of Directive 2011/61/EU, the Retail Investor AIF shall ensure that the AIFM should consider, where appropriate, selecting at least one quantitative-based LMT (redemption gate, extension of notice period, redemption in kind) and at least one anti-dilution tool (redemption fee, swing pricing, dual pricing, anti-dilution levy).

##### *Side pocket*

1. A Retail Investor AIF may establish a side pocket for assets whose economic or legal features have changed significantly or become uncertain due to exceptional circumstances through:
  - (a) physical segregation; or
  - (b) accounting segregation;

<sup>18</sup> This requirement does not apply to transactions by unitholders in relation to their units. This includes subscriptions, redemptions, conversions or dividend payments.

<sup>19</sup> This section only applies in respect of open-ended Retail Investor AIFs or open-ended Retail Investor AIFs with limited liquidity.

where provided for in the Retail Investor AIF’s governing documents and disclosed to unitholders in advance.

### *Suspensions*

1. Where the Retail Investor AIF’s AIFM activates or deactivates the suspension:
  - (a) of subscription, repurchase and redemption of its units, the Retail Investor AIF must inform the Central Bank immediately upon such activation or deactivation taking effect.
  - (b) of the calculation of the NAV, the Retail Investor AIF must inform the Central Bank immediately upon such activation or deactivation taking effect.
2. Without prejudice to paragraph 1, and in circumstances where the suspension has not been lifted within 21 working days of application, the Retail Investor AIF shall provide the Central Bank with an update on the suspension at the expiration of the 21 working days period and each subsequent period of 21 working days where the suspension continues to apply.
3. Where a competent authority of a member state under Article 46(2)(j) of Directive 2011/61/EU requires the AIFM of the Retail Investor AIF to activate or deactivate the suspension of subscriptions, repurchases and redemptions, the Retail Investor AIF must immediately inform the Central Bank when it becomes aware of this instruction.
4. The Retail Investor AIF shall take all necessary steps to keep the Central Bank informed of relevant information with respect to the management of the Retail Investor AIF that is the subject of the exercised powers as detailed in paragraph 3 of this section.

### *Redemption Gate*

1. On any dealing day that a redemption gate is activated, any request for redemption on such dealing day shall be reduced rateably and the redemption requests shall be treated as if they

were received on each subsequent dealing day until all the units to which the original request related have been redeemed.

# Part II: Specific Fund-Type Requirements

## Section 1:

### Venture or development capital or private equity Retail Investor AIFs

1. The 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:
  - (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; and
  - (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 are held in any one company or group of companies. The provisions of paragraphs 4 and 5 of section 1.ii (*Investment restrictions*) 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 Retail Investor AIF, which invests in venture or development capital or private equity investments, shall specify, in its prospectus:
  - (a) the intention of the Retail Investor AIF regarding the exercise of legal and management control over underlying investments.

- (b) 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:
- (i) the above average risk involved;
  - (ii) the suitability of this type of investment only for unitholders who are in a position to take such a risk;
  - (iii) the likelihood that because the Retail Investor AIF is invested in unquoted companies, delays may arise in meeting redemption requests from unitholders; and
  - (iv) a recommendation that not more than 5% of an investor's portfolio be invested in the Retail Investor AIF.
- (c) 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

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.
  - (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. Where the Retail Investor AIF is a Short-Term Money Market Fund it must have a primary investment objective of maintaining the principal of the fund and aim to provide a return in line with money market rates.
  
2. Where the Retail Investor AIF is a Short-Term Money Market Fund it shall, in accordance with paragraph 3 below, limit investments to high quality money market instruments, as

determined by the 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 on-going basis;
  - (b) the nature of the asset class represented by the instrument;
  - (c) the operational and counterparty risk, in the case of structured financial instruments; and
  - (d) the liquidity profile.
4. Where the Retail Investor AIF is a Short-Term Money Market Fund it shall limit investments to securities or instruments with a residual maturity, until the legal redemption date, of less than or equal to 397 days.
5. Where the Retail Investor AIF is a Short-Term Money Market Fund it must provide daily NAV and price calculations and have daily subscriptions and redemptions of units.
6. Where the Retail Investor AIF is a Short-Term Money Market Fund it shall ensure that the WAM of the portfolio does not exceed 60 days.

7. Where the Retail Investor AIF is a Short-Term Money Market Fund it shall ensure that the WAL does not exceed 120 days. When calculating the WAL for securities, including structured financial instruments, the 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. Where the Retail Investor AIF is a Short-Term Money Market Fund it shall, when calculating the WAM and WAL, take into account the impact of financial derivative instruments, deposits and efficient portfolio management techniques.
  
9. Where the Retail Investor AIF is a Short-Term Money Market Fund it is not permitted to have direct or indirect exposure to equities or commodities, including through financial derivative instruments.
  
10. Where the Retail Investor AIF is a Short-Term Money Market Fund, financial derivative instruments may only be used when these are in line with the money market investment strategy of the 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. Where the Retail Investor AIF is a Short-Term Money Market Fund, investment in other investment funds is not permitted unless those investment funds are also Short-Term Money Market Funds.

12. Where the Retail Investor AIF is a Short-Term Money Market Fund it may have either a constant or fluctuating NAV.

## ii. Money Market Funds

1. Where the Retail Investor AIF is a Money Market Fund it must have a primary investment objective of maintaining the principal of the fund and aim to provide a return in line with money market rates.
2. Where the Retail Investor AIF is a Money Market Fund it shall (in accordance with paragraph 3) limit investments to high quality money market instruments, as determined by the 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 on-going basis;
  - (b) the nature of the asset class represented by the instrument;

- (c) the operational and counterparty risk, in the case of structured financial instruments; and
  - (d) the liquidity profile.
4. Where the Retail Investor AIF is a Money Market Fund it shall limit investments to securities or instruments with a residual maturity, until the legal redemption date, of less than or equal to two years, provided that the time remaining until the next interest reset date is less than or equal to 397 days. Floating rate securities must reset to a money market rate or index.
  5. Where the Retail Investor AIF is a Money Market Fund it must provide daily NAV and price calculations and have daily subscriptions and redemptions of units.
  6. Where the Retail Investor AIF is a Money Market Fund it shall ensure that the WAM of the portfolio does not exceed six months.
  7. Where the Retail Investor AIF is a Money Market Fund it shall ensure that the WAL of the portfolio does not exceed 12 months. When calculating the WAL for securities, including structured financial instruments, the 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. Where the Retail Investor AIF is a Money Market Fund it shall, when calculating the WAM and WAL, take into account the impact of financial derivative instruments, deposits and efficient portfolio management techniques.
9. Where the Retail Investor AIF is a Money Market Fund it is not permitted to have direct or indirect exposure to equities or commodities, including through financial derivative instruments.
10. Where the Retail Investor AIF is a Money Market Fund it may only use financial derivative instruments which give exposure to foreign exchange for hedging purposes. Investment in non-base currencies is not permitted unless the exposure is fully hedged.
11. Where the Retail Investor AIF is a Money Market Fund it may only invest in other investment funds that are Short-Term Money Market Funds or Money Market Funds.
12. Where the Retail Investor AIF is a Money Market Fund it must have a fluctuating NAV.
- iii. Short-Term Money Market Funds – valuation on the basis of amortised cost**
1. Where the Retail Investor AIF is a Short-Term Money Market Funds it is permitted to follow an amortised cost valuation methodology provided the Retail Investor AIF or, where relevant, its delegate has demonstrable expertise in the

operations of money market funds which follow this method of valuation. Such expertise shall be demonstrable where:

- (a) the Short-Term Money Market Fund has obtained a triple-A rating from an internationally recognised credit rating agency; or
  - (b) the management company or investment manager is engaged in the management, or has been engaged in the management, of a triple-A rated money market fund; or
  - (c) in circumstances other than (a) or (b), where the Retail Investor AIF or, where relevant, its delegate, has demonstrated to the Central Bank (through separate application) that appropriate expertise exists in the operation of this type of money market fund.
2. The Retail Investor AIF shall ensure and be satisfied at all times that the persons responsible for the operation of the Short-Term Money Market Fund including under any delegation arrangements have and continue to have the necessary expertise.
3. The 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; and
  - (b) discrepancies in excess of 0.2% between the market value and the amortised cost value of the portfolio are brought to the attention of senior management/directors of the

management company or the board of directors and the depositary.

4. The Retail Investor AIF shall conduct a daily review where discrepancies occur in excess of 0.3% between the market value and the amortised cost value of the portfolio. The 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 Retail Investor AIF shall, in its constitutional document, provide for the escalation procedures set out in paragraphs 3 and 4 of this section or, alternatively, provide that a review of the amortised cost valuation vis-à-vis market valuation will be carried out in accordance with the requirements of the Central Bank. Weekly reviews and any engagement of escalation procedures must be clearly documented.
6. The Retail Investor AIF shall undertake and complete monthly portfolio analysis incorporating stress testing to examine portfolio returns under various market scenarios to determine if the portfolio constituents are appropriate to meet pre-determined levels of credit risk, interest rate risk, market risk and investor redemptions. The results of the periodic analysis must be available to the Central Bank on request.
7. A Retail Investor AIF that is a Money Market Fund is not permitted to follow an amortised cost valuation methodology.

#### **iv. Stress Testing**

1. A Retail Investor AIF authorised in accordance with Regulation (EU) 2017/1131 shall, when conducting stress

testing under Article 28 of Regulation (EU) 2017/1131, adhere to the guidelines establishing common reference parameters of the stress test scenarios that are issued and updated periodically by ESMA.

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

1. Each money market fund which meets the definition contained in Article 2 of Regulation (EU) 2021/379 of the European Central Bank of 22 January 2021 on the balance sheet items of credit institutions and of the monetary financial institutions sector (recast) (ECB/2021/2) and domiciled within a euro area Member State shall submit such periodic returns to the Central Bank as specified by the Central Bank from time to time. Those returns shall be in the form, and contain the information, specified by the Central Bank and published on the Central Bank's website.
2. AIFs that meet the definition contained in Article 2 of Regulation (EU) 2024/1988 of the European Central Bank of 27 June 2024 concerning statistics on investment funds and repealing Decision (EU) 2015/32 (ECB/2014/62) (ECB/2024/17) (recast) and domiciled within a euro area Member State shall submit such periodic returns to the Central Bank as specified by the Central Bank from time to time. Those returns shall be in the form, and contain the information, specified by the Central Bank and published on the Central Bank's website

## Section 3:

### Real Estate Retail Investor AIFs

1. The Retail Investor AIF shall only acquire a real estate interest where that interest has been valued in advance. Such a valuation must be contained in a report and it 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. The Retail Investor AIF may only trade or deal in real estate related assets 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. The Retail investor AIF shall not invest more than 30% of its net assets 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. The Retail Investor AIF shall not invest more than 25% of its net assets in real estate interests which are vacant, in the process of development or requiring development.

5. The Retail Investor AIF shall not invest more than 25% of the Retail Investor AIF's net assets 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 Retail Investor AIF shall, in its prospectus, 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. The Retail Investor AIF shall, in its prospectus, provide 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

Where the Retail Investor AIF invests more than 20% in unregulated investment funds, including investments in hedge funds and other alternative investment funds, it shall comply with the following requirements which are in addition to the general rules applicable to all Retail Investor AIFs.

#### *Diversification*

1. The Retail Investor AIF shall 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) shall be subject to independent audit in accordance with generally accepted international auditing standards; and
  - (b) shall have arrangements in place such that all assets are held by a party/parties independent of the management company of the investment funds.

#### *Management*

3. The Retail Investor AIF shall ensure that its management (and such management's delegate(s)) must demonstrate appropriate experience and expertise in relation to alternative investment funds.

The Retail Investor AIF shall submit as part of its application for authorisation detailed information 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 shall 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 management companies of the underlying investment funds;
  - (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. 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 Retail Investor AIF shall make a quarterly report to the Central Bank on the extent to which the underlying investment funds are diversified between trading strategies.
5. The Retail Investor AIF shall 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 Retail Investor AIF shall, in its prospectus:
- 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*

6. Where the Retail Investor AIF is open-ended it shall 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*

7. The Retail Investor AIF shall 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 this 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."**

8. In addition to the normal information provided, the Retail Investor AIF shall, in its prospectus, include information on the special risks referred to in paragraph 7 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; and
  - (f) potential valuation difficulties.
  
9. The Retail Investor AIF shall explain, in plain language, in its prospectus (including a glossary of terms if necessary) the alternative investment strategies which the underlying investment funds may employ.

10. The Retail Investor AIF shall describe in its prospectus 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.
  
11. The decision to invest in underlying investment funds with lock up periods (i.e. investment funds which do not permit redemptions for a period of time) must not affect the redemption arrangements provided for in the prospectus issued by the Retail Investor AIF. The Retail Investor AIF shall fully disclose, in its prospectus, its 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*

12. The periodic reports must list the names of the underlying investment funds, their management companies 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 5 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. The Retail Investor AIF may invest more than 30% of net assets in an open-ended investment fund and may disregard paragraph 10 of section 1.ii (Investment restrictions) of Part I provided that the underlying fund is a Category 1 investment fund or a Category 2 investment fund.
  
2. In the case of a Category 1 investment fund, the Retail Investor AIF shall provide the Central Bank with the prospectus of the underlying investment fund in advance of investing more than 30% of net assets in that investment fund.
  
3. (a) In the case of a Category 2 investment fund, the Retail Investor AIF shall not invest more than 30% of net assets in an open-ended investment fund without having obtained a confirmation in writing from the Central Bank that it has no objection. Further, the Retail Investor AIF shall provide the Central Bank with the prospectus of the underlying investment fund.  
  
(b) The Retail Investor AIF shall provide a letter to the Central Bank confirming that the underlying investment fund complies in all material respects with the provisions of the AIF Rulebook in respect of Retail Investor AIFs.  
  
(c) The oversight function of the depositary for the category 2 investment fund must, at a minimum, include requirements to:
  - ensure that valuations of assets are carried out in accordance with the valuation policy;
  - 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.
- (d) The Retail Investor AIF shall inform the Central Bank immediately when it becomes aware that the underlying investment fund has materially breached any of its legal, regulatory or constitutional obligations.
4. Where the Category 1 investment fund or Category 2 investment fund is a fund of funds, the Retail Investor AIF's prospectus must:
- (a) 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; and
  - (b) 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).
5. The periodic reports of the Retail Investor AIF shall 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. Where the Retail Investor AIF is closed-ended it must have a finite closed-ended period which must be one of the following:
  - (a) 5 years or less; or
  - (b) 10 years or less 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.

The Retail Investor AIF shall specify, in its constitutional document, that on a future date, specified in either the constitutional document or the prospectus, the Retail 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 Retail Investor AIF;
- (b) redeem all outstanding units and apply to the Central Bank for a revocation of the Retail Investor AIF authorisation;
- (c) convert into an open-ended Retail 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. Where the Retail Investor AIF is closed-ended it may, with the prior approval of the Central Bank, provide for the issue of units other than at net asset value.

## ii. Liquidity

1. For the purposes of section 6.iii (*Changes to existing closed-ended Retail Investor AIFs*), where the Retail Investor AIF is closed-ended but provides liquidity provisions, these must realistically contribute to the ability of a unitholder to realise his/her investment prior to the expiry of the closed-ended period.

## 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, the Retail Investor AIF shall ensure that votes in favour of the change must represent at least 75% of votes cast.
2. Realistic liquidity provisions: Where there is a proposed change to the duration of the Retail Investor AIF with an opportunity for unitholders to redeem or otherwise exit the Retail Investor AIF, the Retail Investor AIF shall ensure that votes in favour of the change must represent at least 50% of votes cast.

*Changes to the investment objective or material changes<sup>20</sup> 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 closed ended Retail Investor AIF, the Retail Investor AIF shall ensure that votes in favour of the change must represent at least 75% of votes cast.
  
4. Realistic liquidity provisions: Where there is a proposed change of investment objective and/or material change of investment policies with an opportunity for unitholders to redeem or otherwise exit the closed-ended Retail Investor AIF, the Retail Investor AIF shall ensure that votes in favour of the change must represent at least 50% of votes cast.

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

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

*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<sup>21</sup> charged by, as relevant, the AIFM, management company or general partner as disclosed in the trust deed, deed of constitution, management agreement, AIFM agreement or partnership agreement, the following approach must be adopted:

<sup>20</sup> In accordance with paragraph 7 of section 3.i of Part I, “material” shall be taken to mean, inter alia: “changes which significantly alter the asset type, credit quality, borrowing or leverage limits or risk profile of the Retail Investor AIF”

<sup>21</sup> The annual fee includes any performance related fee charged by the AIFM, the management company, the general partner or the investment manager.

- (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, it shall ensure that votes in favour of the increase must represent at least 75% of votes cast.
- (b) Realistic liquidity provisions: Where there is a proposed increase in these fees or charges with an opportunity for unitholders to redeem or otherwise exit the Retail Investor AIF, it shall ensure that votes in favour of the increase must represent at least 50% of votes cast.

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

## Section 7:

### Guaranteed Retail Investor AIFs

1. The Retail Investor AIF shall not use the word “guaranteed” in the name of a Retail Investor AIF unless there is, as per paragraph 2, 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 the Retail Investor AIF shall clearly disclose in its prospectus.

