IRISH FUNDS INDUSTRY ASSOCIATION

AIFMD Consultation
Markets Policy Division
Central Bank of Ireland
Block D, Iveagh Court
Harcourt Road
Dublin 2

Re: Consultation Paper 60 – Consultation on implementation of Alternative Investment Fund Managers Directive ("AIFMD") ("CP 60")

Date: 11 December, 2012

Dear Sir/Madam

We welcome the opportunity to respond to CP 60 issued by the Central Bank on 30 October 2012.

We note that the Central Bank Policy on Consultations provides that, in general, the period open for public consultations will be 12 weeks and that, having regard to the need to have the AIF Handbook in place as early as possible in 2013, a shortened consultation period of 6 weeks was applied by the Central Bank in this case. The IFIA appreciate all efforts to have the AIF Handbook in place as early as possible while recognising the difficulties associated with implementing a complicated piece of legislation like the AIFMD, particularly in the short period of time available and in the context of the delay in finalising the Level 2 measures. The IFIA has endeavoured to respond as comprehensively and constructively as possible to CP 60.

Over 25 member firms of the IFIA have made specific contributions to the response and the IFIA believes that this response gives a fair representation of the views of all major stakeholders in the Irish funds industry. While we welcome many of the changes made to enhance the AIF regime in Ireland, we have a number of material concerns with the proposed AIF Handbook which we have highlighted in this response.

You will find enclosed:

1. At Schedule 1, the IFIA's response to the specific questions for consideration raised in CP 60; and

2. At Schedules 2 and 3, the IFIA's comments on specific sections of the draft AIF Handbook included in CP 60.

We look forward to engaging with the Central Bank over the coming months with a view to ensuring a smooth transition by funds and fund service providers to the AIF Handbook regime.

Yours sincerely,

Pat Lardner
(Chief Executive)

SCHEDULE 1

RESPONSES TO QUESTIONS POSED IN CP 60

Glossary

AIF	Alternative Investment Fund
AIFM	Alternative Investment Fund Manager
RIAIF	Retail Investor AIF
QIAIF	Qualifying Investor AIF

Question	**Industry Response**
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?	We support the proposal to eliminate the promoter approval process in light of the significantly enhanced prudential and supervisory requirements on AIFM introduced by AIFMD. Whilst we agree that reliance should be placed on the AIFM, we do not consider the proposal to elaborate on the obligations of directors of an AIF management company where an AIF gets into difficulties or to place additional obligations on AIF boards in respect of the resignation process to be the correct approach for the following reasons. AIFMD relates primarily to the AIFM and provides significant prudential, organisational and control requirements for AIFMs. AIFMD will introduce significant measures which are designed to provide additional safeguards to investors of AIF; for example, a robust authorisation process and capital adequacy requirements, strict delegation provisions and the requirement to have additional funds/insurance cover in place to address professional negligence. Furthermore, the enhanced depositary liability provisions in particular in respect of lost assets in custody and the other depositary requirements are also designed to enhance investor protection and to provide additional protections to AIFs. 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 protections which are perceived to exist under the current Non-UCITS/promoter approval regime. We note and welcome the Central Bank's intention not to impose additional obligations on the directors of

Question	Industry Response
	AIFMs. It is for the individual board members, bearing in mind their substantive regulatory obligations and those under company law and common law to manage the AIF in all scenarios, including when the AIF is in a "distressed situation" and/or "gets into difficulties". The Central Bank should not seek to dictate how directors manage an AIF in such a situation and it is not in investors' interests to prescribe rules determining how a director should act in a particular situation without reference to the pertaining fact patterns. In the event that the Central Bank is dissatisfied with a particular director's actions in relation to an AIF in a "distressed situation" the Central Bank can communicate this to the relevant board at the time and can take this into account in processing future fitness and probity applications by that director. In addition, there is no correlation between the removal of the promoter regime and protection of investors of an AIF in a distressed situation. For example, there are currently no legal obligations placed on the promoter, they rarely have any contractual nexus with the fund or its shareholders in respect of the promoter function, the promoter has no role in the management of the fund, nor does it have any legal obligations. There is no correlation between the current minimum capital adequacy requirement of €635,000 imposed on fund promoters and the likelihood of a fund being protected if a distressed situation arises, as the current promoter regime does not require a promoter to stand over the financial performance of a fund. Since the removal of the promoter regime does not create any "gaps", there is no need to clarify further the obligations of fund directors. As outlined above, there are many additional safeguards and protections both for the protection of investors and for the safekeeping of assets which will be introduced by AIFMD. In addition, AIFMD provides for the direct and indirect enforcement of AIFMD requirements against AIFMs. For the reasons outlined above, we do not consider it necessary or appropriate to elaborate in more detail to clarify the obligations of directors of an AIF management company where an AIF gets into difficulties or to place additional obligations on AIF boards in respect of the resignation process.

