DILLON EUSTACE

# Consultation on Implementation of Alternative Investment Fund Managers Directive (CP 60)

## Dillon Eustace Response

December 11, 2012

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Having had the opportunity to participate in the preparation of the Irish Fund Industry Association's (IFIA) submission in response to CP60, we wish to note our support of and agreement with the IFIA submission on Chapters 1-6 and, accordingly, we do not propose to respond separately on those Chapters.

Rather, we have restricted our comments to the 17 specific Questions for Consideration raised by the Central Bank but again, to the extent that our comments are addressed by those of the IFIA, we have simply stated that without repeating its comment(s).

**Dillon Eustace**

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**QUESTIONS FOR CONSIDERATION**

**Question 1. The Central Bank has previously placed significant reliance on the Promoter to underpin the formal regulatory regime by ensuring that only sizable entities with relevant experience could establish AIFs in Ireland, entities who could support AIFs in difficulty. To this end, the Central Bank has had a promoter approval process. We are now proposing to eliminate the promoter approval process and place reliance instead on the AIFM, taking into account the obligations on AIFM which the AIFMD imposes on them. For this to work, we are proposing to elaborate in more detail to clarify the obligations of directors when an AIF gets into difficulties. Is this the correct approach? The proposed QIAIF requirements differ significantly from the Qualifying Investor Funds ("QIFs") requirements previously in place. A number of requirements will no longer be applied because in our judgement, the AIFMD provides an appropriate level of protection, through the requirements applied to the AIFM or, through the AIFM, on the AIF. Do you agree with this approach?**

***Response:***

We support the proposal to remove the promoter approval process in light of the significantly enhanced prudential and supervisory requirements imposed on AIFMs by the Directive.

We agree that, instead of the promoter regime, reliance regarding the overall management of AIFs should be placed on the AIFM.

We do not agree, however, with any proposal to impose additional obligations or to seek to elaborate in more detail the obligations of directors of an AIF where an AIF gets into difficulties as we consider that the duties and obligations of directors are already dealt with by company and common law and existing regulatory requirements and that it is ultimately for the directors to decide how to manage distressed scenarios.

We similarly do not agree with the related proposal to place additional obligations on fund boards in respect of the director resignation process.

***Current Promoter Regime***

In considering the question posed, we think it important to note that the original and current purpose of the promoter approval regime was not and is not designed, in our view, to support AIFs in difficulty. Rather it was and is designed to ensure that only regulated entities with a certain minimum financial resources could establish Irish domiciled funds as a form of reputational safeguard for the jurisdiction.

The promoter approval regime does not place legal obligations on the promoter to support AIFs in difficulty or to in some fashion stand over the financial performance of a fund in a distressed situation and, in any event, there is no correlation between the current minimum financial resources requirement of €635,000 imposed on fund promoters and the likelihood of a fund being protected if a distressed situation arose.

Furthermore, the promoter regime does not require that the promoter have any regulatory or contractual obligation, as promoter, to the fund or its shareholders or to have a role in the management of the fund.

It is also of note that the minimum financial resources requirement of €635,000 imposed on fund promoters does not fit comfortably with either the requirements imposed on asset management firms under MiFID, on UCITS managers nor on asset managers from outside the EU. In the latter case, we have found that US asset managers for example have often had to increase their capitalization solely to meet the Irish promoter regime rather than any regulatory requirement imposed by their home regulator.

***AIFM Obligations***

AIFMD is not a product Directive. Rather, it relates primarily to the AIFM and, similar to MiFID, imposes significant prudential, organisational and control requirements on AIFMs.

AIFMD will introduce new measures designed to provide additional safeguards to investors of AIFs including a detailed authorisation process; capital adequacy requirements; strict delegation provisions and the requirement to have additional funds/insurance cover in place to address professional negligence. Furthermore, the enhanced depository liability provisions and the other depository requirements are designed to enhance investor protection and to provide additional protections to AIFs and their investors.