#### *Legal agreement*

2. The guarantee shall, at a minimum, satisfy the following:
  - (a) it 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<sup>22</sup>;
  - (b) the guarantor must have the legal authority to enter into the contract;
  - (c) the contract must not contain onerous provisions in respect of the Retail Investor AIF which would permit the guarantor to invalidate the guarantee;
  - (d) the Retail Investor AIF shall, in advance of using “guaranteed” in its name, provide to the Central Bank a letter from its legal advisers to confirm that the guarantee conforms to these criteria;
  - (e) 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; and

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<sup>22</sup> 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.

- (f) the guarantor must be a credit institution with paid-up share capital in excess of €100million which is either:
- i. a credit institution authorised in the European Economic Area (EEA) (European Union Member States, Norway, Iceland, Liechtenstein); or
  - ii. 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
  - iii. a credit institution authorised in Jersey, Guernsey, the Isle of Man, Australia or New Zealand.

### *Disclosure*

3. The Retail Investor AIF shall disclose in a prominent position in its prospectus the following material provisions of the guarantee:
- (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; and
  - (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 shall include the risk warning specified in paragraph 1(b) of section 3.xviii 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 shall 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 may be charged to the capital of the Retail Investor AIF. This will have the effect of lowering the capital value of your investment.”**
3. The Retail Investor AIF shall ensure that any income statement issued to unitholders or shareholders where fees and expenses have been charged to capital shall 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: MARKETING OF AIF TO RETAIL INVESTORS

This Part applies to AIFs other than authorised AIFs which market their units in Ireland to retail investors.

1. Where the AIF has received approval from the Central Bank to market its units in Ireland to retail investors, it shall include the following statement, in a prominent position, in each copy of its 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 \_\_\_\_\_.”**

2. The AIF shall include the following information for Irish unitholders in its prospectus:
  - (a) details of the facilities agent and the facilities maintained;
  - (b) provisions of Irish tax laws, if applicable; and
  - (c) details of the places where issue and repurchase prices can be obtained or are published.
3. Where the AIF is constituted as an umbrella fund, it shall only market sub-funds for which it has received specific approval from the Central Bank.

4. The AIF, in marketing its units in Ireland to retail investors, shall comply with the Consumer Protection Code of the Central Bank.
  
5. The AIF shall submit to the Central Bank a copy of its annual and half-yearly reports, as soon as they are available.

## Chapter 2 - Qualifying Investor AIF Requirements

# Introduction

The AIF Rulebook sets out the rules which apply to Qualifying Investor AIFs. However, the definitive rules for each Qualifying Investor AIF will be set out in its letter of authorisation.

# Part I: General Rules

## Section 1:

### Qualifying Investor AIF Restrictions

#### i. General restrictions

1. Subject to approval by the Central Bank otherwise, the Qualifying Investor AIF shall have a minimum capital commitment<sup>23</sup> or minimum subscription of €100,000 or its equivalent in other currencies.
2. The Qualifying Investor AIF shall only accept capital commitments or subscriptions from an investor who:
  - (a) is a professional client within the meaning of Annex II of MiFID; or
  - (b) receives an appraisal from an EU credit institution, a MiFID firm or a UCITS management company that the investor has the appropriate expertise, experience and knowledge to adequately understand the investment in the Qualifying Investor AIF; or
  - (c) certifies that they are an informed investor by providing the following:
    - Confirmation (in writing) that the investor has such knowledge of and experience in financial and business matters as would enable the investor to properly evaluate the merits and risks of the prospective investment; or
    - Confirmation (in writing) that the investor's business involves, whether for its own account or the account of others, the management, acquisition or disposal of

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<sup>23</sup> Applicable only to Qualifying Investor AIFs that operate a capital commitment mechanism.

property of the same kind as the property of the Qualifying Investor AIF.

Within the EU, Qualifying Investor AIFs may only be marketed to professional investors as defined in the AIFMD unless the Member State in question permits, under the laws of that Member State, AIFs to be sold to other categories of investors and this permission encompasses investors set out in categories (b) and (c) above.

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

- is a senior employee of the company or other legal entity appointed to provide investment management or advisory services (whether discretionary or otherwise) and has experience in the provision of investment management services.

In the case of investments by employees<sup>24</sup>, consultants, secondees and/or partners or groups of employees, consultants, secondees and/or partners, the Qualifying Investor AIF must ensure that the AIFM, management company, investment company, advisor or general partner, as appropriate, is satisfied<sup>25</sup> that prospective unitholders fall within the criteria outlined at (e) above.

4. The Qualifying Investor AIF must ensure that prospective unitholders, as set out in paragraph 3 of Section 1 (i) (*General restrictions*) of Part I, certify in writing to it that they meet the minimum criteria listed in paragraph 3 above, 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.
5. The Qualifying Investor AIF shall not raise capital from the public through the issue of debt instruments. This restriction does not operate to prevent the issue of debt instruments by Qualifying Investor AIFs, on a private basis, to a lending institution or other debt providers to facilitate financing arrangements and where details of the debt instruments must be clearly provided in the prospectus.
6. The Qualifying Investor AIF shall only invest in units of an investment fund managed by its management company or

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<sup>24</sup> An employee who is primarily involved in the provision of clerical, secretarial or administrative functions may not avail of this exemption.

<sup>25</sup> 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.

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

7. The Qualifying Investor AIF shall ensure that the depositary or a competent person appointed by the AIFM and who is approved for the purpose by the depositary, verifies that there are procedures in place and are effectively implemented to ensure that any performance fees payable and accrued pursuant to the AIFs performance fee payment cycle are calculated in accordance with the governing documents of the Qualifying Investor AIF.

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

8. The Qualifying Investor AIF shall specify, in its governing documents, management agreement, or AIFM agreement, the maximum annual fee<sup>26</sup> charged by, as relevant, an AIFM, a management company and/or a general partner of the Qualifying Investor AIF. The maximum annual fee of the Qualifying Investor AIF shall not be increased without approval on the basis of a simple majority of votes cast<sup>27</sup>. In

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<sup>26</sup> The annual fee includes any performance related fee charged by the AIFM, the management company, the general partner or the investment manager.

<sup>27</sup> 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

the event of an increase in the annual fee charged to a Qualifying Investor AIF, a reasonable notification period must be provided by the Qualifying Investor AIF to enable unitholders redeem their units prior to the implementation of the increase.<sup>28</sup> 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.

9. The Qualifying Investor AIF shall specify, in its governing documents, the maximum charge<sup>29</sup> relating to the redemption or repurchase of units. The maximum charge relating to the redemption or repurchase of units may not be increased without approval on the basis of a simple majority of votes cast. In the event of an increase in the 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.<sup>30</sup>

10. The limits on investments contained in this chapter and those set down in the Qualifying Investor AIF's prospectus shall apply at the time of purchase of the investments and continue to apply thereafter. If these limits 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 record such matters and adopt as a priority

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fee disclosed in the prospectus unless the prospectus also provides that a higher fee may be charged.

<sup>28</sup> Only applicable to open-ended funds and open-ended funds with limited liquidity which provide the opportunity for unitholders to redeem prior to the implementation of the change. The AIF Rulebook provides for different procedures when there is no opportunity for unitholders to redeem.

<sup>29</sup> This provision refers to circumstances where the Qualifying Investor AIF imposes charges on redemptions that are not applied in accordance with Annex V of Directive (EU) 2011/61

<sup>30</sup> Only applicable to open-ended funds and open-ended funds with limited liquidity which provide the opportunity for unitholders to redeem prior to the implementation of the change. The AIF Rulebook provides for different procedures when there is no opportunity for unitholders to redeem.

objective the remedying of that situation, taking due account of the interests of its unitholders.

## ii. Constitutional document

1. The Qualifying Investor AIF shall, at all times, comply with its constitutional document.
2. The Qualifying Investor AIF shall entrust its assets to a depository for safe-keeping and this must be expressly specified in its constitutional document.
3. The Qualifying Investor AIF shall, in its constitutional document, provide for the remuneration and the expenditure which the AIFM, management company or general partner and depository are empowered to charge to the Qualifying Investor AIF and the method of calculation of such remuneration and, the costs to be borne by the Qualifying Investor AIF.
4. The Qualifying Investor AIF shall specify, in its constitutional document, the conditions and manner of application of income.
5. The Qualifying Investor AIF shall, where relevant, specify in its governing documents, the circumstances under which there may be effected, the replacement of the AIFM/management company/general partner with another AIFM/management company/general partner (including such a replacement by the Central Bank) and shall contain provisions to ensure the protection of unitholders in the event of any such replacement. The AIFM/management company/general partner of a Qualifying Investor AIF may not be replaced without the prior approval of the Central Bank.

6. The depositary of a Qualifying Investor AIF may not be replaced without the prior approval of the Central Bank. The Qualifying Investor AIF shall specify, in its governing documents, the conditions under which there may be effected, 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.

7. The Qualifying Investor AIF may issue registered certificates where such activity is permitted by its constitutional document.

The Qualifying Investor AIF shall attach rights, in proportion to the fraction of the units held except for voting rights which can only be exercised by whole units. The Qualifying Investor AIF shall ensure that the certificates are signed by the depositary. This signature may be reproduced mechanically.

8. The Qualifying Investor AIFs may provide for the issue of partly paid units in its constitutional document.

9. The Qualifying Investor AIF shall ensure that where its constitutional document provides for subscription in specie, the following provisions must also be included in its constitutional document:

- the nature of the assets to be transferred into the Qualifying Investor AIF would qualify as investments of the Qualifying Investor AIF in accordance with the investment objectives, policies and restrictions of the Qualifying Investor AIF;
- assets to be transferred that can be held in custody must be vested with the depositary or arrangements are made to vest the assets with the depositary;

- for other assets transferred that cannot be held in custody, the depositary shall verify the ownership of such assets by the Qualifying Investor AIF or the AIFM acting on behalf of the Qualifying Investor AIF;
- the number of units to be issued must not exceed the amount that would be issued for the cash equivalent; and
- the depositary is satisfied that the terms of any exchange will not be such as are likely to result in any material prejudice to the existing unitholders of the Qualifying Investor AIF or the depositary is satisfied that there is unlikely to be any material prejudice to the existing unitholders of the Qualifying Investor AIF.

The Qualifying Investor AIF shall ensure that where its governing documents provide for the distribution of assets on a winding up<sup>31</sup>, the Qualifying Investor AIF shall disclose in its prospectus the terms and conditions applicable to the operation of the distribution of assets on a winding-up mechanism.

### iii. Valuation

1. The Qualifying Investor AIF shall specify, in its constitutional document, the rules for the valuation of its assets. These rules shall clearly and unambiguously define an expected method of valuation and shall set out a framework for variation from this method of valuation.
2. The Qualifying Investor AIF shall only purchase and sell assets at prices which are in conformity with the rules in the constitutional document.

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<sup>31</sup> A distribution of assets on a winding up does not constitute a liquidity management tool under Annex V of Directive (EU) 2011/61.

3. The Qualifying Investor AIF shall, in its constitutional document, establish conditions for the creation and cancellation of units or for contributions and withdrawals of contributions of unitholders' capital, as appropriate.
4. The Qualifying Investor AIF shall only issue or sell its units at a price arrived at by dividing the net asset value of the Qualifying Investor AIF (calculated in accordance with the valuation rules required by paragraph 1 above) by the number of units outstanding; such price may be increased by duties and charges.
5. The Qualifying Investor AIF shall only redeem or repurchase its units 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.
6. Dealing in the units of a Qualifying Investor AIF should be carried out at forward prices i.e. the NAV next computed after receipt of subscription and redemption requests.

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

1. Where the Qualifying Investor AIF is an open-ended Qualifying Investor AIF it shall:
  - (a) provide redemption facilities on at least a quarterly basis;
  - (b) redeem when requested at least 10% of net assets on a monthly basis or 25% of net asset on a quarterly basis; and

- (c) not impose a charge on redemptions in excess of 5% of NAV per unit.<sup>32</sup>

2. Qualifying Investor AIFs which:

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

3. Where the open-ended Qualifying Investor AIF provides for dealing on a quarterly basis, the time between submission of a redemption request and payment of settlement proceeds must not exceed 90 calendar days. This period can however be extended by five 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.).

**v. Share classes**

1. Subject to paragraph 2 below, a Qualifying Investor AIF shall only create one or more share classes within the Qualifying Investor AIF, or within a sub-fund of an umbrella Qualifying Investor AIF, where the following requirements are satisfied:
- (a) the constitutional document of the Qualifying Investor AIF must provide for the creation of share classes. In the case of an umbrella Qualifying Investor AIF the provision in the

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<sup>32</sup> This provision refers to circumstances where the Qualifying Investor AIF imposes charges on redemptions that are not applied as an LMT in accordance with Annex V of Directive (EU) 2011/61.

constitutional document to establish the way in which sub-funds, and share classes within sub-funds, are created must be clear and unambiguous;

- (b) each Qualifying Investor AIF or sub-fund thereof must consist of a single pool of assets;
- (c) where more than one share class exists, all the unitholders in the different share classes must be treated fairly; and
- (d) no unitholder in a Qualifying Investor AIF or sub-fund thereof, whether in the same or different share classes, shall obtain preferential treatment, unless the granting of such preferential treatment is disclosed in the prospectus, including a description of how the Qualifying Investor AIF ensures the fair treatment of investors. Where a unitholder in a Qualifying Investor AIF or sub-fund thereof, whether in the same or different share classes, obtains such preferential treatment, it shall not result in a material disadvantage to other unitholders in the Qualifying Investor AIF or relevant sub-fund.

Share classes may be established which may be differentiated on the basis of subscription/redemption procedures, asset exposure, distribution policies or charging structure, hedging policies or other criteria clearly disclosed in the prospectus and permitted by the constitutional document.

2. Subject to paragraphs 3 to 8:

- (a) The Qualifying Investor AIF may allocate assets to individual share classes where the arrangement:
  - is not made for the purpose of pursuing a separate investment objective by the share class;
  - does not result in a share class operating de facto as a separate sub-fund; or
  - is not created in order to circumvent the requirements set out in paragraph 1 of this section;

and

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

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

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

- (a) the issuance of shares at a price other than NAV without prior approval of the Central Bank;

- (b) excuse and exclude provisions;
  - (c) stage investing; and
  - (d) management participation.
4. In order for a Qualifying Investor AIF to provide for a share class with one or more of the features noted in paragraph 3(a) – (d) and to allocate the returns of a specific asset to that share class the following general conditions apply:
- (a) the ability to establish share classes providing for the features outlined in paragraph 3(a) – (d) has been provided for in the Qualifying Investor AIF’s governing documents and has been disclosed to unitholders in advance;
  - (b) the Qualifying Investor AIF’s prospectus permits establishment of share classes which provide for different levels of participation in the Qualifying Investor AIF;
  - (c) the unitholder’s interest in a Qualifying Investor AIF is proportionate to:
    - the capital it has paid into the Qualifying Investor AIF at a particular point in time; and/or
    - the predetermined flow of capital returns to the share class; and/or
    - the extent to which the share class held by the unitholder participates in the assets of the Qualifying Investor AIF.
  - (d) where the unitholder has subscribed in the Qualifying Investor AIF on the basis of a capital commitment and periodic drawdowns from the unitholder, the Qualifying Investor AIF maintains records on a per-investor basis to enable it to clearly identify commitments paid and commitments outstanding for each unitholder (“capital accounting”); and

- (e) the capital accounting methodology is consistent with the requirements of Commission Delegated Regulation (EU) 231/2013 which require the AIFM to establish, implement and maintain accounting policies and procedures to ensure that the calculation of the NAV is carried out as required by that Delegated Regulation and the AIFM Regulations.
5. Where a Qualifying Investor AIF issues new units at a price below NAV, this shall not result in a material disadvantage to other unitholders in the Qualifying Investor AIF.
6. A Qualifying Investor AIF may facilitate excuse provisions (which enable a unitholder to be excused from an investment that the Qualifying Investor AIF proposes to make) and/or exclude provisions (which permits the Qualifying Investor AIF to exclude a unitholder from an investment that the Qualifying Investor AIF proposes to make) provided that:
- (a) the excuse and/or exclude provisions are predetermined and documented by the Qualifying Investor AIF (in respect of excuse provisions by way of a written document between the Qualifying Investor AIF and the unitholder prior to an investment being made in the Qualifying Investor AIF and, in respect of exclude provisions, by providing for the circumstances in which this may occur in the governing documents of the Qualifying Investor AIF);
  - (b) in each case, unless the written document agreed with the unitholder or the governing documents provide otherwise, a notification must be provided by the unitholder or Qualifying Investor AIF (depending on the party invoking the provision) outlining the basis on which the excuse or exclude provision is being invoked.

7. A Qualifying Investor AIF may, at a later stage in the life cycle of the Qualifying Investor AIF, permit new investors to acquire units in the Qualifying Investor AIF. The purchase of units by way of transfer from an existing unitholder or the subscription for new units in the Qualifying Investor AIF may be facilitated by the Qualifying Investor AIF by way of establishment of a new share class which provides for participation in (i) one or more existing investments; (ii) one or more existing and future investments; or (iii) one or more future investments of the Qualifying Investor AIF only and provided that:

- (a) upon acquisition by way of transfer, the terms of investment by the new unitholder is clearly documented;
- (b) upon the issue of new units, a new share class is established for the unitholder; and
- (c) the commitments paid and commitments outstanding for each unitholder are accounted for using a capital accounting methodology.