Question	Industry Response
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?	We strongly disagree with this approach and the new proposals. A stated aim of CP 60 is to place "*optimal reliance on European regulatory requirements set out in AIFMD*". As is further elaborated below, notwithstanding: (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; No reliance appears to have been placed on the European requirements and the proposed QIAIF regime can be summarised as consisting of the old Guidance Note 1/01 requirements with the addition of AIFMD requirements and clone fund restrictions. **Detailed analysis of master-feeders under AIFMD** We note that Article 4(1)(m) of AIFMD defines a "feeder AIF" as an AIF which: (i) invests at least 85% of its assets in units or shares of another AIF (the 'master AIF'); (ii) invests at least 85% of its assets in more than one master AIFs where those master AIFs have identical investment strategies; or (iii) has otherwise an exposure of at least 85% of its assets to such a master AIF. Under Article 4(1) (y) of AIFMD, a "master AIF" is simply defined as an AIF in which another AIF invests or has an exposure to in accordance with the feeder AIF definition above. A number of AIFMD provisions deal expressly with master-feeder structures. They relate to, inter alia, (a) the information to be disclosed to competent authorities when seeking authorisation of an AIFM (Art 7.3(b)); (b) minimum levels of disclosure to investors; and (c) the permitted marketing of EU feeder AIFs which have either EU master AIFs or non-EU master AIFs. Articles 31, 32, 35 and 36, Annexes III and IV also set out a list of AIF master-feeder documentation and information to be provided in marketing applications to national regulators. The AIFMD rules differ from the Central Bank's current regime in two significant ways: (i) the 85% AIFMD threshold which must be crossed before an AIF shall

Question	Industry Response
	be considered a feeder AIF is higher than the Central Bank's 50% threshold; and (ii) they better capture genuine master/feeder fund structures and are consistent with other EU feeder concepts (e.g., UCITS). For Irish QIFs, Guidance Note 1/01 provides in section 1 that "*unitholders in a feeder scheme expect that the assets of that scheme consist almost entirely of units in a single underlying CIS*". Notwithstanding this text, the level at which a QIF currently becomes a feeder is well below such entire holdings and applies where the QIF invests a simple majority (50%+) of its assets in a master (whether it is regulated or unregulated). A number of investor protections and regulatory considerations have been considered both in the context of passporting master-feeders and privately placed master-feeders, including: AIFM regulation; depositary issues; co-operation agreements; FATF and tax information sharing. CP 60 proposes a revision to the Guidance Note 1/01 rules and we think it is very important that the revised Irish QIAIF rules address the above inconsistency in Guidance Note 1/01, track the same master-feeder definitions in AIFMD so that Ireland is in line with accepted EU standards (AIFMD and UCITS) and, as AIFMD has extra-territorial effect, in line with the global understanding of EU investment fund law as it applies to master-feeders. We would therefore strongly urge the adoption of a definition of a feeder QIF being a fund which invests 85% or greater in another AIF. We see very strong support for this across the EU to date (for example, in the FSA Consultation Paper, CP12/32). We see the definition of a feeder QIF as separate (albeit linked) to the second issue, namely the imposition of additional restrictions or eligible asset requirements on Irish master-feeders in excess of the AIFMD standards. As a result, we propose that a revised CP 60 position might manifest itself in the following manner: (i) all Irish QIAIF feeders are 85% or greater; (ii) AIFMD conditions alone are sufficient for Irish QIAIF feeders into EU master AIFs or a suitably expanded "Category 1" list as a successor to the current Guidance Note 1/01 template; and (iii) the issues noted herein would be considered in assessing the appropriateness of applying additional restrictions in excess of