In addition, Chapter IX of AIFMD affords new powers to the competent authorities regarding enforcement and cooperation. The additional safeguards and enhanced protection contemplated by AIFMD are far greater than any investor protections which might have been perceived, in our view incorrectly, to exist under the current Non-UCITS/promoter approval regime.

***Directors***

We do not consider it necessary to seek to impose additional (or elaborate upon) obligations on the directors of AIFMs. The duties and obligations of directors are already dealt with by company and common law and existing regulatory requirements and that it is ultimately for the directors, bearing in mind their regulatory obligations under AIFMD and those under company and common law, to manage the AIF in all scenarios, including when the AIF is in a "distressed situation" and/or "gets into difficulties".

We do not consider it appropriate to seek to regulate how they manage an AIF in such a situation. That is a matter reserved for the Board.

**Question 2. QIFs authorised under the existing regime are not subject to investment and borrowing restrictions. However, in order to avoid circumvention of the Irish regulatory regime, they may not invest more than 50% of net assets in a single unregulated investment fund. The Central Bank is not proposing to change this limit of 50%. Indeed it is proposed to tighten the regime slightly by adding a provision to prohibit investment in excess of 50% in unregulated investment funds which are identical in terms of management and strategy. Do you agree with this approach? Do you think it is necessary to further address possible circumvention through investment in clone funds?**

***Response:***

We disagree with this approach and the new proposals for the reasons set out in the IFIA submission. Furthermore, we do not consider it appropriate in the new AIFMD environment to continue with concepts of "unregulated fund", to try to set parameters around what is "identical" in terms of management or strategy or to impose rules in respect of or even define clone funds.

Not only is AIFMD not a product Directive – and therefore we should not be imposing limitations other than those contained in AIFMD – but in our view continuing with concepts of "unregulated fund" or trying to set parameters around what is "identical" in terms of management or strategy or to impose rules in respect of or even define clone funds may lead to what might be loosely described as artificial arrangements to avoid the rules.

We think it far simpler and straightforward to remove this rule for QIAIFs.

Whilst we understand the Central Bank's concern regarding wrapping "unregulated" funds, we note that no such restriction is imposed by AIFMD and in fact AIFMD provides specific rules dealing with EU AIFs which seek to invest significantly in non-EU funds including :

(i) the introduction of harmonised and stringent conditions applicable to any AIFM of an Irish QIAIF feeder under AIFMD;

(ii) clear definitions of what constitutes a master or feeder AIF; and

(iii) clear restrictions and requirements applicable to the marketing (whether by private placement or by passport) of master-feeder AIFs.

**Question 3. The Central Bank has permitted both QIAIFs and RIAIFs to use share classes in order to side pocket assets which have become distressed, subject to certain safe-guards. We are considering if open-ended QIAIF should be permitted to purchase assets and immediately place these in side-pockets. In that case the QIAIF would, in effect, no longer act as an open ended fund for the totality of the portfolio and investors would lose redemption rights in respect of part of their total holding. If suitable disclosure is provided do you consider that this option should be available to QIAIFs? Should a limit apply to such side-pocket arrangements? Can the QIAIF continue to be regarded as an open-ended AIF?**

***Response:***

We do not consider that restrictions should be placed on the types of assets that a QIAIF (or for that matter a RIAIF) should be permitted to invest in. In our view, the central considerations should be capacity to value (linked to the QIAIFs valuation frequency), liquidity profile (open-ended, limited liquidity or closed-ended) and capacity to take assets into custody.

Whilst the original introduction of side pockets was to address unexpected illiquidity within open-ended funds, particularly open-ended funds of alternative funds, we consider it to be quite acceptable for open-ended QIAIFs to be established with the express intention of investing in illiquid assets such as side pockets or in other assets which the QIAIF itself immediately side pockets to take advantage of what the AIFM considers to be the investment opportunity offered by such assets. In such situations the side pocketed assets are held for the investors in the fund at the time of side pocketing.