8. A Qualifying Investor AIF may establish management share classes which permit persons designated by the AIFM as entitled to participate in investments of the Qualifying Investor AIF. Such classes may participate in the Qualifying Investor AIF on the basis of conditions which differentiate the class from other classes in the Qualifying Investor AIF. This is subject to:

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

### *Charity Share Classes*

1. A Qualifying Investor AIF may establish a share class that makes distributions to charity, subject to the following requirements:
  - (a) the unitholder must elect to subscribe to such a share class and cannot be automatically invested in such a share class;
  - (b) distributions should only be paid to a charity that is approved / authorised / registered in the relevant jurisdictions. Details of the charity and evidence of their approval / authorisation / registration status should be provided to the Central Bank on request;
  - (c) the prospectus must clearly set out:
    - the implications of such a share class - that the relevant charity and not the unitholder will benefit financially from distributions from the Qualifying Investor AIF;
    - details of the charity to which the distributions are being made and the circumstances under which such distributions will take place; and
    - that such distributions will not be paid out of the capital of the Qualifying Investor AIF.
  - (d) periodic reporting to unitholders (for example, in the annual reports) must include details of the amounts that have been distributed to charity.
  
2. The requirements outlined in paragraph 1 shall not apply to Sharia-compliant funds in relation to the ordinary, day-to-day activities carried out in the management of their investments to ensure compliance with Sharia law.

### **vi. Umbrella Qualifying Investor AIFs**

1. 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.
2. Where the Qualifying Investor AIF is constituted as an umbrella Qualifying Investor AIF, it shall ensure that each of its sub-funds complies with the requirements to which it is subject.
3. Where the Qualifying Investor AIF is an umbrella Qualifying Investor AIF it shall, as appropriate, provide in its constitutional document that separate records will be maintained for each sub-fund with the assets and liabilities being allocated to each sub-fund.
4. The Qualifying Investor AIF shall ensure that, where relevant, its constitutional document provides 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.
5. 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.
6. 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 Funds. 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 intermediary investment vehicles**

1. A Qualifying Investor AIF, for the purposes of implementing its investment strategy, may invest through intermediary investment vehicles, including but not limited to special purpose vehicles, aggregators, subsidiaries or on a co-investment basis, subject to the following:
  - (a) the use and purpose of such intermediary investment vehicles is disclosed in the prospectus of the Qualifying Investor AIF;
  - (b) where a Qualifying Investor AIF establishes a wholly owned subsidiary, and that wholly owned subsidiary is deemed not to be under the control of the Qualifying Investor AIF as defined in AIFMD, the ability of the wholly owned subsidiary to act other than in a manner consistent with the investment objective and policy of the Qualifying Investor AIF shall be restricted by the constitutional document of the wholly owned subsidiary;
  - (c) the intermediary investment vehicle must not be an investment fund;
  - (d) the Qualifying Investor AIF shall ensure that its AIFM conducts appropriate due diligence of the intermediary investment vehicle prior to

investment in the intermediary investment vehicle;  
and

- (e) the Qualifying Investor AIF shall ensure that the AIFM has documented policies and procedures in place related to its due diligence, oversight and active monitoring of intermediary investment vehicles used by the Qualifying Investor AIF.

**viii. Dealings by the Qualifying Investor AIF with (i) unitholders; or (ii) the AIFM, depositary, management company, general partner, investment manager, or their delegates or associated or group companies**

1. The Qualifying Investor AIF shall only enter into a transaction with:

- (i) a unitholder; or  
(ii) the AIFM, management company, general partner, investment manager, depositary or any of their delegates or associated or group companies

where it is negotiated at arm's length. Transactions must be in the best interests of the unitholders<sup>33</sup>.

2. The appointments of service providers to carry out services are not transactions with the Qualifying Investor AIF.

3. 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

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<sup>33</sup> This requirement does not apply to transactions by unitholders in relation to their units. This includes subscriptions, redemptions, repurchases, conversions or dividend payments.

- (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.

## Section 2:

### Supervisory requirements

#### i. General conditions

1. Unless it is required by the AIFM Regulations to have an authorised AIFM at an earlier date, a Qualifying Investor AIF authorised on or after 22 July 2013 by the Central Bank must have an authorised AIFM within two years from the Qualifying Investor AIF's date of launch i.e. the date when the initial offer period closes or, where there are multiple closings, the date of first closing.
2. The Qualifying Investor AIF shall not alter its constitutional document or change its name without the prior approval of the Central Bank.
3. The Qualifying Investor AIF shall notify the Central Bank in advance of proposed amendments to the (i) governing documents or (ii) the name of the Qualifying Investor AIF. The Central Bank may object to the amendments notified to it and amendments objected to by the Central Bank may not be made.
4. The Qualifying Investor AIF shall notify the Central Bank promptly of any material breach of the investment fund legislation, the requirements imposed on it by the Central Bank or provisions of its prospectus.

#### ii. Offer period

1. The Qualifying Investor AIF shall ensure that the offer period does not commence prior to the authorisation of the Qualifying Investor AIF or approval in the case of a sub-fund.

2. The initial offer period shall be disclosed in the prospectus of the Qualifying Investor AIF.
  
3. Where during the initial offer period subscription proceeds are received by the Qualifying Investor AIF but the Qualifying Investor AIF does not issue units in respect of such proceeds, upon the expiry of the initial offer period or where the initial offer period is extended, the investor may request the return of the subscription proceeds and the AIFM shall arrange for such return to the investor without undue delay and no later than three months from the date of the request subject to applicable law and regulation.

### **iii. Directors of Qualifying Investor AIF investment companies**

1. Where the Qualifying Investor AIF is an investment company, departures from the office of director and the reason for the departure must be notified to the Central Bank immediately in accordance with Central Bank processes and procedures. Such processes and procedures may be amended from time to time. In all cases where a director wishes to resign and prior to providing the relevant Central Bank notification, the Qualifying Investor AIF (at Board or its Chair level) must form a view as to the impact of the resignation on the Qualifying Investor AIF having regard to the current and prospective financial state of the Qualifying Investor AIF. 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 notification. The Board or its Chair may consult the Central Bank in order to help it form a view on that matter.

2. Where the Qualifying Investor AIF is an investment company it shall ensure that it does not have directors in common with the board of directors of its depositary.
3. Where the Qualifying Investor AIF is an investment company, a minimum of two directors must be Irish resident.
4. Where the Qualifying Investor AIF is an investment company it shall ensure that each of its directors is required to disclose to the board of the Qualifying Investor AIF any concurrent directorships which they hold.

**v. 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 AIFM/management company or the general partner. Where the Qualifying Investor AIF replaces its depositary, the Qualifying Investor AIF must ensure that the Central Bank receives, as required, confirmation from both the retiring depositary and new depositary that they are satisfied with the transfer of assets.
2. The Qualifying Investor AIF shall only terminate the appointment of the depositary:
  - (a) upon the appointment of a successor depositary; or
  - (b) upon the revocation of the authorisation of the Qualifying Investor AIF.

#### **iv. Replacement of AIFM, management company, general partner or third party**

1. The Qualifying Investor AIF may only replace its AIFM, management company or general partner with the prior approval of the Central Bank.
  
2. The Central Bank must be notified in advance of any proposal to replace the following third parties, which have contracted (directly or indirectly) with the investment company/AIFM/management company/general partner. These third parties are:
  - (a) depositary;
  - (b) investment manager;
  - (c) auditor; and
  - (d) fund administration company.

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

3. The procedures to be followed by Qualifying Investor AIFs in relation to the replacement of an AIFM, management company, general partner, investment manager or fund administration company must be approved and documented by the Qualifying Investor AIF.

#### **v. Reporting requirements**

1. The Qualifying Investor AIF shall submit to the Central Bank periodic returns in accordance with the requirements specified on the Central Bank's website.

**vi. Amalgamation of Qualifying Investor AIFs with other investment funds**

1. A Qualifying Investor AIF may only merge or amalgamate with another investment fund where the proposed merger or amalgamation has received the prior approval of the Central Bank.

## Section 3:

### Prospectus requirements

#### i. General requirements

1. The Qualifying 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. The Qualifying Investor AIF must where relevant comply with Regulation 24 of the AIFM Regulations regarding disclosure to unitholders obligations. The information set out in Regulation 24 (1) to (3) of the AIFM Regulations, which AIFMs are required to make available to prospective investors before they invest, must be disclosed in a Qualifying Investor AIF's prospectus. For Regulations 24(1)(k), (m) and (n), the prospectus can disclose where the relevant documentation or information is available.
4. The Qualifying Investor AIF must offer, free of charge, the prospectus to every prospective unitholder before a contract for the acquisition of units is entered into.
5. The Qualifying Investor AIF shall ensure that where the prospectus is translated into a language other than English, 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 Qualifying Investor AIF shall comply with the terms of its prospectus.
  
7. The Qualifying Investor AIF may not change its investment objectives or effect a material change to its investment policies, as disclosed in the prospectus, without the prior approval on the basis of a simple majority of votes cast.  
“Material” shall be taken to mean, inter alia:

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

In the event of a change of investment objectives and/or investment policy, on the basis of a simple majority of votes cast, the Qualifying Investor AIF must provide a reasonable notification period to enable unitholders redeem their units prior to implementation of these changes.<sup>34</sup>

8. The Qualifying Investor AIF shall include details of derogations granted by the Central Bank in its prospectus.

**ii. General information concerning the Qualifying Investor AIF**

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

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<sup>34</sup> Only applicable to open-ended funds and open-ended funds with limited liquidity which provide the opportunity for unitholders to redeem prior to the implementation of the change. The AIF Rulebook provides for different procedures where there is no opportunity for unitholders to redeem.

- (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, incorporation or registration 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 base currency of the Qualifying Investor AIF;

- (l) The types and main characteristics of the units and in particular:
  - (i) the nature of the right (real, personal or other) represented by the unit;
  - (ii) whether there are original securities or certificates providing evidence of title;
  - (iii) whether there is entry in a register or in an account;
  - (iv) the characteristics of the registered units;
  - (v) indication of any denominations which may be provided for;
  - (vi) an indication of unitholders' voting rights; and
  - (vii) 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;
- (m) where a Qualifying Investor AIF proposes issuing partly paid units, the nature of the commitment which unitholders will enter into must be fully disclosed;
- (n) where applicable, indication of stock exchanges or markets where the units are listed or dealt in;
- (o) a description of the AIFM's remuneration policies and practices pursuant to Regulation 14 of the AIFM Regulations; and
- (p) any additional information relevant to the valuation of assets.

### **iii. Investments in other investment funds**

1. The Qualifying Investor AIF shall, in its prospectus, 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 costs relating to the underlying investment funds which will be borne by the Qualifying Investor AIF. In addition to disclosure regarding fees which will arise at the level of the Qualifying 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. Where the Qualifying Investor AIF invests in other investment funds it may only invest in another investment fund which itself invests more than 50% of net assets in other investment funds where the Qualifying Investment AIF has made clear disclosure regarding increased costs and lack of transparency concerning the ultimate exposure. Any such investments must not be made for the purpose of duplicating management and/or investment management fees.

#### iv. Dealing

1. The Qualifying Investor AIF shall disclose, in its prospectus, the initial offer period.
2. The Qualifying Investor AIF shall disclose, in its prospectus, the procedures and conditions for subscription, repurchase or redemption of units, including the period within which redemption proceeds will normally be paid or discharged to unitholders. It must also disclose the circumstances in which subscription, repurchase or redemption may be suspended.
3. Where a Qualifying Investor AIF is an open-ended investment fund with limited liquidity, it shall, in its prospectus, specify the limited nature of the redemption facilities.

**v. Settlement of redemptions through a distribution of assets**

1. Where the Qualifying Investor AIF provides for the settlement of redemptions through a distribution of assets, the Qualifying Investor AIF shall disclose the terms and conditions applicable in its prospectus.

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

1. The Qualifying Investor AIF shall, in its prospectus, disclose the name, form in law, registered office and head office, if different from the registered office, of the AIFM/management company or general partner. If the AIFM/management company or general partner is part of a group, the name of that group must be disclosed. The date of incorporation of the company and indication of duration, if limited, must also be included.
2. The Qualifying Investor AIF shall, in its prospectus, disclose the names and positions in the AIFM/management company or general partner of the members of the administrative, management and supervisory functions; their experience, both current and past, which is relevant to the Qualifying Investor AIF; and details of their main activities outside the AIFM/management company or general partner where those are of significance with respect to that AIFM/management company or general partner.

**vii. Information concerning AIFM/management company and other service providers**

1. The Qualifying Investor AIF shall, in its prospectus, disclose the details of service providers.

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

**viii. Authorisation status**

1. The Qualifying Investor AIF shall state in a prominent position in its prospectus that it has been authorised by the Central Bank for marketing solely to qualifying investors. It must specify its minimum capital commitment and/or minimum subscription requirements and add the following:

**“While this Qualifying Investor AIF is authorised by the Central Bank, the Central Bank has not set any limits or other restrictions on the investment objectives, the investment policies or on the degree of leverage which may be employed by the Qualifying Investor AIF.”**

2. The Qualifying Investor AIF shall, in its prospectus, state that its authorisation 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:
3. **“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.”**

#### **ix. Conflicts of interest**

1. The Qualifying Investor AIF shall, in its prospectus, include a description of the potential conflicts of interest<sup>35</sup> which could arise between:

- (i) the Qualifying Investor AIF and unitholders; and/or
- (ii) the Qualifying Investor AIF and its AIFM, management company, general partner, investment manager, depositary or any of their delegates or associated or group companies,

with details, where applicable, of how these conflicts might be resolved.

2. The Qualifying Investor AIF shall, in its prospectus, include a description of soft commission arrangements which may be entered into by the Qualifying Investor AIF.
3. The Qualifying Investor AIF shall only enter into a transaction with:
  - (i) a unitholder; or
  - (ii) the AIFM, management company, general partner, investment manager, depositary or their delegates or associated or group companies,

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<sup>35</sup> This requirement does not apply to transactions by unitholders in relation to their units. This includes subscriptions, redemptions, conversions or dividend payments.

where there has been full disclosure in the Qualifying Investor AIF's prospectus.

#### **x. Umbrella Qualifying Investor AIFs**

1. An umbrella Qualifying Investor AIF which is an Investment Company, Investment Limited Partnership, Unit Trust or Common Contractual Fund shall, in its prospectus, include the words: "An umbrella fund with segregated liability between sub-funds". Investment companies constituted as umbrella Qualifying Investor AIFs which were authorised and commenced trading before 30 June 2005 and which do not have segregated liability between sub-funds must clearly disclose the potential risks to unitholders arising from the absence of the segregation of liability between sub-funds.
2. Where the Qualifying Investor AIF, which is an umbrella Qualifying Investor AIF, issues a supplement to its prospectus, it shall state, in the supplement that it 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. Where the Qualifying Investor AIF is an umbrella Qualifying Investor AIF, it shall, in its prospectus disclose the extent to which one sub-fund can invest in another and the conditions which apply to such investments.
4. Where the Qualifying Investor AIF is an umbrella Qualifying Investor AIF it shall, in its prospectus, clearly state the charges, if any, applicable to the exchange of units in one sub-fund for units in another.

#### **xi. Warehousing**

1. The Qualifying Investor AIF shall only acquire assets pursuant to a warehousing arrangement where the use of such arrangements is provided for in its prospectus, including details of any fees, charges or interest payable in relation to such arrangements.

## xii. Liquidity Management Tools<sup>36</sup>

### *General operational requirements*

1. The Qualifying Investor AIF shall disclose in its governing documents the selected liquidity management tools (LMTs) and the terms and conditions under which an LMT can be activated and deactivated.
2. In selecting the two minimum mandatory LMTs per the requirements of Annex V of Directive 2011/61/EU, the Qualifying Investor AIF shall ensure that the AIFM should consider, where appropriate, selecting at least one quantitative-based LMT (redemption gate, extension of notice period, redemption in kind) and at least one anti-dilution tool (redemption fee, swing pricing, dual pricing, anti-dilution levy).

### *Side pocket*

1. A Qualifying Investor AIF may establish a side pocket for assets whose economic or legal features have changed significantly or become uncertain due to exceptional circumstances through:
  - (a) physical segregation; or
  - (b) accounting segregation;

where provided for in the Qualifying Investor AIF's governing documents and disclosed to unitholders in advance.

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<sup>36</sup> This section only applies in respect of open-ended Qualifying Investor AIFs or open-ended Qualifying Investor AIFs with limited liquidity.

## *Suspensions*

1. Where the Qualifying Investor AIF's AIFM activates or deactivates the suspension:
  - (a) of subscription, repurchase and redemption of its units, the Qualifying Investor AIF must inform the Central Bank immediately upon such activation or deactivation taking effect.
  - (b) of the calculation of the NAV, the Qualifying Investor AIF must inform the Central Bank immediately upon such activation or deactivation taking effect.
  
2. Without prejudice to paragraph 1, and in circumstances where the suspension has not been lifted within 21 working days of application, the Qualifying Investor AIF shall provide the Central Bank with an update on the suspension at the expiration of the 21 working days period, and each subsequent period of 21 working days where the suspension continues to apply.
  