Question	Industry Response
	AIFMD where the scenario involves an Irish QIAIF feeder into a non-EU master AIF. Failure to follow the AIFMD limits at national level in Ireland is contrary to the overall intention of AIFMD, conflicts with some requirements of the Directive (e.g., Article 35.1) and will create numerous administrative issues (e.g., many of the filing and disclosure requirements in the Directive are linked to crossing the 85% threshold (not 50%). The only substantive restrictions imposed by AIFMD on feeder funds relate to the marketing arrangements and in what circumstances the cross-border passport can be availed of. There are no restrictions on the ability of an EU AIF to feed into an unregulated AIF per se; merely restrictions on how that AIF may be sold to investors. In particular, AIFMD does not require anything resembling the Central Bank's additional eligibility criteria for a derogation to be obtained. While many AIFMD provisions are couched in discretionary language to provide Member States with options in permitting certain activities, the wording of Article 35 gives no such discretion and states that Member States shall enable the marketing passport to be extended to EU AIF feeder/unregulated master structures from 2015 (if applicable). A full legal analysis of this provisions versus any wider Member State or competent authority powers in the Directive would need to be undertaken but on first reading (and in particular, the absence of clear Member State discretion as is inherent in Article 36) it would appear that Member States do not have the ability to prevent the passport being extended in this manner. Article 5.1 provides that the AIFM is responsible for ensuring compliance with the Directive, which includes inter alia compliance with the master-feeder provisions. Where Ireland is dealing with EU AIFMs located outside of Ireland or non-EU AIFMs the supervisions and compliance with an additional level of national level restrictions in excess of the AIFMD standards is likely to cause some issues. We recognise that the Central Bank has a policy concern to ensure that Irish funds are not capable of being used as regulated "wrappers" for unregulated funds. However, we believe that maintaining the current regime would go too

Question	Industry Response
	far. We strongly urge at the very least that the 85% threshold be adopted, and that alternative safeguards be considered in the interests of investor protection. For example, we note the very long-established and accepted practice by which the Irish Stock Exchange requires control agreements to be put in place for offshore master-feeder structures which intend to list on the ISE. Such control agreements allow the listed feeder funds to contractually assume certain control over the operation of the respective master funds. We submit that this could be a balanced compromise position between properly implementing the AIFMD provisions, while still improving control and investor protection at the level of the feeder QIF. **Impact assessment** In light of: (i) the value of the fund of funds and master-feeder industry globally; and (ii) the size of the fund of funds and master-feeder industry in Ireland, it is crucial that Ireland takes a considered approach to this issue. We believe that if the new QIAIF and RIAIF rules are more restrictive than the main competitive jurisdictions then Ireland will lose the majority if not all of this business.
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?	We welcome this proposed change as providing for greater flexibility in the management of AIFs. We note that, as the Central Bank already permits QIFs to be established as closed-ended vehicles, it accepts the principle of assets being unavailable for redemption by investors who can be expected to understand the nature of the investment that they are making and that this proposal is an extension of this principle. We therefore believe that it is appropriate that QIAIFs should have the ability to treat up to 50% of NAV in this way while still being regarded as being open-ended. We suggest that QIAIFs which treat or want to have the flexibility to treat more than 50% of their NAV in this way should be regarded as being open-ended QIAIFs with limited liquidity, with the additional requirements that this brings and that QIAIFs which treat or want to have the flexibility to treat 100% of their NAV in this way should be regarded as closed-ended. We agree with the need for appropriate disclosure of the abilities of QIAIFs in this regard to ensure that investors are adequately informed prior to their investment.