Subject to clear disclosure of the impact of the side pocketing and appropriate administrative capacity to set up and maintain and value the side pockets (and allocate costs thereto) including valuation for the purpose of acquisition, we see no reason why the QIAIF could not continue to raise monies/offer redemption facilities like any other open-ended scheme.

As the side pocketed assets should not impact the liquid portfolio, we do not think it necessary to impose by regulation a maximum % of the overall QIAIF (or sub-fund) that can at any one time be held in side pockets. Ultimately, the AIFM will be driven by normal commercial considerations – investor demand/interest or lack thereof.

**Question 4. QIFs authorised under the existing regime are subject to requirements in relation to initial offer periods. In the case of QIFs which are real estate or private equity funds this period can be extended for a period of up to one year. We are considering if this period can be longer, up to 2 years, provided that the arrangement and the terms to apply to investors who invest after the investment strategy has been initiated are both clearly**

**outlined at the commencement of the offering as the capital raising period. Do you consider that this should be permitted and what are the risks for investors who subscribe at the outset, particularly where the QIAIF has commenced investing?**

***Response:***

We consider that closed-ended private equity, venture capital and real estate and infrastructure funds should be given a period of up to two years from the date of First Closing (being the date on which commitments or subscriptions are first accepted) to the Final Closing (being the final date on which commitments or subscriptions are accepted).

During the period from First Closing to Final Closing, the QIAIF should be able to accept commitments/subscriptions and issue shares at a fixed issue price with investors coming in after the First Closing (i.e. at Second to Final Closings) being required to pay an additional charge (either to the QIAIF or to the existing investors), intended principally to recognise the cost of money subscribed/committed at the First or earlier Closings.

***Additional Comment***

We consider that this topic needs to be addressed using terminology that the closed-ended fund industry is familiar with as we think that that may remove current ambiguity.

***Initial Offer Periods Generally***

For closed-ended private equity, venture capital and real estate and infrastructure funds we feel firstly that the terms First Closing (being the date on which commitments or subscriptions are first accepted) and Second – Final Closing should be used rather than the term initial offer periods ("IOPs").

The general concept of an IOP refers to the period during which an investment fund offers its shares / units for the first time, normally at a fixed initial price. Before the IOP can open, the relevant investment fund has first to be authorised (or in the case of a sub-fund, approved) by the Central Bank. The IOP can only open / commence after that authorisation / approval. Normally, the earliest that an IOP can open / commence is the day after authorization.

The IOP does not, however, have to start immediately after the date of authorisation / approval. It might commence several weeks or several months afterwards, for a variety of reasons. For example, once the fund is authorized in Ireland it may need to effect a passport notification in other jurisdictions before it can commence marketing; it might be a structured product where the commercial terms of the product might only be capable of being settled (so as to allow marketing commence) once a subsequent derivative auction has occurred; the promoter may want to hold off marketing for other commercial reasons etc.

For most funds, being open ended, applications would normally be received during an IOP by the manager/administrator and the subscription monies received into the relevant subscription account , but the subscription monies do not formally go into the fund (ie. into the NAV) until the IOP expires (usually the business day thereafter), at which point the shares / units are issued at the fixed initial price and thereafter the fund trades at NAV per share / unit. In other words, the IOP is a period during which applications are received and at the end of the IOP then the shares are issued.

Central Bank Guidance Note 1/07, in the context of QIFs, states under the heading "Offer Period" that the Offer Period cannot commence prior to the authorisation of the QIF (as noted above) and should be for a period no longer than 6 months. It does however state further that "*In the case of QIFs which are established as private equity …. schemes, this period may extend up to 1 year provided that the terms of the offer ensure that early investors are not prejudiced by the arrangements".* That however is, in our view, a slight misunderstanding of the position in the context of private equity schemes as explained below.

The Guidance Note also states that extensions to initial offer periods (6 months for normal QIFs or 1 year for private equity QIFs) may be made without prior notification to the Central Bank provided that no subscriptions have been received at the date of the proposed extensions. In our view this is not really of assistance in the context of private equity schemes as they do want to receive commitments at First Closing and thereafter drawdown commitments but continue to offer investment at further (up to Final) closings.