3. Where a competent authority of a member state under Article 46(2)(j) of Directive 2011/61/EU requires the AIFM of the Qualifying Investor AIF to activate or deactivate the suspension of subscriptions, repurchases and redemptions, the Qualifying Investor AIF must immediately inform the Central Bank when it becomes aware of this instruction.
  
4. The Qualifying Investor AIF shall take all necessary steps to keep the Central Bank informed of relevant information with respect to the management of the Qualifying Investor AIF that is the subject of the exercised powers as detailed in paragraph 3 of this section.

## *Redemption Gate*

1. On any dealing day that a redemption gate is activated, any request for redemption on such dealing day shall be reduced

rateably and the redemption requests shall be treated as if they were received on each subsequent dealing day until all the units to which the original request related have been redeemed.

## Section 4:

### General operational requirements

#### i. Dealing

1. The Qualifying Investor AIFs shall make the issue and redemption prices of their units available promptly to unitholders on request.
2. The Qualifying Investor AIF shall not issue units, or if issued shall cancel such units, 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. A Qualifying Investor AIF may only retain redemption proceeds where this is provided for in the prospectus and reflects the redemption policy of the underlying investment fund(s) and until such time as the full redemption proceeds from the underlying investment fund(s) is received.

The retention of such redemption proceeds should not be considered as the activation of a redemption gate as provided for under Annex V of Directive (EU) 2011/61/EU.

## Section 5:

### Annual and half-yearly reports

#### i. Publication of annual and half-yearly reports

1. The Qualifying Investor AIF shall publish an annual report for each financial year. The accounting information given in the annual report must be audited by one or more persons empowered to audit accounts in accordance with the Companies Acts. The auditor's report to unitholders, including any qualifications, shall be reproduced in full in the annual report.
2. The Qualifying Investor AIF shall include the information specified in the AIFM Regulations and the information specified in this section in its annual report.
3. A Qualifying Investor AIF established as a Unit Trust or Common Contractual Fund must publish a half-yearly report covering the first six months of the financial period. The information set out in this section must be incorporated into the half-yearly report.
4. The Qualifying Investor AIF shall prepare a set of accounts (whether an interim report or an annual report) to a reporting date within 12 months of the first issuance of units by the Qualifying Investor AIF, and publish and submit it to the Central Bank within two months if an interim report or six months if an annual report. The first annual reports must be prepared to a reporting date within 18 months of incorporation/establishment of the Qualifying Investor AIF and published and submitted to the Central Bank within six months. A Qualifying Investor AIF established as a Unit Trust or Common Contractual Fund shall publish and submit to the

Central Bank its half-yearly report within two months of the end of the reporting period to which it relates.

5. The Qualifying Investor AIF shall publish and submit to the Central Bank its annual report within six months of the end of the financial period to which it relates.
6. The Qualifying Investor AIF shall, on request, supply unitholders with copies of the annual reports and half-yearly reports (if any) free of charge.
7. Where the Qualifying Investor AIF is an umbrella Qualifying Investor AIF constituted as a Unit Trust, Common Contractual Fund, ICAV, or Investment Limited Partnership it may produce separate periodic reports for individual sub-funds. In such cases, the report of each sub-fund must name the other sub-funds and state that the reports of such sub-fund are available free of charge on request from the Qualifying Investor AIF.
8. In accordance with company law, an investment company other than an ICAV 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. Where the Qualifying Investor AIF is an investment company other than an ICAV it shall confirm in its annual report, whether or not, the aim of spreading investment risk has been maintained.
2. The Qualifying Investor AIF shall include the following in its annual report as well as any significant information which will

enable unitholders to make an informed judgement on the development of the Qualifying Investor AIF and its results:

- (a) number of units in circulation;
- (b) NAV per unit, where relevant;
- (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. 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 repo contracts 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 financial 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 international 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; and
  - the NAV per unit.
- (j) depositary's report;
- (k) the annual report must state whether:
  - the Qualifying Investor AIF is satisfied that there are arrangements (evidenced by written procedures) in place, to ensure that the obligations set out in paragraph 1 of section 1.viii *Dealings by the Qualifying Investor AIF with: (i) unitholders; or (ii) the AIFM, depositary, management company, general partner, investment manager, or any of their delegates or associated or group companies*

are applied to all transactions with connected parties;<sup>37</sup> and

- the Qualifying Investor AIF is satisfied that transactions with connected parties entered into during the period complied with the obligations set out in paragraph 1 of section 1.viii *Dealings by the Qualifying Investor AIF with: (i) unitholders; or (ii) the AIFM, depositary, management company, general partner, investment manager, or any of their delegates or associated or group companies of this Part*<sup>38</sup>;
- (l) a report on any commissions received by the AIFM/management company of the Qualifying Investor AIF by virtue of an investment in the units of another investment fund where these commissions are not paid into the property of the Qualifying Investor AIF. This report must include an explanation regarding how the receipt of such commissions by the management company is consistent with its inducements and best execution obligations; and
- (m) the names of any wholly owned subsidiaries.

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

3. The Qualifying Investor AIF shall include the following in its half-yearly report:
- (a) a balance sheet or statement of assets and liabilities;
  - (b) number of units in circulation;
  - (c) NAV per unit, where relevant;

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<sup>37</sup> This requirement does not apply to transactions by unitholders in relation to their units. This includes subscriptions, redemptions, conversions or dividend payments.

<sup>38</sup> This requirement does not apply to transactions by unitholders in relation to their units. This includes subscriptions, redemptions, conversions or dividend payments.

- (d) 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 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 half-yearly 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;
- (e) investments by sub-funds within an umbrella investment company in the units of other sub-funds within the umbrella shall be disclosed. The policies adopted to disclose cross-investments must be explained in a note to the accounts;
- (f) 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;
- (g) a description of soft commission arrangements affecting the Qualifying Investor AIF during the reference period;
- (h) 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.

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 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 depositaries systems, the name of the central securities depositary system must be disclosed;

- (i) a description of any material changes in the prospectus during the reporting period;
- (j) a list of exchange rates used in the report;
- (k) where a Qualifying 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;
- (l) the half-yearly report must state whether:
  - the Qualifying Investor AIF is satisfied that there are arrangements (evidenced by written procedures) in place, to ensure that the obligations set out in paragraph 1 of section 1.viii *Dealings by the Qualifying Investor AIF with: (i) unitholders; or (ii) the AIFM, depositary, management company, general partner, investment manager, or any of their delegates or associated or group companies of this Part* are applied to all transactions with connected parties<sup>39</sup>; and

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<sup>39</sup> This requirement does not apply to transactions by unitholders in relation to their units. This includes subscriptions, redemptions, conversions or dividend payments.

- the Qualifying Investor AIF is satisfied that transactions with connected parties entered into during the period complied with the obligations set out in paragraph 1 of section 1.viii *Dealings by the Qualifying Investor AIF with: (i) unitholders; or (ii) its AIFM, depositary, management company, general partner, investment manager, or any of their delegates or associated or group companies of this Part*<sup>40</sup>; and
- (m) the names of any wholly owned subsidiaries.

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<sup>40</sup> This requirement does not apply to transactions by unitholders in relation to their units. This includes subscriptions, redemptions, conversions or dividend payments.

# Part II: Specific Fund-Type Requirements

## Section 1:

### Money market Qualifying Investor AIFs

#### i. Stress testing

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

#### ii. European Central Bank reporting requirements

1. Each money market fund which meets the definition contained in Article 2 of Regulation (EU) 2021/379 of the European Central Bank of 22 January 2021 on the balance sheet items of credit institutions and of the monetary financial institutions sector (recast) (ECB/2021/2) and domiciled within a euro area Member State shall submit such periodic returns to the Central Bank as specified by the Central Bank from time to time. Those returns shall be in the form, and contain the information, specified by the Central Bank and published on the Central Bank's website.
2. The AIFs which meet the definition contained in Article 2 of Regulation (EU) 2024/1988 of the European Central Bank of 27 June 2024 concerning statistics on investment funds and repealing Decision (EU) 2015/32 (ECB/2014/62) (ECB/2024/17) (recast) and domiciled within a euro area Member State shall submit such periodic returns to the

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

## 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. 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. Subject to paragraph 7, a Qualifying Investor AIF which invests more than 50% of net assets in one other investment fund is subject to the following rules:
  - (a) the underlying investment fund is authorised in Ireland; or
  - (b) 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;
  - established in a Member State of the European Economic Area which are authorised under domestic legislation implementing Directive 2009/65/EC;

- established in Guernsey and authorised as Class A Schemes;
- established in Jersey as Recognised Funds;
- established in the Isle of Man as Authorised Schemes;
- authorised AIFs;
- investment funds established in Hong Kong and authorised by the SFC under section 104 of the Securities and Futures Ordinance.

## 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;
  - such other funds which the Central Bank may specify upon application and which comply, in all material respects, with the provisions of these requirements in respect of Qualifying Investor AIFs.
4. In the case of category 1, the Qualifying Investor AIF shall provide the Central Bank with the prospectus of the underlying investment fund in advance of investing more than 50% of net assets in one other investment fund.
  5. (a) In the case of category 2, the Qualifying Investor AIF shall not invest more than 50% of net assets in one other investment fund without having obtained a confirmation in writing from the Central Bank that it has no objection.

Further, the Qualifying Investor AIF shall provide the Central Bank with the prospectus of the underlying investment fund.

- (b) The Qualifying Investor AIF shall provide a letter to the Central Bank confirming that the underlying investment fund complies in all material respects with the provisions of the AIF Rulebook in respect of Qualifying Investor AIFs.
- (c) The oversight function of the depositary for the category 2 investment fund must, at a minimum, include requirements to:
- ensure that valuations of assets are carried out in accordance with the valuation policy;
  - 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.
- (d) The Qualifying Investor AIF shall 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. Other than in the case of a Qualifying Investor AIF as specified in paragraph 2 of Section 3, (iii) *Investments in other investment funds* of Part I, a Qualifying Investor AIF to whom paragraph 2 of this section applies may not invest in an investment fund which itself invests more than 50% of net assets in another investment fund.
7. Paragraphs 1 to 6 of this section do not apply in circumstances where:

- the Qualifying Investor AIF has a minimum subscription limit of €500,000 or its equivalent in other currencies. The aggregate of an investor's investments in the sub-funds of an umbrella Qualifying Investor AIF cannot be taken into account for the purposes of determining this requirement. The amounts of subsequent subscriptions from unitholders who have already subscribed the minimum subscription of €500,000 are unrestricted. Institutions may not group amounts of less than €500,000 for individual investors; and
  - the prospectus for the Qualifying Investor AIF contains a detailed and prominent disclosure which identifies on an item-by-item basis those obligations and conditions which apply to the Qualifying Investor AIF and its AIFM but which do not apply to the underlying unregulated investment fund and its management company.
8. The periodic reports of the underlying investment fund must be made available by the Qualifying Investor AIF upon request.
9. The annual report of the underlying investment fund must be made available by the Qualifying Investor AIF upon request.

## Section 3:

### Closed-ended Qualifying Investor AIFs and duration of closed-ended Qualifying Investor AIFs

#### i. General requirements

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

Accordingly, the constitutional document must provide that on a future date, specified in either the constitutional document or the prospectus, the Qualifying Investor AIF will undertake 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 (whether or not with limited liquidity), 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.

#### ii. Liquidity

1. For the purposes of section iii *Changes to existing closed-ended Qualifying Investor AIFs*, where the Qualifying Investor AIF is closed ended but provides liquidity provisions, these must realistically contribute to the ability of a unitholder to realise their investment prior to the expiry of the closed-ended period.

### iii. Changes to existing closed-ended Qualifying Investor AIFs

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

#### 1. Where a closed-ended Qualifying Investor AIF proposes to:

- i. amend the duration of the closed-ended Qualifying Investor AIF;
- ii. change the investment objective or make material<sup>41</sup> changes to the investment policy of the closed-ended Qualifying Investor AIF; or
- iii. amend the maximum charge relating to the redemption or repurchase of units, or the maximum annual fee<sup>42</sup> charged by, as relevant, the AIFM, management company or general partner of the closed-ended Qualifying Investor AIF;

the following shall apply:

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

<sup>41</sup> In accordance with paragraph 7 of section 3.i *General requirements* of Part I, “material” shall be taken to mean, inter alia: “changes which significantly alter the asset type, credit quality, borrowing or leverage limits or risk profile of the Qualifying Investor AIF.

<sup>42</sup> The annual fee includes any performance related fee charged by the AIFM, the management company, the general partner or the investment manager.

2. The provisions of paragraph 1(iii) are also applicable to the annual fee charged by an investment manager where this fee is paid directly out of the assets of the Qualifying Investor AIF.
3. Where the closed ended Qualifying Investor AIF makes non-material changes to investment policies, it shall notify unitholders of these changes. Notification can be provided by means of appropriate disclosure in the next annual report.

## Part III: ADDITIONAL PROVISIONS APPLICABLE TO QUALIFYING INVESTOR AIFS WHICH HAVE A REGISTERED AIFM

1. Where a Qualifying Investor AIF has a registered AIFM, the registered AIFM shall comply with the following provisions of the AIFM Regulations:
  - (a) General principles – Regulation 13(1)(f)
  - (b) Delegation – Regulation 21(1)(f)
  - (c) Liquidity management – Regulation 18(3)
  - (d) Valuation – Regulation 20(1) to (7) and 1st sentence of Regulation 20(15)
  - (e) Transparency obligations – Regulation 23 excluding Regulation 23(2)(e) and Regulation 23(2)(f) and Regulation 24 excluding Regulations 24(1)(e), 24(1)(p), 24(4) and 24(5).
  
2. Without prejudice to Paragraph 1, where a Qualifying Investor AIF, that is a loan originating AIF as defined in the AIFM Regulations, has a registered AIFM, the loan originating Qualifying Investor AIF must be closed-ended and it shall comply with the provisions applicable to loan originating AIFs contained in the AIFM Regulations.
  
3. Where a Qualifying Investor AIF has a registered AIFM, the registered AIFM shall ensure that a single depositary is appointed in accordance with Regulation 22(1) of the AIFM Regulations.

4. Where a Qualifying Investor AIF has a registered AIFM the registered AIFM shall comply with the following provisions of AIFMD Level 2:

Article 20	Due diligence in the selection and appointment of counterparties and prime brokers
Article 24	Inducements
Article 27	Execution of decisions to deal on behalf of the managed AIF
Article 28	Placing orders to deal on behalf of AIFs with other entities for execution
Article 49	Alignment of investment strategy, liquidity profile and redemption policy
Article 67	Policies and procedures for the valuation of the assets of the AIF
Article 68	Use of models to value assets
Article 69	Consistent application of valuation policies and procedures
Article 71(1)	Review of individual values of assets
Article 72(1)	Calculation of NAV per unit or share
Article 74	Frequency of valuation of assets held by open-ended AIFs
Article 103	General principles for the annual report
Article 104	Content and format of the balance sheet or statement of assets and liabilities and of the income and expenditure account
Article 105	Report on the activities of the financial year
Article 106	Material changes

## Part IV: ADDITIONAL PROVISIONS APPLICABLE TO QUALIFYING INVESTOR AIFS WHICH HAVE A NON-EU AIFM

1. Where a Qualifying Investor AIF has a non-EU AIFM, the Qualifying Investor AIF shall ensure that the non-EU AIFM shall comply with the following provisions of the AIFM Regulations:
  - (a) General principles – Regulation 13(1)(f)
  - (b) Delegation – Regulation 21(1)(f)
  - (c) Liquidity management – Regulation 18(3)
  - (d) Valuation – Regulation 20(1) to (7) and 1st sentence of Regulation 20(15)
  - (e) Transparency obligations – Regulation 23 excluding Regulation 23(2)(e) and Regulation 23(2)(f) and Regulation 24 excluding Regulations 24(1)(e), 24(1)(p), 24(4) and 24(5).
  
2. Without prejudice to Paragraph 1, where a Qualifying Investor AIF, that is a loan originating AIF as defined in the AIFM Regulations, has a non-EU AIFM, the loan originating Qualifying Investor AIF must be closed-ended and it shall ensure that the non-EU AIFM complies with the provisions applicable to loan originating AIFs contained in the AIFM Regulations.
  
3. Where a Qualifying Investor AIF has a non-EU AIFM, the Qualifying Investor AIF shall ensure that the non-EU AIFM appoints a single depositary in accordance with Regulation 22(1).

4. Where a Qualifying Investor AIF has a non-EU AIFM, the Qualifying Investor AIF shall ensure that the non-EU AIFM shall comply with the following provisions of AIFMD Level 2:

Article 20	Due diligence in the selection and appointment of counterparties and prime brokers
Article 24	Inducements
Article 27	Execution of decisions to deal on behalf of the managed AIF
Article 28	Placing orders to deal on behalf of AIFs with other entities for execution
Article 49	Alignment of investment strategy, liquidity profile and redemption policy
Article 67	Policies and procedures for the valuation of the assets of the AIF
Article 68	Use of models to value assets
Article 69	Consistent application of valuation policies and procedures
Article 71(1)	Review of individual values of assets
Article 72(1)	Calculation of NAV per unit or share
Article 74	Frequency of valuation of assets held by open-ended AIFs
Article 103	General principles for the annual report
Article 104	Content and format of the balance sheet or statement of assets and liabilities and of the income and expenditure account
Article 105	Report on the activities of the financial year
Article 106	Material changes

# Chapter 3 – European Long-Term Investment Fund Requirements

# Introduction

The AIF Rulebook sets out the rules which apply to ELTIFs. However, the definitive rules for each ELTIF will be set out in its letter of authorisation.