Question	Industry Response
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?	Yes, we consider that an initial offer period ("IOP") of up to two years during which shares/units can be issued at a fixed price after the AIF has started to make investments should be permitted for QIFs. However, the 2 year cap on IOPs for private equity ("PE") funds is not realistic in the current market and ignores the large funds which operate with multiple closings or sponsor commitments during the "investment period" which can be up to 6/7 years investment. In addition, in the current market the second or subsequent closes can be delayed. Almost all PE funds we are familiar with have specific rebalancing mechanisms to ensure incoming and existing investors are fairly treated in the event of subsequent investment. The main risk for investors who subscribe at the outset would be that the value of the assets acquired has increased and, therefore, later investors are benefiting from the increase in value without having taken any risk in the period since the initial investors' initial investment. Private equity funds typically only build up portfolios over a number of years and the value of investments tend to be negative in the early years of the fund. However, any increase in value can be dealt with adequately by providing that investors who subscribe at a fixed price following the first closing are obliged to pay a subscription charge payable into the assets of the fund. This helps to ensure that the initial investors gain in a small way from subsequent investments and offsetting the risk of any increase rise in value of the underlying assets (which would have yet to be formally valued in any case). In addition, a prohibition on redemptions would be applied during the two year offer period as no NAV would have been struck in that period. In addition the arrangements would be fully disclosed in the prospectus such that investors (irrespective of when they invested) would be aware of the position.
5. The Central Bank is proposing to discontinue the Professional Investor Fund ("PIFs") regime. This will mean	We understand that approximately 160 funds are currently approved by the Central Bank as PIFs. Accordingly, they represent a substantial proportion of

Question	Industry Response
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?	regulated funds. While the reduction in the minimum initial investment amount to EUR 100,000 for QIFs has reduced the differences between the two categories, the fact that PIFs may be invested in by investors who do not meet the QIF qualifying investor criteria does mean that there may be demand in the future for this type of fund from those categories of investors. Accordingly, we think it is appropriate to maintain the PIF category and the ability to establish PIFs as new single or umbrella funds or as new sub-funds to existing umbrellas. Certainty of regulation is an important feature for any jurisdiction and so we believe that promoters who have established PIF umbrella funds should be able to continue to use their existing platforms, without being required to incur further expenditure in launching QIAIF or RIAIF umbrellas. We do not believe that the drafting work involved in amending the AIF Handbook to contain a short chapter along the lines of the existing Non-UCITS Notice NU12.8 would be significant and we don't see any downside in retaining this category of fund.
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?	We believe it is appropriate to create a regime for retail investment funds that have a different risk profile than UCITS. As you know, the UCITS regime was designed to facilitate the free movement of capital by permitting UCITS to be distributed on a cross-border basis provided the UCITS complies with the common EU standards. It was not envisaged that the UCITS regime should apply to all retail investor funds and in particular the UCITS Directive clarifies that Member States are permitted to lay down laws specific rules for non-UCITS schemes ("RIAIFs"). The UCITS Directive does not apply to certain asset classes such as unlisted securities, real estate, commodities and other non-financial assets. Retail investors should not be excluded from investing in such asset classes. Therefore, it is appropriate for the Central Bank to establish an appropriate regulatory regime to accommodate such investments. Although the UCITS Directive prescribes a regulatory regime that has become internationally recognised as a gold standard, this does mean it should be the only type of retail investment fund. Internationally, there are a myriad of regulatory regimes that apply different risk profiles to RIAIFs. Various regulatory