***Private Equity Funds [and closed ended venture capital and real estate and infrastructure funds]***

In the private equity funds sector, the terminology generally used is "first closing" and "second closing" (if any). They also use the term "closing date" or "first closing date" and "second closing date" or "final closing date". In that regard:

1. Putting the terminology to one side, the concept in a private equity is generally as follows:

    (i) The first closing refers to an initial period ending on a given date (the closing date) during which commitments for shares (by means of a subscription letter/agreement) are received from prospective investors. That is, in effect, an initial offer period and the end of that period is the closing date.

(ii) During that initial offer period (ie. the first closing), commitments are received from investors but no shares are issued until the day (or some later period) after the closing date. For example, the applicant investor must commit to subscribe at least USD 200,000 noting that that commitments will be drawn-down over time through the issue of fully paid shares. Normally, shortly after the closing date an initial drawdown will be made of, for example, 10% of the commitment. In the private equity context, that is normal because, unlike a listed equity or bond fund, a private equity fund is looking for legally binding commitments from prospective investors that it can drawdown and make investments over time, where private equity investments are not always immediately available or may take time to negotiate. In addition, the fund's investment manager does not want to have large amounts of cash in its portfolio as that dilutes the IRR. It may also need to drawdown monies to pay set up and other fees.

(iii) The shares issued as a result of the initial drawdown will be at a fixed price of, for example, USD 1 per share and, unlike an open-ended fund, the prospectus of a private equity fund will normally provide that the fund can continue to drawdown commitments up until the end of the second (or final) closing at the same fixed offer price of USD 1 per share (ie. as opposed to at NAV).

(iv) Private equity funds will normally have or provide for a second (or series of up to final) closing which allows the relevant private equity fund to continue to raise monies from new investors (and even additional commitments from existing investors) for a longer period (the second closing), expiring on the second closing date. Normally two main issues arise. Firstly, the price at which the shares are issued to the investors coming in at the second etc closing date are again issued at the same fixed price (ie. USD 1 per share) but with an additional amount payable either to the existing investors or possibly into the fund, as in effect a form of compensation for the initial investors. This is normally achieved by applying a percentage rate (normally the internal rate of return) for the time elapsed between the initial issue of shares to the initial investors following the first closing date and the date on which the shares are issued to the new investors at the second closing date.

The second issue to take into account is to equalize the two sets of investors in terms of the commitments drawn-down so that new investors coming in at the second closing will have to meet drawdowns to the same extent as those already in the fund (ie. those who came in at the first closing).

(v) The idea behind using a fixed price takes into account the fact that the general method of valuing a private equity fund's assets is at cost. The rationale is that, using the money which has been drawn-down as part of the initial closing, the private equity fund may have bought investments and, in accordance with the normal valuation rules for private equity investments, will treat those investments as still being valued at cost. In other words, the new investors are really paying interest on the monies that they have subscribed but they must take into account the fact that they are coming into an existing portfolio and that they will share in the same assets as those who came in earlier at the initial closing.

2. We consider that the Central Bank should allow for a period of up to two years between the First and Final Closing. The period should only start at the First Closing – it should not be linked to when the AIFM starts to seek investment/engage in marketing.

This is because, given the nature of private equity investing (generally through closed ended vehicles) our experience is that prospective investors carry out significant due diligence before making a commitment to invest and the normal process would usually involve:

(1) the drafting of fund documentation;

(2) based on draft red herring type document, gauge general interest in product concept;

(3) obtain authorisation;

(4) issue prospectus to audience of prospective investors;

(5) due diligence period carried out by investors who wish to invest at outset (this normally includes their legal advisers reviewing all the documentation, due diligence calls with the legal advisors of the Fund etc.);

(6) First Closing (can often be six months to a year or longer after the authorisation of the Fund) at which time the initial investors' commitments are fixed;

(7) depending on the sums committed, the Fund may close to new investment and proceed to drawdown an initial amount or may decide to proceed with an initial drawdown but also hold a Second and/or Final closings;

(8) at the second closing new investors can come in with new commitments, normally with an adjustment to equalise their treatment vis-à-vis those who have committed at the first closing (normally by means of application of interest rate adjustment, and then a drawdown so that all investors are drawn equally. This

process would be fully disclosed in the prospectus, with those committing at the Second Closing knowing exactly what is required of them and what is imposed upon them;

(9) the same process again leading to a Final closing.