# Part I: General Rules

## Section 1:

### European Long-Term Investment Fund Restrictions

#### i. General restrictions

1. The ELTIF shall not raise capital from the public through the issue of debt instruments. This restriction does not operate to prevent the issue of debt instruments by ELTIFs, on a private basis, to a lending institution or other debt providers to facilitate financing arrangements and where details of the debt instruments are provided in the prospectus.
2. The ELTIF shall ensure that the depositary or a competent person appointed by the manager of the ELTIF<sup>43</sup> and who is approved for the purpose by the depositary, verifies that there are procedures in place and are effectively implemented to ensure that any performance fees payable and accrued pursuant to the ELTIF's performance fee payment cycle are calculated in accordance with the governing documents of the ELTIF.
3. The ELTIF shall ensure that the manager of the ELTIF provides the depositary/competent person with all necessary information regarding the calculation of the performance fee in advance of any such fees being paid.
4. The ELTIF shall specify, in its constitutional document, management agreement or AIFM agreement, the maximum

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<sup>43</sup> "manager of the ELTIF" means the authorised EU AIFM approved to manage an ELTIF, or the internally managed ELTIF where the legal form of the ELTIF permits internal management and where no external AIFM has been appointed.

annual fee charged by, as relevant, an AIFM, a management company and/or a general partner of the ELTIF. The maximum annual fee shall not be increased without approval on the basis of the following:

- i. if the amendment includes an opportunity for unitholders to redeem or otherwise provides a realistic opportunity to exit from the ELTIF, the proposal shall be approved by a simple majority of votes cast.
- ii. if no opportunity is provided for unitholders to redeem or otherwise avail of a realistic opportunity to exit from the ELTIF, the proposal shall require approval by a qualified majority of 75% of votes cast.

In the event of an increase in the annual fee charged to an ELTIF, and unitholders are provided with the opportunity to redeem or otherwise avail of a realistic opportunity to exit, a reasonable notification period must be provided by the ELTIF to enable unitholders redeem their units prior to the implementation of the increase. The provisions of this paragraph are also applicable to the annual fee charged by an investment manager where this fee is paid directly out of the assets of the ELTIF.

## **ii. Constitutional documents**

1. The ELTIF shall, at all times, comply with its constitutional document.
2. The ELTIF shall entrust its assets to a depositary for safe-keeping and this must be expressly specified in its constitutional document.
3. The ELTIF shall, in its constitutional document provide for the remuneration and the expenditure which the manager of the

ELTIF and depositary are empowered to charge to the ELTIF and the method of calculation of such remuneration, and the costs to be borne by the ELTIF.

4. The ELTIF shall specify, in its governing documents, the maximum charge<sup>44</sup> relating to the redemption or repurchase of units. The maximum charge relating to the redemption or repurchase of units shall not be increased without approval on the basis of the following:
  - i. if the amendment includes an opportunity for unitholders to redeem or otherwise provides a realistic opportunity to exit from the ELTIF, the proposal shall be approved by a simple majority of votes cast.
  - ii. if no opportunity is provided for unitholders to redeem or otherwise avail of a realistic opportunity to exit from the ELTIF, the proposal shall require approval by a qualified majority of 75% of votes cast.

In the event of an increase in the charge, and unitholders are provided with the opportunity to redeem or otherwise avail of a realistic opportunity to exit, a reasonable notification period must be provided by the ELTIF to enable unitholders redeem their units prior to the implementation of the increase.

5. The ELTIF shall establish in its constitutional document conditions for the creation and cancellation of units or for contributions and withdrawals of contributions of unitholders' capital, as appropriate.
6. The ELTIF shall specify, in its constitutional document, the conditions and manner of application of income.

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<sup>44</sup> This provision refers to circumstances where the ELTIF imposes charges on redemptions that are not applied as an LMT in accordance with Annex V of Directive (EU) 2011/61

7. The ELTIF shall, where relevant, specify, in its governing documents the circumstances under which there may be effected, the replacement of the manager of the ELTIF with another manager (including such a replacement by the Central Bank) and shall contain provisions to ensure the protection of unitholders in the event of any such replacement. The manager of an ELTIF may not be replaced without the prior approval of the Central Bank.
  
8. The depositary of an ELTIF may not be replaced without the prior approval of the Central Bank. The ELTIF shall specify, in its governing documents, the conditions under which there may be effected, the replacement of the depositary of the ELTIF with another depositary (including such a replacement by the Central Bank) and shall contain provisions to ensure the protection of unitholders in the event of any such replacement.
  
9. The ELTIF may only issue registered certificates where such activity is permitted by its constitutional document.

The ELTIF shall attach rights in proportion to the fraction of the units held except for voting rights which can only be exercised by whole units. The ELTIF shall ensure that the certificates are signed by the depositary. This signature may be reproduced mechanically.

### **iii. Valuation**

1. The ELTIF shall specify, in its constitutional document, the rules for the valuation of its assets. These rules shall clearly and unambiguously define an expected method of valuation and shall set out a framework for variation from this method of valuation.

2. The ELTIF shall only purchase and sell assets at prices which are in conformity with the rules in the constitutional document.

**iv. Distinction between closed-ended ELTIF and those which are open-ended with limited liquidity**

1. Where an ELTIF does not permit investors to request the redemption of their units or shares before the end of the life of the ELTIF in accordance with Article 18(1) of Regulation (EU) 2015/760, the ELTIF shall be deemed a closed-ended ELTIF.
2. Where an ELTIF provides redemption facilities in accordance with Article 18(2) of Regulation (EU) 2015/760, the ELTIF shall be deemed an open-ended with limited liquidity ELTIF.

**v. Share Classes**

*General*

1. Subject to paragraph 2 below, an ELTIF shall only create one or more share classes within the ELTIF, or within a sub-fund of an umbrella ELTIF, where the following requirements are satisfied:
  - (a) the constitutional document of the ELTIF must provide for the creation of share classes. In the case of an umbrella ELTIF the provision in the constitutional document to establish the way in which sub-funds, and share classes within sub-funds, are created must be clear and unambiguous;
  - (b) each ELTIF or sub-fund thereof must consist of a single pool of assets;
  - (c) where more than one share class exists, all the unitholders in the different share classes must be treated fairly; and

- (d) no unitholder in an ELTIF or sub-fund thereof, whether in the same or different share classes, shall obtain preferential treatment, unless the granting of such preferential treatment is disclosed in the prospectus, including a description of how the ELTIF ensures the fair treatment of investors. Where a unitholder in an ELTIF or sub-fund thereof, whether in the same or different share classes, obtains such preferential treatment, it shall not result in a material disadvantage to other unitholders in the ELTIF or relevant sub-fund.

Share classes may be established which may be differentiated on the basis of subscription/redemption procedures, distribution policies or charging structure, asset exposure or other criteria clearly disclosed in the prospectus and permitted by the constitutional document.

2. Subject to paragraphs 3 to 8:

- (a) The ELTIF may allocate assets to individual share classes where the arrangement:
- (a) is not made for the purpose of pursuing a separate investment objective by the share class;
  - (b) does not result in a share class operating de facto as a separate sub-fund; or
  - (c) is not created in order to circumvent the requirements set out in paragraph 1 of this section.

and

- (b) The ELTIF shall distribute and/or accrue capital gains/losses and income from the above to each unitholder relative to their participation in the relevant share class provided that:
- (a) there is prominent disclosure in the prospectus of the ability to establish such share classes and the attendant risks;
  - (b) there is clear authority in the constitutional document to create such share classes;

- (c) the constitutional document contains unambiguous valuation and allocation provisions; and
  - (d) to the extent possible under the investment fund legislation and applicable law, the constitutional document contains provisions aimed at achieving segregation of liability between such share classes and the share classes participating in the single pool of assets of the ELTIF or sub-fund thereof. Where it is not possible to ensure such segregation of liability, this shall be prominently disclosed in bold text in the prospectus.
3. Notwithstanding the requirements of Section 1, iii *Valuation of Part I*, and without prejudice to the generality of paragraphs 1 and 2, share classes may be used to operationalise the capital commitment or subscription made by a unitholder or the participation of the investment management function in the ELTIF. These share classes may, subject to the requirements set out in paragraph 4 to paragraph 8, provide for: (i) allocation of the returns of specific assets to the share class and/or (ii) participation by a share class in the ELTIF other than on a pro rata basis. Establishment of share classes which provide for such differentiated participation will be permissible to reflect:
- (a) the issuance of units at a price other than NAV without prior approval of the Central Bank;
  - (b) excuse and exclude provisions;
  - (c) stage investing; and
  - (d) management participation.
4. In order for an ELTIF to provide for a share class with one or more of the features noted in paragraph 3(a) – (d) and to allocate the returns of a specific asset to that share class the following general conditions apply:
- (a) the ability to establish share classes providing for the features outlined in paragraph 3(a) – (d) has been provided

for in the ELTIF's governing documents and has been disclosed to unitholders in advance;

- (b) the ELTIF's prospectus permits establishment of share classes which provide for different levels of participation in the ELTIF;
  - (c) the unitholder's interest in an ELTIF is proportionate to:
    - the capital it has paid into the ELTIF at a particular point in time; and/or
    - the predetermined flow of capital returns to the share class; and/or
    - the extent to which the share class held by the unitholder participates in the assets of the ELTIF.
  - (d) where the unitholder has subscribed in the ELTIF on the basis of a capital commitment and periodic drawdowns from the unitholder, the ELTIF maintains records on a per-investor basis to enable it to clearly identify commitments paid and commitments outstanding for each investor ("capital accounting"), and
  - (e) the capital accounting methodology is consistent with the requirements Commission Delegated Regulation (EU) 231/2013 which require the manager of the ELTIF to establish, implement and maintain accounting policies and procedures to ensure that the calculation of the NAV is carried out as required by that Delegated Regulation and the AIFM Regulations.
5. Where an ELTIF issues new units at a price below NAV, this shall not result in a material disadvantage to other unitholders in the ELTIF.
6. An ELTIF may facilitate excuse provisions (which enable a unitholder to be excused from an investment that the ELTIF proposes to make) and/or exclude provisions (which permits the ELTIF to exclude a unitholder from an investment that the ELTIF proposes to make) provided that:

- (a) the excuse and/or exclude provisions are predetermined and documented by the ELTIF (in respect of excuse provisions by way of a written document between the ELTIF and the unitholder prior to an investment being made in the ELTIF and, in respect of exclude provisions, by providing for the circumstances in which this may occur in the governing documents of the ELTIF);
  - (b) in each case, unless the written document agreed with the unitholder or the governing documents provides otherwise, a notification must be provided by the unitholder or ELTIF (depending on the party invoking the provision) outlining the basis on which the excuse or exclude provision is being invoked.
7. An ELTIF may, at a later stage in the life cycle of the ELTIF, permit new unitholders to acquire units in the ELTIF. The purchase of units by way of transfer from an existing unitholder or the subscription for new units in the ELTIF may be facilitated by the ELTIF by way of establishment of a new share class which provides for participation in: (i) one or more existing investments; (ii) one or more existing and future investments; or (iii) one or more future investments of the ELTIF only and provided that:
- (a) upon acquisition by way of transfer, the terms of investment by the new unitholder is clearly documented;
  - (b) upon the issue of new units, a new share class is established for the unitholder; and
  - (c) the commitments paid and commitments outstanding for each unitholder are accounted for using a capital accounting methodology.
8. An ELTIF may establish management share classes which permit persons designated by the manager of the ELTIF as entitled to participate in investments of the ELTIF. Such share classes may participate in the ELTIF on the basis of conditions which differentiate the share class from other share classes in the ELTIF. This is subject to:

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

### *Charity Share Classes*

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

2. The requirements outlined in paragraph 1 shall not apply to Sharia-compliant funds in relation to the ordinary, day-to-day activities carried out in the management of their investments to ensure compliance with Sharia law.

#### vi. Umbrella AIFs

1. An umbrella AIF or umbrella ELTIF which has been authorised by the Central Bank must obtain the Central Bank's prior approval for each ELTIF sub-fund.
2. A Retail Investor AIF umbrella shall only establish a Retail Investor ELTIF sub-fund. A Qualifying Investor AIF umbrella shall only establish a Professional Investor ELTIF sub-fund or Qualifying Investor ELTIF sub-fund.
3. An umbrella ELTIF may only establish ELTIF sub-funds.
4. An umbrella ELTIF shall only be comprised of either (i) Retail Investor ELTIF sub-funds or (ii) Qualifying Investor ELTIF sub-funds and/or Professional Investor ELTIF sub-funds.
5. An umbrella ELTIF which is an Investment Company, Investment Limited Partnership, Unit Trust or Common Contractual Fund shall, in its prospectus, include the words: "**An umbrella fund with segregated liability between sub-funds**".
6. Where the umbrella AIF or umbrella ELTIF, issues a supplement to its prospectus, it shall state, in the supplement that it is constituted as an umbrella AIF or umbrella ELTIF and name the other existing sub-funds or provide that these will be available upon request.

7. The umbrella AIF or umbrella ELTIF shall, in its prospectus disclose the extent to which one sub-fund can invest in another.
8. Where the ELTIF is an umbrella ELTIF, it shall, in its prospectus, clearly state the charges, if any, applicable to the exchange of units in one sub-fund for units in another.
9. Where an ELTIF sub-fund (the “Investing Fund”) of an umbrella 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 ELTIF.

**vii. Dealings by the ELTIF with (i) unitholders, or (ii) the AIFM/manager of the ELTIF, management company, general partner, investment manager, depositary or their delegates or associated or group companies**

1. The ELTIF shall only enter into a transaction with:
  - (i) a unitholder; or
  - (ii) the AIFM/manager of the ELTIF, management company, general partner, investment manager, depositary or any of their delegates or associated or group companies

where it is negotiated at arm's length. Transactions must be in the best interests of the unitholders<sup>45</sup>.

2. The appointments of service providers to carry out services are not transactions with the ELTIF.
  
3. Transactions permitted are subject to:
  - (a) certified valuation by a person approved by the depositary, or the ELTIF 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 ELTIF in the case of transactions involving the depositary, is satisfied conform to the principles outlined in paragraph 1 of this section.

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<sup>45</sup> This requirement does not apply to transactions by unitholders in relation to their units. This includes subscriptions, redemptions, repurchases, conversions or dividend payments.

## Section 2:

### Supervisory requirements

#### i. General conditions

1. The ELTIF shall notify the Central Bank of any proposed amendments to its prospectus. The Central Bank may object to the amendments notified to it and amendments objected to by the Central Bank shall not be made.
2. The ELTIF shall not alter its constitutional document or change its name without the prior approval of the Central Bank.
3. The ELTIF shall notify the Central Bank 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.
4. The ELTIF shall notify the Central Bank promptly of any material breach of the investment fund legislation, the requirements imposed on it by the Central Bank or provisions of its prospectus.
5. Where an ELTIF provides for a minimum capital commitment or minimum subscription of €100,000 and only accepts subscriptions from a unitholder who meets the criteria set out in the definition of a Qualifying Investor ELTIF, it may avail of the Central Bank QIAIF authorisation process and market itself as a Qualifying Investor ELTIF.

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

In the case of investments by employees<sup>46</sup>, consultants, secondees and/or partners or groups of employees, consultants, secondees and or/partners the Qualifying Investor ELTIF must ensure that the AIFM/manager of the

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<sup>46</sup> An employee who is primarily involved in the provision of clerical, secretarial or administrative functions may not avail of this exemption.

ELTIF, management company, investment company, advisor or general partner, as appropriate, is satisfied<sup>47</sup> that prospective unitholders fall within the criteria outlined at (e) above.

7. The Qualifying Investor ELTIF must ensure that prospective unitholders, as set out in paragraph 6 of Section 2, (i) *General conditions* of Part I, certify in writing to it that they meet the minimum criteria listed in paragraph 6 above, 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.

## ii. Directors of ELTIF investment companies

1. Where the ELTIF is an investment company, departures from the office of director and the reason for the departure must be notified to the Central Bank immediately in accordance with Central Bank processes and procedures. Such processes and procedures may be amended from time to time. In all cases where a director wishes to resign and prior to providing the relevant Central Bank notification, the ELTIF (at Board or its Chair level) must form a view as to the impact of the resignation on the ELTIF having regard to the current and prospective financial state of the ELTIF. 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 notification. The Board or its Chair may consult the Central Bank in order to help it form a view on that matter.

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<sup>47</sup> 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.

2. Where the ELTIF is an investment company it shall ensure that it does not have directors in common with the board of directors of its depositary.
3. Where the ELTIF is an investment company, a minimum of two directors must be Irish resident.
4. Where the ELTIF is an investment company it shall ensure that each of its directors is required to disclose to the board of the ELTIF any concurrent directorships which they hold.

### iii. Liquidity Management Tool Requirements<sup>48</sup>

#### *General operational requirements*

1. The ELTIF shall disclose in its governing documents the selected liquidity management tools (LMTs) and the terms and conditions under which an LMT can be activated and deactivated.
2. In selecting the two minimum mandatory LMTs per the requirements of Annex V of Directive 2011/61/EU, the ELTIF shall ensure that the manager should consider, where appropriate, selecting at least one quantitative-based LMT (redemption gate, extension of notice period, redemption in kind) and at least one anti-dilution tool (redemption fee, swing pricing, dual pricing, anti-dilution levy).