Question	Industry Response
	regimes for RIAIFs apply different rules in relation to the management of leverage, issuer concentration rules, rules on the prudential regulation of service providers etc., that represent an adequate risk profile for RIAIFs. RIAIFs other than UCITS, such as registered funds or 1940 Act funds in the US, Non-UCITS retail schemes (NURS funds) in the UK or German retail funds do not have the same risk profile as UCITS, are properly regulated and remain appropriate for retail investors. From an economic perspective, it is important that Ireland has a regulatory regime for RIAIFs. Following the implementation of AIFMD in Ireland, it will be possible to market Irish retail funds on a cross-border basis without a passport subject to the domestic laws of the Member State where the marketing occurs. Accordingly, it will be possible for Irish RIAIFs to be sold in European on a level playing field with foreign domestic funds. As a large international domicile for investment funds, it is extremely important that Ireland be able to avail of this opportunity.
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?	Whilst it may be the case that not every retail investor would fully understand all the details of a private equity or venture capital fund, we believe that, with the proper disclosures, retail investors should be capable of readily grasping the fundamental nature of the obligations of partly paid shares or commitment agreements. Many financial products available on a retail basis operate on the principle of partial payment up front with further payments to follow; a purchase backed by a loan is a common feature of the retail market at present and, in essence, a partly paid share or a commitment agreement coupled with the requirement for later capital contributions is founded on the same principles. In any event, retail investors should not be excluded from the opportunity to invest in venture capital or private equity funds.
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	We agree with this approach. Going forward the additional flexibility possible in regulating RIAIFs as compared with UCITS due to the greater ease with which the applicable rules can be amended should be taken advantage of to ensure that the rules applicable to the use of derivatives by RIAIFs in the AIF Handbook are updated on an ongoing basis to reflect market practice and evolving trends.

Question	Industry Response
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?	We would suggest that the Central Bank ought to consult and engage with risk managers to draft appropriate guidelines to apply where RIAIF invest in financial derivative instruments.
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.	A RIAIF should be entitled to take derivative exposure to any commodity. RIAIFs which seek exposure to commodities will generally do so through investment in derivatives and commodities indices. We would, therefore, welcome greater clarity regarding investment in financial indices and whether guidance similar to Guidance Note 2/07 will apply to RIAIFs. In addition, RIAIFs should be entitled to acquire commodities directly provided that regular market prices are available and that the RIAIF can demonstrate that there are significant daily market volumes in the commodities in question (e.g., in excess of the NAV of the fund). Allowing a RIAIF to hold, for example, a precious metal directly (via a physical segregated holding with its custodian or a sub-custodian) takes away any issuer risk as the precious metal is actually held in the RIAIF's custody network. In addition the RIAIF can be required to hold multiple different bars/coins of a type ordinarily traded on the market (e.g., London Good Delivery Bars). There should be no limit on the amount of a precious metal held in this way. Single commodity products are available on the market (in Switzerland and the US, for example) and there is no reason to limit them here. In addition a RIAIF could hold precious metals via an unallocated account and this should be treated like any other deposit and subject to the same cash deposit limits. We believe that any proposal for RIAIFs to invest directly in commodities other than precious metals should be the subject of a separate application to the Central Bank. We would not recommend that all commodities are treated in the same way, due to the significant differences in the tradability, pricing and ability to take various commodities into custody.
10. The Central Bank has a requirement for a risk warning	We do not believe it is appropriate for the Central Bank to mandate any specific

Question	Industry Response
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?	risk disclosures. We believe this is a matter which is better left to the general first principles which are set out in Chapter 1, Part 1, Section 5, xiii of the AIF Handbook. This position is also consistent with the position in the UK. We believe that the investment manager is best placed to judge the relative riskiness of investment in various markets which meet the Central Bank's requirements. There are also inherent difficulties in defining what is meant by emerging markets. For the reasons stated above, we do not believe that a specific disclosure is required or appropriate for investment in gold.
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?	We have significant concerns with this approach and ask that it be re-considered. Two categories of AIFMs in particular are prejudiced by this. **Sub-Threshold AIFMs** AIFMD seeks to regulate AIFMs and not the products themselves, which is what the Central Bank is seeking to do in this instance and thereby negating the exemption provided for in AIFMD. The reason for the exemption is not to impose undue costs and administrative burdens on small AIFMs which are not considered to contribute to the systemic risk of the financial markets. To take the approach suggested is to ignore the nature, scale and complexity of such AIFs and AIFMs. The Chapter 2, Part III obligations list is too broad and if it is the intention of the Central Bank to apply all these factors when AIFMD specifically carves out a less onerous regime for start-ups then this may prove problematic. The sub-EUR100/500m market is very important for Ireland; not only does this sector ensure a steady inflow of new managers into the jurisdiction but these managers often go on to be much larger. Accordingly, to implement the rule proposed in CP 60 is effectively closing the door on the next generation of large AIFMs. While AIFMD clearly allows Member States to adopt stricter provisions the application of essentially the full AIFMD requirements to this sector appears to be inconsistent with the general intention of the regime as set out in Recital 17:

Question	Industry Response
	"This Directive further provides for a lighter regime for AIFMs where the cumulative AIFs under management fall below a threshold of EUR 100 million and for AIFMs that manage only unleveraged AIFs that do not grant investors redemption rights during a period of five years where the cumulative AIFs under management fall below a threshold of EUR 500 million. Although the activities of the AIFMs concerned are unlikely to have individually significant consequences for financial stability, it is possible that aggregation causes their activities to give rise to systemic risks. Consequently, those AIFMs should not be subject to full authorisation but to registration in their home Member States and should, inter alia, provide their competent authorities with relevant information regarding the main instruments in which they are trading and on the principal exposures and most important concentrations of the AIFs they manage. However, in order to be able to benefit from the rights granted under this Directive, those smaller AIFMs should be allowed to be treated as AIFMs subject to the opt-in procedure provided for by this Directive. That exemption should not limit the ability of Member States to impose stricter requirements on those AIFMs that have not opted in." **Non-EU AIFMs** There are also other examples of AIFMs who cannot become "Full AIFMs" for regulatory reasons, e.g., U.S. managers awaiting a delegated act under Article 37 or the switching on of the passport. If these AIFMs have to adopt the Full AIFM provisions set out in Chapter 2, Part III rather than rely on the existing private placement regime under AIFMD (and the more minimal compliance obligations set down in AIFMD) this is going to be a problem. We understand the Central Bank's main focus is to insist that the "AIF" rather than the "AIFM" adopts appropriate AIFMD standards but there are numerous references to remuneration, organisation and general principles. The proposals in CP60, in respect of AIFS managed by both sub-threshold AIFMs and non-EU AIFMs, are to effectively apply the full weight of AIFMD indirectly via the AIF. Given that AIFMD explicitly contemplates reduced obligations for both categories of AIFMs until the relevant threshold is passed or the passporting regime is introduced, we would strongly urge the Central

Question	Industry Response
	Bank to reconsider this approach. We would propose that the Central Bank consider the approach followed in Luxemburg. The Luxembourg Bill of Law No. 6471 provides that their SIFs and SICAR products which to not qualify as AIFs are not impacted by the AIFM law and will remain subject to a large extent to requirements similar to those applicable under their current regime. They are however, introducing some adjustments to their current regime such as the introduction of new eligibility criteria for the depositary. We would suggest that this approach be considered.
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?	An Exempt Unit Trust ("EUT") is a trust-based structure used to facilitate investment by all types of Irish pension schemes. The structure can also be utilised by Revenue-approved charities. In essence, a pension scheme or charity, instead of investing in an asset directly, purchases units in a trust arrangement. Those units represent a right to participate in the underlying asset(s) which are held by the trustee. An EUT is a particular type of trust structure which is accorded special tax treatment under Irish tax law - the "exempt" aspect referring the tax exemptions attached to this type of trust. The EUT is used for various reasons, not least of which is its flexibility to allow investments which may not be easily permitted by a pension fund directly. Specific reasons include: 1. to facilitate collective investments by pension schemes. This would include the possibility of a small group of investors pooling their pensions for the purposes of acquiring a particular asset identified by that group, e.g. a commercial building; 2. to provide a governing structure for such collective investments; 3. to facilitate investments by pension schemes in private equity investments where the scope for direct investment is restricted; 4. to facilitate borrowing (at the level of the EUT) by certain pension schemes where direct borrowing is not allowable; and