The imperative point is, however, that the two year period should run from first closing to final closing and not from date of authorisation.

As noted above this should be allowed for private equity funds and for venture capital and real estate and infrastructure funds.

**Question 5. The Central Bank is proposing to discontinue the Professional Investor Fund ("PIFs") regime. This will mean that no new PIF structures will be authorised but the Central Bank will consider allowing existing PIFs to establish new sub-funds. What are stakeholders' views concerning the grandfathering provisions which should apply to PIFs? Should existing umbrella funds be permitted to establish new sub-funds where this category of AIF will not be provided for in the AIF Handbook?**

***Response:***

We agree with the IFIA submission on this point.

**Question 6. The proposed RIAIF Requirements allow for the creation of an investment fund which is subject to less investment and eligible asset restrictions than the UCITS regime but is more restrictive than the QIAIF regime. In particular, key limits on investment in unlisted securities, single issuers and other investment funds have been raised. Do stakeholders agree that it is correct to create a different risk profile for RIAIFs compared with UCITS?**

***Response:***

Although we consider that there are reasonable arguments not to restrict investor choice at retail level at all and therefore not to impose limits on investment as suggested in your question (retail investor protection can be addressed in other ways through for example education and risk warnings in plain English), we generally support the IFIA submission on this point and agree that it is appropriate to create a regime for retail investment funds that have a different risk profile and investment capacity than UCITS.

**Question 7. Should RIAIFs be permitted to provide for the issue of partly paid units, particularly where the RIAIF is established as a venture capital or private equity fund? Notwithstanding that full disclosure may be provided regarding the capital commitments and drawdowns would retail investors readily grasp the nature of the obligation they have entered into?**

***Response:***

As a general principle, we do not favour limiting investor choice nor do we believe that retail investor status should automatically mean that such investors be considered less able to grasp the nature of the obligations they have entered into or the investment risks that they assume.

Nevertheless, we consider that significant additional warnings and disclosures could be provided explaining to retail investors the impact of being unable to subsequently meet drawdown requests, the inability to redeem partly paid shares, the long term nature of such an investment and clear recommendation that they consider carefully the proportion of the monies which they may have available to invest being allocated to less liquid / illiquid strategies.

**Question 8. UCITS are permitted to invest in financial derivative instruments subject to detailed requirements including those relating to risk management procedures. It is intended that RIAIFs should, at least, be provided with the same possibilities in relation to derivatives. It is proposed to make that change now. We will also be open to discussing whether these can be extended where appropriate as the AIF Handbook is further developed in future. Do you agree with this approach? How should the rules on the use of financial derivative instruments differ for RIAIFs as compared with UCITS?**

***Response:***

We agree with the IFIA submission on this point.

**Question 9. RIAIFs may invest in gold subject to appropriate disclosure requirements. However the markets for different commodities vary significantly. You are invited to provide views on whether the Central Bank should set out requirements for commodities as an asset class or wait for an application to consider this matter. You are also invited to indicate what type of safe-guards should be considered in that context.**

***Response:***

As a general principle, we consider that a RIAIF should be permitted to invest directly in commodities where there is a recognized method of valuation for the relevant commodity which can be adopted and where the custodian can take custody of the commodity, recognising that

that may involve warehousing, use of vaults or other means employed to safe keep commodities of the relevant type on an outsourcing basis.

We also consider that it should be acceptable to allow for RIAIFs which offer exposure to a single commodity (ie. up to 100%) with appropriate recommendations as to the benefits of diversifying one's own investment portfolio.