#### *Side pocket share classes*

1. An ELTIF may establish a side pocket for assets whose economic or legal features have changed significantly or become uncertain due to exceptional circumstances through:
  - (a) physical segregation; or

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<sup>48</sup> This section only applies in respect of open-ended ELTIFs or open-ended ELTIFs with limited liquidity.

(b) accounting segregation;

where provided for in the ELTIF's governing documents and disclosed to unitholders in advance.

#### iv. Suspensions

1. Where the manager of the ELTIF activates or deactivates:
  - (a) the suspension of subscription, repurchase or redemption of its units, the ELTIF must inform the Central Bank immediately, upon such activation or deactivation taking effect.
  - (b) the suspension of the calculation of the NAV, the ELTIF must inform the Central Bank immediately upon such activation or deactivation taking effect.
2. Without prejudice to paragraph 1, and in circumstances where the suspension has not been lifted within 21 working days of application, the ELTIF shall provide the Central Bank with an update on the suspension at the expiration of the 21 working day period and each subsequent period of 21 working days where the suspension continues to apply.
3. Where a competent authority of a member state under Article 46(2)(j) of Directive 2011/61/EU requires the manager of the ELTIF to activate or deactivate the suspension of subscription, repurchase and redemption, the ELTIF must immediately inform the Central Bank when it becomes aware of this instruction.
4. The ELTIF shall take all necessary steps to keep the Central Bank informed of relevant information with respect to the management of the ELTIF that is the subject of the exercised powers as detailed in paragraph 3 of this section.

**v. Gating**

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

**vi. 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 AIFM/manager of the ELTIF, management company or the general partner. Where the ELTIF replaces its depositary, the ELTIF must ensure that the Central Bank receives, as required, confirmation from both the retiring depositary and new depositary that they are satisfied with the transfer of assets.
2. The ELTIF shall only terminate the appointment of the depositary:
  - (a) upon the appointment of a successor depositary; or
  - (b) upon the revocation of the authorisation of the ELTIF.

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

1. The ELTIF may only replace its AIFM, management company or general partner with the prior approval of the Central Bank.
2. The Central Bank must be notified in advance of any proposal to replace the following third parties which have contracted

(directly or indirectly) with the investment company/AIFM/manager of the ELTIF, management company/general partner. These third parties are:

- (a) depositary;
- (b) investment manager;
- (c) auditor; and
- (d) fund administration company.

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

3. The procedures to be followed by ELTIFs in relation to the replacement of an AIFM, management company, general partner, investment manager or fund administration company must be approved and documented by the ELTIF.

#### **viii. Reporting requirements**

1. The ELTIF shall submit such periodic returns to the Central Bank as specified by the Central Bank from time to time. Those returns shall be in the form, and contain the information, specified by the Central Bank and published on the Central Bank's website.

#### **ix. Amalgamation of ELTIFs**

1. An ELTIF may only merge or amalgamate with another ELTIF where the proposed merger or amalgamation has received the prior approval of the Central Bank.

#### **x. Changes to the ELTIF**

1. Where an ELTIF proposes to:
  - (a) amend the duration of the ELTIF;

- (b) change the investment objective or make material<sup>49</sup> changes to the investment policy of the ELTIF; or
- (c) amend the maximum charge relating to the redemption or repurchase of units or the maximum annual fee<sup>50</sup> charged by, as relevant, the AIFM/manager of the ELTIF, management company or general partner of the ELTIF;

the following shall apply:

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

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<sup>49</sup> In accordance with paragraph 5 of section 3(i) *General requirements*, “material” shall be taken to mean, inter alia: “changes which significantly alter the asset type, credit quality, borrowing or leverage limits or risk profile of the ELTIF.

<sup>50</sup> The annual fee includes any performance related fee charged by the AIFM/manager of the ELTIF, the management company, the general partner or the investment manager.

## Section 3:

### Prospectus requirements

#### i. General requirements

1. The ELTIF must publish a prospectus, which must be dated and the essential elements of which must be kept up to date.
2. The ELTIF must offer, free of charge, the prospectus to every prospective unitholder before a contract for the acquisition of units is entered into.
3. The ELTIF shall ensure that where the prospectus is translated into a language other than English, 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 ELTIF shall comply with the terms of its prospectus.
5. The ELTIF shall not change its investment objectives or effect a material change to its investment policies, as disclosed in the prospectus without:
  - if the amendment includes an opportunity for unitholders to redeem from or otherwise provides a realistic opportunity to exit from the ELTIF, the proposal shall be approved by a simple majority of votes cast.
  - if no opportunity is provided for unitholders to redeem or otherwise avail of a realistic opportunity to exit from the ELTIF as part of the amendment, the proposal shall require approval by a qualified majority of 75% of votes cast.

“Material” shall be taken to mean, inter alia: “changes which significantly alter the asset type, credit quality, borrowing or leverage limits or risk profile of the ELTIF”.

In the event unitholders are provided with the opportunity to redeem, the ELTIF must provide a reasonable notification period to enable unitholders redeem their units prior to implementation of these changes.

6. The ELTIF shall include details of derogations granted by the Central Bank in its prospectus.

## ii. General information concerning the ELTIF

1. The ELTIF shall, at a minimum, disclose the following in its prospectus:
  - (a) The name of the ELTIF, 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, incorporation or registration of the ELTIF 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 ELTIF. Details of whether deductions are made at source from the income and capital gains paid by the ELTIF to unitholders must also be included;
  - (e) The 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) The base currency of the ELTIF;

- (h) The types and main characteristics of the units and in particular:
  - (i) the nature of the right (real, personal or other) represented by the unit;
  - (ii) whether there are original securities or certificates providing evidence of title;
  - (iii) whether there is entry in a register or in an account;
  - (iv) whether the units are registered;
  - (v) indication of any denominations which may be provided for;
  - (vi) an indication of unitholders' voting rights; and
  - (vii) the circumstances in which winding-up of the ELTIF can be decided on and winding-up procedure, in particular as regards the rights of unitholders;
- (i) Where an ELTIF proposes issuing partly paid units, the nature of the commitment which unitholders will enter into must be fully disclosed;
- (j) Where applicable, indication of stock exchanges or markets where the units are listed or dealt in;
- (k) A description of the AIFM's remuneration policies and practices pursuant to Regulation 14 of the AIFM Regulations; and
- (l) Information on any additional relevant details regarding the valuation of assets.

### **iii. Dealing**

1. The ELTIF shall disclose, in its prospectus, the initial offer period.
2. The ELTIF shall disclose, in its prospectus, the procedures and conditions for subscription, repurchase or redemption of units, including the period within which redemption proceeds will normally be paid or discharged to unitholders. It must also

disclose the circumstances in which subscription, repurchase or redemption may be suspended.

3. Where the ELTIF provides for the possibility of redemptions from the ELTIF, it shall, in its prospectus, specify the limited nature of the redemption facilities.
4. Where the ELTIF provides for the settlement of redemptions through a distribution of assets as part of its redemption policy, the ELTIF shall disclose the terms and conditions applicable in its prospectus.

**iv. Information concerning an AIFM/manager of the ELTIF, management company or general partner**

1. The ELTIF shall, in its prospectus, disclose the name, form in law, registered office and head office, if different from the registered office, of the AIFM/manager of the ELTIF, management company or general partner. If the AIFM/manager of the ELTIF, management company or general partner is part of a group, the name of that group must be disclosed. The date of incorporation of the company and indication of duration, if limited, must also be included.
2. The ELTIF shall, in its prospectus, disclose the names and positions in the AIFM/manager of the ELTIF, management company or general partner of the members of the administrative, management and supervisory functions; their experience, both current and past, which is relevant to the ELTIF; and details of their main activities outside the AIFM/manager of the ELTIF, management company or general partner where those are of significance with respect to that AIFM/manager of the ELTIF, management company or general partner.

**v. Information concerning investment managers and other service providers**

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

**vi. Authorisation status**

1. The ELTIF shall, in its prospectus, state that its authorisation is not an endorsement or guarantee of the ELTIF 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, by virtue of its authorisation of this ELTIF or by reason of its exercise of functions conferred on it by legislation in relation to this ELTIF, be liable for any default of the ELTIF. Authorisation of this ELTIF does not constitute a warranty by the Central Bank as to the creditworthiness or financial standing of the various parties to the ELTIF.”**

**vii. Risk disclosures**

1. The ELTIF shall, in its prospectus, identify, and describe in a comprehensive manner, the risks applicable to investing in

that particular ELTIF. In particular ELTIFs 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 ELTIF means that the investment must be viewed as medium to long term.
2. The ELTIF shall, where relevant, contain in its prospectus a prominent risk warning in bold text which will make specific reference to the following:
- (a) any potential for above average risk involved; and
  - (b) the suitability of this type of investment with the potential for above average risk only for people who are in a position to take such a risk.
3. The ELTIF shall, in its prospectus, 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 may have on the performance of the ELTIF.

#### **viii. Conflicts of interest**

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

2. The ELTIF shall, in its prospectus, include a description of soft commission arrangements which may be entered into by the ELTIF.
  
3. The ELTIF shall only enter into a transaction with:
  - (i) a unitholder, or
  - (ii) the AIFM/manager of the ELTIF, management company, general partner, depositary, investment manager, or their delegate or associated or group companies

where there has been full disclosure in the ELTIF's prospectus<sup>51</sup>.

#### **ix. Warehousing**

1. The ELTIF shall only acquire assets pursuant to a warehousing arrangement where the use of such arrangements is provided for in its prospectus, including details of any fees, charges or interest payable in relation to such arrangements.

#### **x. Charging fees and expenses to capital**

1. Where the ELTIF charges fees and expenses, including management fees, to capital, its prospectus shall include the following disclosures:
  - (a) indicate that fees and expenses, including management fees, or a portion thereof, may be charged to capital; and
  - (b) a description of the effects of the charging of fees and expenses, including management fees, to capital i.e. that capital may be eroded.

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<sup>51</sup> This requirement does not apply to transactions by unitholders in relation to their units. This includes subscriptions, redemptions, conversions or dividend payments.

## Section 4:

### General operational requirements

#### i. Dealing

1. The ELTIF shall make the issue prices and redemption prices (where relevant) of its units available promptly to unitholders on request.

## Section 5:

### Annual and half-yearly reports

#### i. Publication of annual and half-yearly reports

1. The ELTIF shall publish an annual report for each financial year. The accounting information given in the annual report must be audited by one or more persons empowered to audit accounts in accordance with the Companies Act 2014. The auditor's report to unitholders, including any qualifications, shall be reproduced in full in the annual report.
2. The ELTIF shall include the information specified in the AIFM Regulations, the ELTIF Regulation and the information specified in this section in its annual report.
3. An ELTIF established as a unit trust or common contractual fund 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.
4. The ELTIF shall prepare a set of accounts (whether an interim report or an annual report) to a reporting date within 12 months of the first issuance of units by the ELTIF and publish and submit to the Central Bank within two months if an interim report or six months if an annual report. The first annual reports must be prepared to a reporting date within 18 months of incorporation/establishment of the ELTIF and published and submitted to the Central Bank within six months. An ELTIF established as a unit trust or common contractual fund shall publish and submit to the Central Bank its half-yearly report within two months of the end of the reporting period to which it relates.

5. The ELTIF shall publish and submit to the Central Bank its annual report within six months of the end of the financial period to which it relates.
6. The ELTIF shall, on request, supply unitholders with copies of the annual reports and half-yearly reports (if any) free of charge.
7. Where the ELTIF is an umbrella ELTIF constituted as a unit trust, common contractual fund, ICAV or ILP it may produce separate periodic reports for individual sub-funds. In such cases, the report of each sub-fund must name the other sub-funds and state that the reports of such sub-fund are available free of charge on request from the ELTIF.
8. In accordance with company law, an investment company other than an ICAV established as an umbrella ELTIF must include accounts for all ELTIF sub-funds in its periodic reports.

**ii. Information to be contained in the annual report**

1. Where the ELTIF is an investment company other than an ICAV it shall confirm in its annual report, whether or not, the aim of spreading investment risk has been maintained.
2. The ELTIF shall include the following in its annual report as well as any significant information which will enable unitholders to make an informed judgement on the development of the ELTIF and its results:
  - (a) NAV per unit, where relevant;
  - (b) 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 ELTIF (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 ELTIF must be stated. If a condensed portfolio statement is included in the annual report, an ELTIF must make the full portfolio statement available to unitholders on demand. This can be made available to potential investors at the ELTIF's discretion;

- (c) investments by sub-funds within an umbrella investment company in the units of other sub-funds within the umbrella must be disclosed. The policies adopted to disclose cross-investments must be explained in a note to the accounts;
- (d) information on the investment funds in which the ELTIF has invested during the reference period, including disclosure on their regulatory status and fees paid by the ELTIF and, to the extent possible, by the underlying investment funds;
- (e) a description of soft commission arrangements affecting the ELTIF during the period;
- (f) a description on how financial derivative instruments, securities lending and repo contracts 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 financial 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.

ELTIFs 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 ELTIF in respect of these securities. Where an ELTIF has entered into a securities lending programme organised by generally recognised international central securities depositories systems, the name of the international central securities depository system must be disclosed;

- (g) a list of exchange rates used in the report;
- (h) 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; and
  - the NAV per unit.
- (i) depositary's report;
- (j) the annual report must state whether:
  - the ELTIF is satisfied that there are arrangements (evidenced by written procedures) in place, to ensure that the obligations set out in paragraph 1 of section 1.vii *Dealings by the ELTIF with: (i) unitholders; or (ii) the AIFM/manager of the ELTIF, management company, general partner, investment manager, depositary or any of their delegates or associated or group companies* are applied to all transactions with connected parties<sup>52</sup>; and
  - the ELTIF is satisfied that transactions with connected parties entered into during the period complied with the obligations set out in paragraph 1 of section 1.vii *Dealings by the ELTIF with: (i) unitholders; or (ii) the AIFM/manager of the ELTIF, management company, general partner, investment manager, depositary or any of their delegates or associated or group companies*<sup>53</sup>;
- (k) a report on any commissions received by the manager of the ELTIF by virtue of an investment in the units of

<sup>52</sup> This requirement does not apply to transactions by unitholders in relation to their units. This includes subscriptions, redemptions, conversions or dividend payments.

<sup>53</sup> This requirement does not apply to transactions by unitholders in relation to their units. This includes subscriptions, redemptions, conversions or dividend payments.

another investment fund where these commissions are not paid into the property of the ELTIF. 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; and

- (l) the names of any subsidiaries of the ELTIF.

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

#### 1. The ELTIF shall include the following in its half-yearly report:

- (a) a balance sheet or statement of assets and liabilities;
- (b) number of units in circulation;
- (c) NAV per unit, where relevant;
- (d) 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 ELTIF (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 ELTIF must be stated. If a condensed portfolio statement is included in the half-yearly report, an ELTIF must make the full portfolio statement available to unitholders on demand. This can be made available to potential investors at the ELTIF's discretion;
- (e) investments by sub-funds within an umbrella investment company in the units of other sub-funds within the umbrella shall be disclosed. The policies adopted to disclose cross-investments must be explained in a note to the accounts;
- (f) information on the investment funds in which the ELTIF has invested during the reference period, including disclosure on their regulatory status and fees paid by the

ELTIF and, to the extent possible, by the underlying investment funds;

- (g) a description of soft commission arrangements affecting the ELTIF during the reference period;
- (h) 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.

ELTIFs 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 ELTIF in respect of these securities. Where an ELTIF has entered into a securities lending programme organised by generally recognised international central securities depositaries systems, the name of the central securities depositary system must be disclosed;

- (i) a description of any material changes in the prospectus during the reporting period;
- (j) a list of exchange rates used in the report;
- (k) where an ELTIF has paid or proposes to pay an interim dividend, the half-yearly report must indicate the results after tax for the half-year concerned and the interim dividend paid or proposed; and
- (l) the half-yearly report must state whether:

- the ELTIF is satisfied that there are arrangements (evidenced by written procedures) in place, to ensure that the obligations set out in paragraph 1 of section 1.vii *Dealings by the ELTIF with: (i) unitholders; or (ii) the AIFM/manager of the ELTIF, management company, general partner, investment manager, depositary or any of their delegates or associated or group companies* are applied to all transactions with connected parties<sup>54</sup>; and
- the ELTIF is satisfied that transactions with connected parties entered into during the period complied with the obligations set out in paragraph 1 of section 1.vii *Dealings by the ELTIF with: (i) unitholders; or (ii) the AIFM/manager of the ELTIF, management company, general partner, investment manager, depositary or any of their delegates or associated or group companies* of this Part<sup>55</sup>; and

(m) the names of any subsidiaries of the ELTIF.

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<sup>54</sup> This requirement does not apply to transactions by unitholders in relation to their units. This includes subscriptions, redemptions, conversions or dividend payments.

<sup>55</sup> This requirement does not apply to transactions by unitholders in relation to their units. This includes subscriptions, redemptions, conversions or dividend payments.