Question	Industry Response
	5. to ring-fence assets and liabilities into a trust structure to help limit exposure of the remainder of the pension assets to third parties. EUTs are not within the scope of the Unit Trusts Act 1990 as they do not provide facilities for participation by the public. They are therefore not currently subject to authorisation or supervision by the Central Bank of Ireland. In that regard, the EUT is no different from other forms of unregulated property ownership structures such as co-ownerships, partnerships or joint venture special purpose vehicles. It is important to note that the pension funds themselves will be subject to oversight and may be bound by laws pertaining to pension fund investments. For example, the IORPS Directive requires that pension funds within its scope are invested "predominantly on a regulated market". These rules specifically provide that a "look through" applies to collective investment vehicles such as EUTs. Furthermore, institutions for occupational retirement are outside the scope of AIFMD. Accordingly, applying a regulatory regime to many EUTs would duplicate or potentially conflict with the regulatory regime applicable to many investors in such vehicles. Having regard to the above, it is submitted that the application of a regulatory regime to EUTs at product level is both unnecessary and would potentially conflict with the existing regulatory requirements applicable to qualifying investors in EUTs. In addition, there would be a significant negative cost impact of applying further regulatory requirements on trusts that are not, by their nature, offered to the public.
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	We agree with this change and suggest that the appropriate party would be an independent party which has demonstrated to the board/manager of the RIAIF or QIAIF that it has sufficient expertise to be appointed to verify the calculation of performance fees.

Question	Industry Response
you consider could carry out this role?	
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?	A full portfolio statement should be made available on demand (preferably in electronic format). If a full statement is made available to unitholders and potential investors on demand there is no reason to require inclusion of portfolio statements, either full or condensed, in periodic reports for either RIAIFS or QIAIFS. As a compromise, a suggestion might be for RIAIFS to include a condensed portfolio statement in periodic reports. For QIAIFS we would not propose to include any portfolio statement in the periodic reports if a full statement was made available to unitholders and potential investors on demand.
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?	Yes, there are measures or protections which could be put in place to allow an outsourcing service provider to release the NAV for dealing purposes provided the final check is performed by the fund administrator the following day. This is consistent with Chapter 5, Annex II, paragraph 3.2 and footnote 53 of the AIF Handbook but also with current practice where it is understood there are numerous cases provided for under exceptional circumstances to allow an outsourcing service provider to release the NAV for dealing prior to final checking by the Fund Administrator the following day. The measures that would facilitate this are those which are already detailed in the 8 requirements of Annex II and as per current practice generally, covering the oversight, control, management and documentation of the outsourced activity. Please see also our comments on Chapter 5, Annex II, paragraph 3.2 of the AIF Handbook. **Intra-Group Outsourcing** In addition to the outsourcing of activities to third parties, there are many instances where the outsourcing service provider is part of the same group as the fund administrator. This inherently provides for control and oversight of the outsourced activities and subsequent reduced risk. To reflect this there should be greater recognition and flexibility included where the outsourcing is being carried out intra-group as opposed to outsourcing to a third-party.

Question	Industry Response
	Achieving the requisite regulatory standards, particularly in the case of intra-group outsourcing could be met by models which involve a comprehensive process level review where the outsourcing service provider is an affiliated entity and both the fund administrator and the affiliated delegate might have for example an intra-group global processing platform, applying for example common policies and procedures, internal control, continuous compliance oversight and system audits.
16. Are there any other initiatives, options or changes which we should consider?	We suggest that the following areas also be given consideration. **Inward Marketing Rules** We note that the current requirements contained in NU 19.6 "Inward marketing of schemes established in other jurisdictions" have not been incorporated in the AIF Handbook. Notwithstanding the introduction of the passport, there will still be a need for these rules as inward marketing on a private placement basis may arise in a number of circumstances, such as: *(a) Irish / EU AIFM managing non-EU AIF marketing into Ireland* Under AIFMD, the marketing of the non-EU AIF in the EU may be on a passported basis (Article 35) or on a private placement basis (Article 36). *(b) Non-EU AIFM managing an Irish AIF marketing in Ireland* The non-EU AIFM is permitted to market the Irish AIF in Ireland on a private placement basis under Article 42. *(c) Non-EU AIFM managing a non-EU AIF marketing in Ireland* The non-EU AIFM is permitted to market the Irish AIF in Ireland on a private placement basis under Article 42. We note that the only inward marketing rules contained in the AIF Handbook relate to the inward marketing of AIF to retail investors (Chapter 1, Part IV). Rules will also be required to regulate the inward marketing of non-EU or EU

