



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

Share class features of closed-ended QIAIFs

Guidance

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Guidance: Share class features of closed-ended QIAIFs

This Guidance addresses operational matters for closed-ended QIAIFs (“CE QIAIFs”) and the application of certain provisions of the AIF Rulebook to those CE QIAIFs.

Scope

1. This Guidance applies only to closed-ended Qualifying Investor AIFs (“CE QIAIF”) which typically invest in illiquid assets.

Share classes in a CE QIAIF

2. The AIF Rulebook generally requires that capital gains/losses and income arising from the assets of a QIAIF must be distributed and/or must accrue equally to each unitholder relative to their participation in the QIAIF. Certain exceptions arise in the case of share classes¹ which may be differentiated on the basis of subscription/redemption procedures, distribution policies or charging structure, hedging policies, asset exposure or other criteria as clearly disclosed in the prospectus and permitted by the QIAIF’s constitutional document.
3. Where a QIAIF allocates assets to individual share classes in accordance with AIF Rulebook criteria this is generally effected either through the use of financial derivative instruments to generate the differentiated exposure or through establishment of side-pocket share classes for the purpose of acquiring illiquid assets.

Establishment of differentiated share classes in a CE QIAIF

4. Share classes in a CE QIAIF may be used to operationalise either the capital commitment made by an investor or the participation of the investment management function in the QIAIF. These share classes may, subject to requirements further set out below, provide for the (i) allocation of the returns of specific assets to the share class and / or (ii) participation by a share class in the CE QIAIF other than on a pro rata basis. Establishment of share classes which provide for such differentiated participation will be permissible to reflect:
 - a. issue of shares at a price other than net asset value without prior approval of the Central Bank;
 - b. excuse and exclude provisions;
 - c. stage investing; and

¹ In the context of this Guidance, reference to “shares” or “share classes” includes reference to the nature of participation in the CE QIAIF (i.e. depending on the legal structure this may be by way of units, share classes or participations). Similarly, reference to a shareholder should be read as including reference to a “unitholder” or “partner” and reference to “prospectus” should be read as including reference to an “offering document”.

- d. management participation.
5. In order for a CE QIAIF to provide for a share class with one or more of the features noted at Section 4(a)-(d) and to allocate the returns of a specific asset to that share class² the following general conditions apply:
- (a) the ability to establish share classes providing for the features outlined at paragraph 4(a)-(d) has been provided for in the CE QIAIF's constitutional document and has been disclosed to unitholders in advance;
 - (b) the CE QIAIF's prospectus permits establishment of share classes which provide for different levels of participation in the CE QIAIF;
 - (c) the unitholder's interest in a CE QIAIF is proportionate to:
 - i. the capital it has paid into the CE QIAIF at a particular point in time; and / or
 - ii. the pre-determined flow of capital returns to the share class; and / or
 - iii. the extent to which the share class held by the unitholder participates in the assets of the CE QIAIF.
 - (d) where the investor has subscribed in the CE QIAIF is on the basis of a capital commitment and periodic drawdowns from the investor the CE QIAIF maintains records on a per-investor basis to enable it to clearly identify commitments paid and commitments outstanding for each investor³ ("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 net asset value is carried out as required by that Delegated Regulation and the AIFM Regulations⁴. Additional conditions for establishment of differentiated share classes in a CE QIAIF
6. The following additional conditions apply:
- (a) A CE QIAIF may provide for the issue of shares at a price other than net asset value without prior approval of the Central Bank. This may be necessary, for example, to recognise the capital commitment made by an investor to the CE QIAIF and the fact that portions of this fixed amount will be periodically drawn down from the investor.
 - (b) **Share classes enabling the exercise of excuse or exclude provisions**

A CE QIAIF may facilitate excuse provisions (which enable an investor to be excused from an investment that the CE QIAIF proposes to make) and / or exclude provisions

² Share classes do not represent separately managed pools of assets and so assets which are attributed to a share class form part of an AIF and are available to creditors of the AIF as a whole.

³ Commitments may include the allocation of assets, liabilities, income, expenses, profits and losses attributable to the investor's participation in the CE QIAIF.

⁴ European Union (Alternative Investment Fund Managers) Regulations 2013 (SI No. 257 of 2013).

(which permits the CE QIAIF to exclude an investor from a proposed investment that the CE QIAIF proposes to make provided that:

- A. the excuse and / or exclude provisions are predetermined and documented by the CE QIAIF (in respect of excuse provisions by way of a written document between the CE QIAIF and the investor prior to an investment being made in the CE QIAIF and, in respect of exclude provisions, by providing for the circumstances in which this may occur in the prospectus and / or constitutional document of the CE QIAIF);
- B. a formal legal opinion must be provided by the unitholder or CE QIAIF (depending on the party invoking the provision) outlining the basis on which the excuse or exclude provision is being invoked;
- C. the board of the CE QIAIF and AIFM must document
 - whether or not it accepts the formal legal opinion so provided, and
 - the consequences of accepting or disagreeing with such opinion (for example, enforcing the investor's participation in the CE QIAIF in accordance with subscription terms or the resultant share class structure).

(c) **Stage investing**

To facilitate new investors in the CE QIAIF the CE QIAIF may, at a later stage in the life cycle of the CE QIAIF, permit new investors to acquire shares in the CE QIAIF. The purchase of shares by way of transfer from an existing unitholder or the subscription for new shares in the CE QIAIF may be facilitated by the CE QIAIF by way of establishment of a new share class which provides for participation in existing and future investments of the CE QIAIF or in future investments only and provided that:

- A. upon acquisition by way of transfer of shares, the terms of investment by the new investor is clearly documented,
- B. upon the issue of new shares, a new share class is established for the investor, and
- C. the commitments paid and commitments outstanding for each investor are accounted for using a capital accounting methodology.

(d) **Share classes providing for management participation**

A CE QIAIF may establish management share classes which permit portfolio managers of a CE QIAIF to participate in investments of the CE QIAIF. Such share classes may participate in the CE QIAIF on the basis of conditions which differentiate the share class from other share classes in the CE QIAIF (for example, to reflect a pre-determined fee arrangement or capital payout which is not pro-rata). This is subject to:

- A. the conditions applicable to management share classes being provided for in the prospectus, and
- B. capital payments (both committed capital and preferred returns) being allocated to relevant investor share classes in priority to management share classes.

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