# Chapter 4 – Alternative Investment Fund Manager Requirements

# Introduction

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

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

# Part I: General Rules

## Section 1:

### i. Operating conditions

1. The AIFM shall prepare and submit half-yearly financial and annual audited accounts of the AIFM to the Central Bank.

The half-yearly accounts shall be submitted within two months of the half year end and the annual audited accounts within four months of the year end. Where the AIFM is an internally managed authorised AIF, the half-yearly financial accounts shall be submitted within two months of the half year end and the annual audited accounts within six months of the year end. Internally managed Qualifying Investor AIF investment companies are not required to produce half-yearly financial accounts.

Both half-yearly (if any) and annual audited accounts of an AIFM must be accompanied by the Minimum Capital Requirement Report as set out on the Central Bank’s website and as may be amended from time to time. The Minimum Capital Requirement Report must be signed by a director or a senior manager of the AIFM. Annual audited accounts of the direct parents of the AIFM must also be submitted to the Central Bank.

The AIFM shall submit such other returns to the Central Bank as specified by the Central Bank from time to time. Those returns shall be in the form, and contain the information, specified by the Central Bank and published on the Central Bank’s website.

## ii. Remuneration

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

## iii. Organisational requirements

1. The AIFM shall appoint a Chair to its board on a permanent basis.
2. The board of an AIFM shall be responsible for the following managerial functions:
  - (a) Regulatory compliance: The board shall put in place, and ensure adherence to, procedures designed to ensure compliance with all applicable legal and regulatory requirements of the AIFM itself and all AIFs under management. The board shall have arrangements in place to ensure that complaints from unitholders regarding matters other than distribution are addressed promptly and effectively;
  - (b) Fund risk management: The board shall put in place, and ensure adherence to, procedures designed to ensure that all applicable risks pertaining to the AIFs under management can be identified, monitored and managed at all times;
  - (c) Operational risk management: The board shall put in place, and ensure adherence to, procedures designed to ensure that all applicable risks pertaining to the AIFM can be identified, monitored and managed at all times;
  - (d) Investment management: The board shall put in place, and shall ensure adherence to, procedures to:
    - i. ensure and verify that the investment approach of each AIF is complied with; and
    - ii. ensure availability of up to date information on portfolio performance;

- (e) Capital and financial management: The board shall put in place, and ensure adherence to, procedures to ensure compliance with regulatory capital requirements of the AIFM. The board shall put in place, and ensure adherence to, procedures to ensure all relevant accounting records of the AIFM and of the AIFs under management are properly maintained and are readily available, including production of annual and half-yearly financial statements. The board shall put in place, and ensure adherence to, procedures to ensure that proper accounting policies and procedures are employed in respect of the AIFM and all AIFs under management.
  - (f) Distribution: The board shall put in place, and shall ensure adherence to, procedures to ensure and verify that the distribution strategy of each AIF is complied with. The board shall have arrangements in place to ensure that complaints from unitholders regarding distribution matters are addressed promptly and effectively.
3. An AIFM shall ensure that:
- (a) an organisation effectiveness role shall be performed by an independent Chair or an independent board member, and
  - (b) shall not be performed by a person with responsibility in relation to any of the managerial functions specified in paragraph 2 of this section.
4. Delegates to be appointed by the AIFM shall be approved by the board of the AIFM acting in good faith in the interests of the AIFs under management.
5. Where an AIFM delegates activities the programme of activity shall identify the board member or other individual ("designated persons") who will, on a day-to-day basis, monitor and control each of the individual activities identified in paragraph 2 of this section. The board of the AIFM shall

formally adopt a statement of responsibility in relation to the functions and the procedures which will apply in each case.

6. Where an AIFM delegates activities, the programme of activity shall provide for the following requirements in relation to the reports to be received by the designated person and the required action, in the context of each function identified in paragraph 2 of this section:
- (a) types of reports received: A list of reports which the designated person will receive from parties who have an involvement, by delegation or otherwise, in the performance of the function and the identity of those third parties;
  - (b) frequency of the reports: The provisions relating to frequency must include procedures for immediate reporting to the designated person of all material issues which arise;
  - (c) action carried out: Circumstances in which action by a designated person is required and procedures to be followed by the designated person in this event, including escalation to the board; and
  - (d) exceptional reporting: In addition to (a) to (c), the programme of activity must also provide for the following:
    - delegates are required to submit exceptional reports to the designated person in accordance with thresholds / trigger events which the board will from time to time determine, details of which are provided to the Central Bank;
    - the programme of activity should set out details of thresholds / trigger events and procedures which must be adopted on receipt of exceptional reports;
    - reports must be maintained where they can be subject to inspection by the Central Bank.

7. An AIFM shall not designate the same person to perform the investment management managerial function and either the fund risk management managerial function or the operational risk management managerial function.
  
8. The depositary shall not permit performance fees payable and accrued pursuant to authorised AIF's performance fee payment cycle to be paid by or on behalf of the authorised AIF unless the depositary or a competent person appointed by the AIFM and who is approved for the purpose by the depositary, verifies that there are procedures in place and are effectively implemented to ensure that any performance fees payable and accrued pursuant to the AIFs performance fee payment cycle are calculated in accordance with the governing documents of the AIF. The AIFM of the authorised AIF is responsible for ensuring that the depositary or competent person receive all necessary information regarding the calculation of performance fees in advance of any such fees being paid.
  
9. The AIFM must have in place and implement policies and procedures to carry out appropriate due diligence and ongoing oversight of the activities of intermediary investment vehicles in accordance with the relevant policies and procedures and its compliance with the AIF's stated investment objectives, policy, and strategy.
  
10. The AIFM of an AIF should consider selecting at least one quantitative-based LMT (redemption gate, extension of notice period, redemption in kind) and at least one anti-dilution tool (redemption fee, swing pricing, dual pricing, anti-dilution levy) when selecting the two minimum mandatory LMTs required by the requirements of Annex V of Directive 2011/61/EU.

11. Where during the initial offer period, subscription proceeds are received by the AIF but the AIF does not issue units in respect of such proceeds, upon the expiry of the initial offer period or where the initial offer period is extended, the investor may request the return of the subscription proceeds and the AIFM shall arrange for such return to the investor without undue delay and no later than three months from the date of the request subject to applicable law and regulation.

#### iv. Directors

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

## **v. Recordkeeping requirements**

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

## **vi. Relationship with the Central Bank**

1. The AIFM shall notify the Central Bank promptly of:
  - (a) any breaches of the AIFM Regulations, AIFMD Level 2 or any of the Central Bank's requirements (including the AIF Rulebook) which are applicable to the AIFM;
  - (b) breaches of other Irish legislation which may be of prudential concern to the Central Bank or which may impact on the reputation or good standing of the AIFM;
  - (c) the commencement of any significant legal proceedings by or against the AIFM;
  - (d) any situations or events which impact, or potentially impact, on the AIFM to a significant extent;
  - (e) the imposition on the AIFM of fines by another supervisory authority; or
  - (f) a visit to the AIFM by another supervisory authority.

2. An AIFM shall obtain the prior approval of the Central Bank in respect of a proposed change of its name. In addition, an AIFM shall notify the Central Bank promptly of any change to the AIFM’s address, telephone number or facsimile number.
  
3. Approval of the Central Bank is required in respect of any proposed change in direct or indirect ownership or in qualifying holdings. A qualifying holding for the purpose of this condition is defined in Regulation 5(1) of the AIFM Regulations.
  
4. An AIFM shall specify, on its headed paper, that it is regulated by the Central Bank. An AIFM must ensure that any references in publicity material to the role of the Central Bank in relation to its supervision of the AIFM’s activities are not misleading.
  
5. Where an AIFM provides management services to an AIF not authorised by the Central Bank it must be satisfied that the prospectus issued by the AIF does not imply, in any way, that the AIF is regulated by the Central Bank.

Where an AIFM provides administration services to AIFs not authorised by the Central Bank, it shall submit a quarterly return containing the following aggregate information within each base currency category:

- (a) domicile of the AIF;
- (b) number of AIF;
- (c) number of unitholders; and
- (d) total net asset value.

## vii. Financial control and management information

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

### *Financial*

- (a) details of all money received and expended by the AIFM whether on its own behalf or on behalf of AIFs 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 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 AIFM to:
  - identify, quantify, control and manage the AIFM's risk exposures;
  - make timely and informed decisions;
  - monitor the performance of all aspects of the AIFM's business on an up-to-date basis; and

- monitor the quality of the AIFM’s assets.

#### *Company Secretarial*

- (g) the share register;
- (h) the register of directors’ and secretary’s interests;
- (i) signed copies of the minutes of meetings of the board of directors; and
- (j) other statutory documents required under the Companies Act 2014.

3. An AIFM shall notify the Central Bank in advance of any proposed change of auditor and the reasons for the proposed change.

#### **viii. Additional capital requirements of AIFMs providing individual portfolio management services**

1. In this section -

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

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

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

“assets under management" or "AUM" means both the value of assets that an AIFM manages for its clients under discretionary portfolio management and the value of assets in

relation to which such AIFM provides investment advice of an ongoing nature;

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

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

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

"group undertaking" means an undertaking that is included in the same group for the purposes of preparing consolidated accounts, in accordance with Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 84/349/EEC or in accordance with recognised international accounting rules;

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

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

2. An AIFM which is not a small and non-interconnected AIFM shall hold own funds which shall never be less than the higher of -
  - (a) The total amount of initial capital and own funds which the AIFM is required to hold pursuant to the AIFM Regulations, or
  - (b) Own funds which amount to the Risk to Client K-Factor requirement calculated in accordance with paragraph 4 of this section.
  
3. (a) An AIFM shall be deemed to be a small and non-interconnected AIFM for the purposes of this Regulation where it meets all of the following conditions:
  - (i) AUM measured in accordance with paragraph 5 is less than €1.2 billion;
  - (ii) ASA measured in accordance with paragraph 7 is zero;
  - (iii) CMH measured in accordance with paragraph 6 is zero;
  - (iv) COH measured in accordance with paragraph 8 is –
    - (I) EUR 100 million/day for cash trades; or
    - (II) EUR 1 billion/day for derivatives;
  - (v) the on- and off-balance-sheet total of the AIFM is less than €100 million;
  - (vi) the total annual gross revenue from individual portfolio management services of the AIFM is less than €30 million, calculated as an average on the basis of the annual figures from the two-year period immediately preceding the given financial year.
- (b) By way of derogation from the provisions of paragraphs 4, 5, 7 and 8, for the purposes of paragraph 3 (a)(i), (ii) and (iv), end-of-day values shall apply.
- (c) For the purposes of subparagraph (a)(iii), and without prejudice to Regulation 23(1)(l) of the European Union

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

- (d) For the purposes of paragraph 3(a)(v) and (vi), the levels at the end of the last financial year for which annual audited accounts have been finalised and approved by the AIFM shall apply.
- (e) An AIFM shall (i) measure the value under paragraph 3 (a)(i) by using the methods specified under paragraph (5) and (ii) measure the value under paragraph 3 (a)(iv) by using the methods specified under paragraph (8), with the exception that the measurements under (i) and (ii) shall be done for a continuous period of no less than 12 consecutive months, without the exclusion of the three most recent monthly values.
- (f) The conditions set out in paragraph 3 (a)(i), (iv), (v) and (vi) shall apply on a combined basis for all AIFMs that are group undertakings included in the same group. For the purpose of measuring the total annual gross revenue referred to in subparagraph (a)(vi), those AIFMs may exclude any double counting that may arise in respect of gross revenues generated within the group of which they are group undertakings.
- (g) The conditions set out in paragraph 3 (a)(ii) and (iii) shall apply to each AIFM on an individual basis.
- (h) Where an AIFM no longer meets all the conditions set out in paragraph 3 (a) to (e), it shall cease to be considered to be a small and non-interconnected AIFM, with immediate effect.

- (i) By way of derogation from paragraph 3 (h), where an AIFM no longer meets the conditions set out in paragraph 3 (a)(i),(iv), (v) and (vi) but continues to meet the conditions set out in paragraphs 3(a)(ii) and (iii), it shall cease to be considered to be a small and non-interconnected AIFM after a period of three months, calculated from the date on which the threshold was exceeded. The AIFM shall notify the Bank without undue delay of any breach of a threshold.
  - (j) Where an AIFM which has not met all of the conditions set out in paragraphs 3(a) to (e) subsequently meets them, it shall be considered to be a small and non-interconnected AIFM only after a period of six months from the date on which those conditions are met, provided that no breach of a threshold has occurred during that period and the AIFM has notified the Bank accordingly without delay.
4. (a) For the purposes of paragraph 2(b), an AIFM shall calculate its Risk to Client K-factor requirement by using the following formula:

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

where:

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

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

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

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

K-Factors		Co-efficient
Assets under management	K-AUM	0.02%
Client money held	K-CMH (on segregated accounts)	0.4%
	K-CMH (on non-segregated accounts)	0.5%
Assets safeguarded and administered	K-ASA	0.04%
Client orders handled	K-COH cash trades	0.1%
	K-COH derivatives	0.01%

- (b) An AIFM shall only use information related to its individual portfolio management services in complying with the measurement of the K-Factors referred to in paragraph 4(a).
- (c) An AIFM shall monitor the value of its K-factors referred to in subparagraph (a) for any trends that could leave it with a materially different Risk to Client K-factor requirement value for the following reporting period applicable to the reporting of such information to the Bank and shall notify the Bank of that materially different Risk to Client K-factor requirement value.
- (d) Where the Bank notifies an AIFM that there has been a material change in the business activities of the AIFM that impacts the amount of a relevant K-factor referred to in paragraph 4(a), the AIFM shall adjust the amount of additional capital held by the AIFM in accordance with the Bank's notification.

5. (a) An AIFM shall comply with the following in calculating the K-AUM for the purposes of paragraph 4(a):
- (i) AUM shall be the rolling average of the value of the total monthly assets under management, measured on the last business day of each of the previous 15 months converted into the entities' functional currency at that time, excluding the three most recent monthly values;
  - (ii) AUM shall be the arithmetic mean of the remaining 12 monthly values;
  - (iii) K-AUM shall be calculated on the first business day of each month.
- (b) Where the AIFM has formally delegated the management of assets under individual portfolio management services to another financial entity, those assets shall be included in the total amount of AUM measured in accordance with paragraph 5(a).
- (c) Where another financial entity has formally delegated the management of assets under individual portfolio management services to the AIFM, those assets shall be excluded from the total amount of assets under management measured in accordance with paragraph 5(a).
- (d) Where an AIFM has been managing assets under individual portfolio management services for less than 15 months, or where it has done so for a longer period as a small and non-interconnected AIFM and now exceeds the threshold for AUM, it shall use historical data for AUM for the period specified under paragraph 5(a) as soon as such data becomes available to calculate K-AUM.

- (e) For the purposes of paragraph 5(d), the Bank may replace missing historical data points by regulatory determinations based on the business projections of the AIFM submitted in support of the AIFM’s application for authorisation to provide individual portfolio management services.
6. (a) An AIFM shall comply with the following in calculating K-CMH for the purposes of paragraph 4(a):
- (i) CMH shall be the rolling average of the value of total daily client money held, measured at the end of each business day for the previous nine months, excluding the three most recent months;
  - (ii) CMH shall be the arithmetic mean of the daily values from the remaining six months;
  - (iii) K-CMH shall be calculated on the first business day of each month.
- (b) Where an AIFM has been holding client money for less than nine months, it shall use historical data for CMH for the period specified under paragraph 6(a)(i) as soon as such data becomes available to calculate K-CMH.
- (c) For the purposes of paragraph 6(b), the Bank may replace missing historical data points by regulatory determinations based on the business projections of the AIFM submitted in support of the AIFM’s application for authorisation to provide individual portfolio management services.
7. (a) An AIFM shall comply with the following in calculating K-ASA for the purposes of paragraph 4(a):
- (i) ASA shall be the rolling average of the value of the total daily assets safeguarded and administered, measured at the end of each business day for the previous nine months, excluding the three most recent months;

- (ii) ASA shall be the arithmetic mean of the daily values from the remaining six months;
  - (iii) K-ASA shall be calculated on the first business day of each month.
- (b) Where an AIFM has formally delegated the tasks of safeguarding and administration of assets to another financial entity, or where another financial entity has formally delegated such tasks to the AIFM, those assets shall be included in the total amount of ASA which is measured in accordance with paragraph 7(a).
- (c) Where an AIFM has been safeguarding and administering assets for less than six months, it shall use historical data for ASA for the period specified under paragraph 7(a) as soon as such data becomes available to calculate K- ASA.
- (d) For the purposes of paragraph 7(c), the Bank may replace missing historical data points by regulatory determinations based on the business projections of the AIFM submitted in support of the AIFM’s application for authorisation to provide individual portfolio management services.
8. (a) An AIFM shall comply with the following in calculating K-COH for the purposes of paragraph 4(a):
- (i) COH shall be the rolling average of the value of the total daily client orders handled, measured throughout each business day over the previous six months, excluding the three most recent months;
  - (ii) COH shall be the arithmetic mean of the daily values from the remaining three months;
  - (iii) K-COH shall be calculated on the first business day of each month.

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

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

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

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

Duration = time to maturity (in years) / 10

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

(e) Where an AIFM has been handling client orders for less than six months, or where it has done so for a longer period as a small and non-interconnected investment firm, and it now exceeds the threshold for COH, it shall use historical data for COH for the period specified under paragraph 8(a) as soon as such data becomes available to calculate K-COH.