Taking exposures to commodities via derivative instruments, ETFs, ETCs and similar instruments should also be allowed.

**Question 10. The Central Bank has a requirement for a risk warning in relation to RIAIFs which invest in emerging markets. Is this still appropriate? As mentioned in paragraph 9, it is proposed to include specific risk disclosures for RIAIF gold funds. Is the proposed text suitable in this regard? Are there other asset classes for which a risk warning would be appropriate?**

***Response:***

We consider that it should be left to the RIAIF to draft and incorporate into its offering documentation the risk factors which it wishes to bring to the attention of investors.

Whilst we do not think it appropriate for the Central Bank to require standardized wording for risk factors nor to determine which risk factors should be given or in what priority or with what prominence, we are not opposed to the development of a non-obligatory list of suggested risk factor topics (as opposed to the text thereof) for retail investors, particularly in relation to issues of impact of leverage, impact of illiquidity, consequences of investing in partly paid shares (where unable to meet drawdowns) with a general recommendation to diversify one's investment portfolio

**Question 11. AIFMs falling below the thresholds specified in the AIFMD, as referenced in footnote 5, are subject to registration requirements only. The Central Bank considers that RIAIFs and QIAIFs should be subject to all AIFMD requirements as they are authorised investment funds. Do you support this approach?**

***Response:***

We agree with the IFIA submission on this point.

**Question 12. The AIFMD defines AIFs as collective investment undertakings which are not UCITS. Exempt Unit Trusts are not currently subjected to the domestic regulatory regime although as AIFs they will be subject to certain requirements under the AIFMD. Where the AIFM of the Exempt Unit Trust falls below the thresholds referenced in footnote 5 the AIFM**

**will be subject to registration requirements. If the AIFM is above the threshold, the full AIFMD regime will apply. The Central Bank will in the near future look at the option of extending the domestic regulatory regime to Exempt Unit Trusts. What issues will arise from the extension of the regulatory regime to these Exempt Unit Trusts? In your view are there potentially unforeseen consequences which could arise?**

***Response:***

To the extent that the move from a wholly unregulated environment to a potentially highly regulated environment for EUTs is required by AIFMD, we feel that that could create numerous requirements to significantly modify / amend existing constitutive documentation for EUTs, could alter their valuation rules and custody rules and potentially their tax treatment, require the issuance of prospectus, etc.

To address that, we recommend that the legislative framework provide for a mechanism to enable the move to the new obligatory regulatory regime without the need for investor approvals where the changes required are either to meet the new regulatory requirements or to address the consequences thereof in a manner that would not reasonably be expected to prejudice investors of the type who invest in such EUTs.

We suggest that care be taken particularly in the area of valuation and dual pricing to ensure a smooth conversion process.

**Question 13. We currently require that the calculation of performance fees payable by RIAIFs and QIAIFs must be verified by the depositary. We are leaning towards amending this rule to allow that a party other than the depositary could carry out the verification, provided it is a party independent from any party involved in or benefitting from the operations of the AIF or the AIFM. Do you agree with this change and who do you consider could carry out this role?**

***Response:***

We agree that verification of the performance fee calculation does not need to be a duty of the depository but we also question whether the current verification requirement really adds anything from a control perspective.

The entity which normally performs the calculation is the fund administrator who is responsible for calculating the NAV, the NAV per share and all of the other fees, including the management fee. The management fee can often be far higher than a performance fee and it does not require independent verification.

It might instead be considered beneficial to require the AIFM to have the performance fee methodology checked by the auditors at set up stage (formula v. worked examples) rather than have a separate verification process, noting that is usual in any event for the auditors to recalculate the performance fees (albeit after the period end).

**Question 14. RIAIFs and QIAIFs must comply with requirements in relation to the content of periodic reports, including a requirement to include a detailed portfolio statement which lists each investment. We are considering if a condensed portfolio statement should be permitted, which lists positions/exposures greater than 5% of net asset value. We are only considering this for QIAIFS. Do you agree with this approach? Do you consider that the full list should be available to unitholders and potential investors on demand?**

***Response:***

We consider that existing investors in QIAIFs should be entitled to receive full portfolio information upon request where the QIAIF takes advantage of the condensed portfolio statement option. This should be made available at the same frequency as the condensed report.

We also consider that where potential investors are provided with a condensed report in advance of subscription, they also should be entitled to the full portfolio information (ie. as at the last accounting date) so that they are in the same position as existing investors.

For the avoidance of doubt, in both cases all that would be supplied is historic portfolio information (ie as at the last set of audited accounts), not current portfolio information.

**Question 15. Requirements applicable to fund administrators specify that the final check and release of each investment fund net asset value (NAV) is a core administration activity which must be performed by the fund administrator. Are there measures or protections which could be put in place to allow the Central Bank permit that fund administrators may publish a net asset value prior to the final check?**

*Response.*

We agree with the IFIA submission on this point.

**Question 16. Are there any other initiatives, options or changes which we should consider?**

***Response:***

In addition to the IFIA submissions on this question, with which we agree, we request that the following be considered:

***Dedicated Handbook provision for certain types of AIFs***

We consider it essential that specific sections of the Handbook be individually dedicated to private equity funds, venture capital funds, real estate funds and infrastructure funds (including development and management of all such assets) given the importance of such funds to the future development of Ireland as an alternative funds jurisdiction.

Such sections need to address inter alia:

(i) Investment mechanics: to provide for layered investing; co-investment arrangements; joint ventures; investing by means of loans etc, use of SPVs; etc

(ii) Legal and management control: There should not be any such restrictions imposed and there needs to be an express capacity of the AIF to actually manage the assets on a hands on basis if necessary;

(iii) Partly paid / drawdown arrangements;

(iv) Waterfall return arrangements (both distribution and capital return);

(v) Custody arrangements for real estate, for infrastructure projects, for tangibles (eg solar panels) etc. Also should deal with matters such a control over rental accounts, and capacity for agents to make day to day payments (eg for maintenance/repairs/security);

(vi) Interpretation of any regulatory imposed diversification rules for real estate funds, taking into account the distinction between different assets, such as multi-let shopping centres v single occupier building etc and also to apply any percentage based regulatory imposed diversification rules by reference to aggregate commitments;

(vii) Need to allow for real estate funds and infrastructure funds (and others) to engage in actual development activity;

(viii) Need to distinguish between speculative build, build to order and refurbishment / redevelopment when assessing any limits imposed in “vacant” building exposure;

(ix) Should not impose limitations by reference to Irish / UK concepts of land ownership / tenancies / lease duration. That can be dealt with by disclosure;

(x) Need to allow for flexibility in relation to subsidiary vehicles employed, for example, in common areas control;

(xi) Need, at least for RIAIFs (assuming no limits for QIAIFs), to change the current derogations form Central Bank imposed investment restrictions allowed for six months following the date of launch.

This should be changed to take account of the fact that private equity, venture capital, real estate and infrastructure funds take time to build their portfolios due to issue as to availability of suitable investments and the time it takes to complete transactions when compared to listed equity funds. We consider that the derogation should run from the First Closing to the later of the Final Closing and end of investment period.

Funds of this type are critical to Ireland's development of alternative funds capacities and clarity is needed for those wishing to establish such funds.

***Leverage***

We suggest that consideration be given to how leverage is to be calculated in the AIFMD environment.

***Transitionary Period***

Irish non-UCITS funds that will benefit from the transitionary period and may not end up being subject to the Directive should be subject to a grandfathering during the transitionary period. An example would be an open-ended QIF plc managed from the U.S that is not marketed in the EU.

Whilst it may be administratively efficient to have a single rule book, such funds will not be subject to any of the AIFMD's requirements and should not be subject to this new regime, at least if and until the Commission applies the AIFMD to third countries.

**Question 17. Are there any transitional measures that we should consider to facilitate an orderly transition for existing non-UCITS investment funds to the new regime?**

***Response:***

We agree with the IFIA submission on this point.