(f) For the purposes of paragraph 8(e), the Bank may replace missing historical data points by regulatory determinations based on the business projections of the AIFM submitted in support of the AIFM's application for

authorisation to provide individual portfolio management services.

9. (a) For the purposes of paragraph 5, the measurement of total monthly AUM shall be made in accordance with all of the following:
    - (i) the calculation shall include the value of financial instruments calculated at fair value in accordance with the applicable accounting standards;
    - (ii) financial instruments with a negative fair value shall be included in absolute value;
    - (iii) the calculation shall include cash except any amounts covered under CMH in accordance with paragraph 9(b).
  - (b) For the purposes of paragraph 6, the measurement of CMH shall be based on the following:
    - (i) balances that the AIFM uses for its internal reconciliations;
    - (ii) the values contained in the AIFM’s accounting records.
  - (c) For the purposes of paragraph 7, the measurement of total daily ASA shall include the value of all client financial instruments safeguarded and administered, calculated at fair value in accordance with the applicable accounting standards. It shall exclude CMH referred to in paragraph 9(b).
10. (a) The amount of own funds required to be held by an AIFM resulting from the calculation referred to in paragraph 2(b) shall not be required to exceed the sum of twice the amount required in accordance with Regulation 10(5) of the AIFM Regulations until the end of the five year

period referred to in Article 57(3) of Regulation (EU) 2019/2033 of the European Parliament and of the Council.

- (b) Where the amount of own funds referred to in paragraph 10 (a) is less than the total amount of initial capital and own funds which the AIFM is required to hold pursuant to the AIFM Regulations, the AIFM shall comply with the requirements of the AIFM Regulations until the end of the period referred to in paragraph 10(a).

#### **ix. Internal Capital Adequacy Assessment**

1. An AIFM authorised to provide individual portfolio management services shall have in place sound, effective and comprehensive arrangements, strategies and processes to assess and maintain on an ongoing basis the amounts, types and distribution of internal capital that the AIFM considers adequate to cover the nature and level of risks which the AIFM may pose to others and to which the AIFM itself is, or might be, exposed.
2. The arrangements, strategies and processes referred to in paragraph 1 shall be -
  - (a) appropriate and proportionate to the nature, scale and complexity of the activities of the AIFM, and
  - (b) subject to regular internal review.
3. An AIFM authorised to provide individual portfolio management services shall complete and submit an ICAAP questionnaire to the Bank on an annual basis in the format published on the Central Bank's website.

4. In this section:

(a) “ICAAP” means internal capital adequacy assessment process, and

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

# Chapter 5 – AIF Depositary Requirements

# Introduction

The AIF Rulebook sets out the rules which apply to depositaries of:

- AIFs that have an authorised AIFM;
- Professional Investor Funds that have a registered AIFM;
- Qualifying Investor AIFs that have a registered AIFM; and
- Qualifying Investor AIFs that have a non-EU AIFM.

Depositaries of AIFs which have an authorised AIFM and depositaries of Qualifying Investor AIFs authorised by the Central Bank before 22 July 2013 which have a registered AIFM shall comply with all of the conditions contained in this chapter except paragraphs 2 to 4 of section 1(vi) *Qualifying Investor AIF with a registered AIFM and Professional Investor AIF with a registered AIFM*. 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 this chapter except paragraph 1 of section 1 (vi) *Qualifying Investor AIF with a registered AIFM and Professional Investor AIF with a registered AIFM*. The definitive rules for each depositary will be set out in a letter from the Central Bank which it will receive when an AIF, for which it acts as depositary, is authorised by the Central Bank.

# Part I: General Rules

## Section 1:

### Depositary Requirements

#### i. Eligibility criteria

##### 1. The depositary shall:

- (a) have appropriate expertise and experience to carry out the functions as set out in this chapter, the AIFM Regulations and AIFMD Level 2;
- (b) have sufficient resources to effectively conduct its business; and
- (c) 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.

#### ii. Conditions applicable to depositaries which fall within Regulation 22(3)(a)(iii) of the AIFM Regulations

##### 1. A depositary which falls within Regulation 22(3)(a)(iii) of the AIFM Regulations shall comply with the following:

- (a) The firm shall 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”),whichever is higher (“Minimum Capital Requirement”).

The depositary shall:

- calculate its Minimum Capital Requirement in accordance with Annex I;
- have financial resources, calculated in accordance with paragraph 2 of the Minimum Capital Requirement Report, Notes on Compilation (Depositary), at least equal to its Minimum Capital Requirement (“Financial Resources”);
- hold its Minimum Capital Requirement in the form of Eligible Assets, as specified in paragraph 3 of the Minimum Capital Requirement Report, Notes on Compilation (AIF Depositary); and
- be in a position to demonstrate its compliance with the Minimum Capital Requirement throughout the reporting period.

(b) The depositary shall notify the Central Bank immediately of the departure of a director.

(c) The depositary shall have at least two directors that are Irish resident.

(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) A depositary shall establish, implement, document and maintain accounting policies and procedures that enables the depositary 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.

(f) The depositary shall prepare and submit to the Central Bank the following reports:

- i. Management/interim accounts which shall be delivered two months after the depositary’s reporting half-year end;

- ii. Management/annual accounts which shall be delivered one month after the depositary’s reporting year end; and
- iii. Annual audited accounts which shall be delivered four months after the depositary’s reporting year end.

Both management/interim accounts and the annual audited accounts shall be accompanied by the Minimum Capital Requirement Report (MCR), which (together with the Notes on Compilation thereto) forms part of this chapter.

The MCR must be signed by a director or a senior manager of the depositary. In relation to the above referred management/annual accounts no MCR report is required. Annual audited accounts of the corporate shareholder(s) of the company must also be submitted.

The depositary shall submit such other returns to the Central Bank as specified by the Central Bank from time to time. Those returns shall be in the form, and contain the information, specified by the Central Bank and published on the Central Bank’s website.

- (g) A depositary shall establish, implement, document 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.

### iii. Depositary tasks

1. Where the depositary is acting as depositary for an authorised AIF, the depositary shall 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. This 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. This report shall state whether in the depositary’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 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 constitutional document and the investment fund legislation.

If the AIFM, management company, investment company or general partner has not complied with (a) or (b) above, the depositary must state why this is the case and outline the steps which the depositary has taken to rectify the situation.

Where there has been a change of depositary during the accounting period, the annual report must include a depositary report from both the retiring and new depositary to cover their respective periods of appointment.

2. The depositary shall notify the Central Bank promptly of any material breach of the investment fund legislation, the AIFM Regulations or AIFMD Level 2, the requirements imposed on the AIF or the depositary by the Central Bank or provisions of the AIF’s prospectus.
3. Where a Retail Investor AIF proposes to invest more than 30% of net assets in another investment fund, the depositary shall, prior to the investment being made, (i) confirm in writing to the Central Bank that the authorised AIF has procedures in place to ensure that the underlying investment fund meets the requirements imposed by the Central Bank; and (ii) confirm that the depositary will regularly review the operation of these procedures to ensure that the underlying investment

fund continues to meet the requirements imposed by the Central Bank.

#### iv. Operating conditions

1. The depositary shall not have directors in common with the board of directors of the AIFM or the management company, the fund administration company, the investment company or the general partner.
2. The depositary shall 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 imposed by the Central Bank on the Retail Investor AIF. If the depositary cannot provide custody in accordance with this requirement it must consult with the Retail Investor AIF to ensure that the relevant exchanges or markets are removed from the list.
3. The depositary shall keep the list of permitted stock exchanges and markets in the prospectus under review to ensure that the markets meet with the regulatory criteria set out in paragraph 1 of section 4 (iii) of Part I of Chapter 1 – Retail Investor AIF Requirements on an on-going basis.
4. 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 material prejudice to the AIF unitholders.
5. The depositary shall not permit performance fees payable and accrued pursuant to authorised AIF's performance fee payment cycle to be paid by or on behalf of the authorised AIF unless the depositary or a competent person appointed by the

AIFM and who is approved for the purpose by the depositary, verifies that there are procedures in place and are effectively implemented to ensure that any performance fees payable and accrued pursuant to the AIFs performance fee payment cycle are calculated in accordance with the governing documents of the AIF.

The AIFM of the authorised AIF is responsible for ensuring that the depositary or competent person receives all necessary information regarding the calculation of performance fees in advance of any such fees being paid.

#### **v. Delegation**

1. The depositary must not delegate to third parties its functions as described in this chapter and in the AIFM Regulations and AIFMD Level 2, except in accordance with Regulation 22(11) of the AIFM Regulations. The functions which the depositary has not delegated must be carried out in Ireland.

#### **vi. Qualifying Investor AIF with a registered AIFM and Professional Investor AIF with a registered AIFM**

1. The depositary of a Qualifying Investor AIF authorised by the Central Bank before 22 July 2013 which has a registered AIFM must comply with Regulation 22 of the AIFM Regulations and with Chapter IV of AIFMD Level 2.
2. The depositary 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
 shall comply with:
  - Regulation 22 of the AIFM Regulations excluding Regulations 22(12) to (15);

- Chapter IV of AIFMD Level 2 excluding Articles 83(1)(c) and 100 to 102; and paragraphs 3 and 4 of this section.
3. The trust deed in the case of a unit trust scheme or the depositary agreement in the case of an investment company or investment limited partnership or common contractual fund shall 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.
  4. The trust deed in the case of a unit trust scheme or the depositary agreement in the case of an investment company or investment limited partnership or common contractual fund shall 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 shall 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. Relationship with the Central Bank

1. Where a depositary provides services to an AIF not authorised by the Central Bank, it must be satisfied that the prospectus issued by the AIF does not imply, in any way, that the AIF is regulated by the Central Bank.

Where the depositary provides depositary services to AIFs not authorised by the Central Bank, it shall submit a quarterly return containing the following aggregate information, for all investment funds not authorised by the Central Bank to which services are provided, within each base currency category:

- domicile of the investment funds;
- number of investment funds;
- number of unitholders; and
- total NAV.

## viii. Depositaries of Assets other than Financial Instruments (DAoFI)

*Depositaries for AIFs under Regulation 22(3)(b) of the AIFM Regulations - (“Depositaries of Assets other than Financial Instruments” or “DAoFI”)*

### 1. Applications

An applicant to become a DAoFI must:

- (a) be a company incorporated in Ireland which is authorised as an investment business firm under the Investment Intermediaries Act 1995; and
- (b) in addition to satisfying the Central Bank in relation to its suitability (including the fitness and probity and expertise of its staff), must demonstrate to the Central Bank:
  - (i) its capacity and ability to meet safekeeping and oversight obligations as provided for under the AIFM Regulations;

- (ii) it has effective policies and procedures to ensure the depository oversight role is carried out; and
- (iii) how it has the necessary systems access to effectively oversee the AIFM and any of its delegates, particularly those which are appointed to carry out fund administration or portfolio management.

### 1. Applicable AIF Rulebook requirements

A DAoFI must comply with the following requirements of Chapter 5 of the AIF Rulebook:

- (a) section (i);
- (b) section (ii), paragraph 1(b) – (g);
- (c) section (iii), paragraphs 1 and 2;
- (d) section (iv), paragraphs 1, 4 and 5;
- (e) section (v); and f. section (vii).

### 2. Capital

- (a) A DAoFI must meet the capital requirements set out in chapter 5, section (ii), paragraph (1)(a) of the AIF Rulebook; and
- (b) Where the AIF in respect of which a DAoFI is appointed invests in financial instruments the Central Bank expects the DAoFI will seek to delegate custody of those instruments. Where it does not, the DAoFI may elect either to: (i) put in place a guarantee similar to that required by Regulation 22(3)(a)(iii) of the AIFM Regulations (i.e. a guarantee of liabilities of the DAoFI by an institution with paid up share capital not less than the limits specified in Section 9E of the Central Bank Act 1971); or (ii) hold sufficient financial resources (as calculated in accordance with Section 2.3 of Annex I of chapter 5) of the AIF Rulebook to cover the value of financial instruments in custody.

### 3. Professional indemnity cover

A DAoFI may elect to cover potential risks of professional liability by either: (a) additional own funds (calculated in the same manner as provided for AIFMs in Article 14 of Commission Delegated Regulation 231/2013); or (b) appropriate professional indemnity insurance (calculated in the same manner as provided for AIFMs in Article 15 of Commission Delegated Regulation 231/2013). The adequacy of coverage through additional own funds or professional indemnity insurance should be reviewed at least once a year by the DAoFI.

#### 4. *Financial instruments*

Where an AIF in respect of which a DAoFI is appointed invests in financial instruments which are the subject of custody obligations the DAoFI may either: (a) appoint a sub-custodian to custody these assets and concurrently discharge its liability to the AIF in respect of these assets; or (b) hold additional capital (as set out at paragraph 3(b) of this Section).

#### 5. *Assets other than financial instruments*

A DAoFI must demonstrate to the Central Bank its capacity to safe-keep and provide ongoing monitoring of assets for which it will provide services, including that: (i) the AIF has a clear title of ownership to the assets that is properly registered and documented; (ii) the AIF's ownership of the assets can be verified and confirmed on an ongoing basis; (iii) the assets are safeguarded in order to preserve them; and (iv) risks to safeguarding of assets are identified, managed, monitored and mitigated.

#### 6. *Disclosure*

A DAoFI must ensure the AIF in respect of which it is appointed clearly discloses to unitholders the regulatory status of the DAoFI, the more limited nature of the DAoFI's activities (when compared to the requirements of a depositary which provides so-called "full scope"

activities) and the standard of liability which applies to the DAoFI.

# Annex 1

## iii. MINIMUM CAPITAL REQUIREMENT REPORT - NOTES ON COMPILATION (Depositary)

For the purposes of these Notes, the depositary is referred to as a “Firm”.

### 1. Expenditure Requirement

1.1. The **Expenditure Requirement** is calculated as one quarter of the Firm’s total expenditure taken from the most recent annual accounts.

1.2. 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.

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

## 2. Financial Resources

2.1. A Firm is required to have **Financial Resources** at least equal to its Minimum Capital Requirement.

2.2. Financial Resources for a Firm will be based on the half yearly accounts or the annual audited accounts, whichever is most recent.

2.3. Financial Resources are calculated as the aggregate of:

- Fully paid up equity capital;
- Perpetual non-cumulative preference shares;
- **Eligible Capital Contribution** (see 2.4 below);
- Qualifying **Subordinated Loan Capital** (see 2.4 below);
- Share premium account;
- Disclosed revenue and capital reserves (excluding revaluation reserves);
- Interim net profits (may only be included if they have been audited); and
- Other reserves.

Less

- Current year losses not included in disclosed revenue and capital reserves above.

### 2.4. Conditions for Eligible Capital Contributions and Subordinated Loan Capital

The following conditions apply to Eligible Capital Contributions and to Subordinated Loan Capital (both perpetual and redeemable):

- (a) the prior approval of the Central Bank must be obtained in respect of the inclusion of the Eligible Capital Contribution or Subordinated Loan Capital in the Financial Resources for capital adequacy purposes. Subordinated Loan Capital may not be incorporated in the calculation of the Initial Capital Requirement;
- (b) the Central Bank must be provided with documentary evidence that the Eligible Capital Contribution or Subordinated Loan Capital has been received by the Firm; and
- (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:
- (c) Remaining term to maturity \_\_\_\_\_
- (d) Gross Amount \_\_\_\_\_
- (e) Less Amortisations \_\_\_\_\_
- (f) = Qualifying Amount \_\_\_\_\_

### 3. Eligible Assets

3.1. A Firm shall hold the higher of the Expenditure Requirement or the Initial Capital Requirement in the form of **Eligible Assets**. Eligible Assets must be easily

accessible and free from any liens or charges and maintained outside the Firm's group.

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

3.3. Eligible Assets are calculated as follows:

Total Assets (Non-current Assets plus Current Assets)

**Less the following ineligible assets**

- Fixed assets
- Intangible assets
- Cash or cash equivalents held with group companies
- Debtors
- Bad debt provisions
- Prepayments
- Intercompany amounts (gross)
- Loans
- Investment funds which are not daily dealing (see 3.4 below)
- Any other assets which are not easily accessible not included above.

3.4. When a Firm invests all or part of its capital in one or more investment funds, the Central Bank will review the relationships linking the investment fund(s) 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.

4. The Firm must be in a position to demonstrate its on-going 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 capital adequacy requirements, it must notify the Central Bank immediately and take any necessary steps to rectify its position.

## iv. 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)

### 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 1.2(d)) \_\_\_\_\_

Exceptional and Extraordinary Items (Note 1.2(e)) \_\_\_\_\_

Any other Non-recurring Expense (Note 1.2(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 1.3)	_____
Other Reserves	_____
<b>Total</b>	<input type="text"/>
<i>LESS: Current Year Losses not included in Disclosed Reserves and Capital Reserves above</i>	_____
<b>FINANCIAL RESOURCES</b>	<input type="text"/> (D)

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

Total Non-current Assets (taken from Balance Sheet)	_____
Current Assets (taken from Balance Sheet)	_____
<b>TOTAL ASSETS</b>	<input type="text"/>
<b>Less: Ineligible Assets</b>	
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 (Note 3.4)	_____
Any other assets which are not easily accessible not included above	_____
<b>Total Ineligible Assets</b>	<input type="text"/>
<b>ELIGIBLE ASSETS</b>	<input type="text"/> (E)

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

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

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 4)       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)

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