Question	Industry Response
	AIF into Ireland on a private placement basis. The current NU 19 could be used as a template for these requirements. **Ireland as Member State of Reference** We note that the AIF Handbook does not contain specific rules where a non-EU AIFM applies for authorisation under AIFMD using Ireland as its member state of reference. Is it intended that the Chapter 3 Alternative Investment Fund Managers Requirements, in a modified format, will apply to the non-EU AIFM? We note that this step is contingent on ESMA issuing an opinion in 2015 that the passport ought to be extended to non-EU AIFM. **Authorisation Procedures** The AIF Handbook does not address timelines for authorisation. Clearly, a drawn-out authorisation process could have a significant impact on competitiveness for Ireland. Although this does not immediately impact on the AIF Handbook, we would encourage that a discussion be initiated between industry and the Central Bank as soon as possible to determine how the authorisation procedures can be streamlined to the fullest extent possible. In particular, the material aspects of the current fast-track / self-certification process applicable to QIFs should be retained. This may involve standard checklists, application documents and "programme of activity" / business plan templates in order to ensure that the authorisation process is as efficient as possible. This is key for those AIFMs that wish to avail of the passport from July 2013 and, given that AIFMD contemplates a 3-month authorisation process for such AIFMs, we would expect that a form of application process should be agreed by April 2013 at the latest to ensure that the AIFMD authorisation can issue in July 2013. **Self-Managed/Internally-Managed AIFs** Internally-managed AIFs are not specifically addressed in the AIFM notice and it is unclear how some of the provisions will apply to internally-managed AIFs,

Question	Industry Response
	for example: ▪ the requirement that an application for authorisation as an AIFM must be made by submitting completed individual questionnaires (“IQ”) in respect of each individual who has a direct or indirect holding of shares or other interest in the proposed AIFM, which represents 10% or more of the capital or voting rights in the AIFM; ▪ the requirement that the AIFM shall comply with the Client Asset Requirements issued by the Central Bank under European Communities (Markets in Financial Instruments) Regulations, 2007 ("the MiFID Regulations") where the AIFM maintains client asset accounts for processing subscription and redemption monies; and ▪ the requirement that an AIFM which is authorised to provide individual portfolio management services must, with respect to the additional activity, comply with the provisions of the European Communities (Markets in Financial Instruments) Regulations 2007 ("the MiFID Regulations"), which are specified in Regulation 16(4). Given that the majority of Irish AIFMs are expected to be constituted as internally-managed AIFs, it would be worthwhile to have the AIF Handbook address this category either throughout the relevant sections of the AIF Handbook or in a dedicated section which explains those provisions which are inapplicable or amended in the case of an internally-managed AIF. **Exemptions for Closed-Ended Funds** The provisions of Article 61(3) and 61(4) which permit AIFMs of certain closed ended funds to continue to manage such AIFs without authorisation have not been addressed in CP 60. **Qualifying Investors v Professional Investors** The AIF Handbook provides that a unitholder in a QIAIF must be:

Question	Industry Response
	(a) an investor who is a professional client within the meaning of Annex II of Directive 2004/39/EC (Markets in Financial Instruments Directive); or (b) an investor who 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 QIAIF; or (c) an investor who 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 property of the same kind as the property of the QIAIF. In AIFMD, "professional investor" is defined as "an investor which is considered to be a professional client or may, on request, be treated as a professional client within the meaning of Annex II to Directive 2004/39/EC." The availability of the passport under AIFMD only applies where the AIF is marketed to professional investors in the EU. The ability to market to investors in QIAIFs that fall into categories (b) and (c) will depend on private placement rules as applied under Article 43 of AIFMD – Marketing to Retail Investors. We would ask that the Central Bank confirm its position on this point. At a minimum, it should be confirmed that QIAIFs may be marketed to investors in categories (b) and (c) on a private placement basis and that the introduction of the new rules will not impact marketing to existing investors that fall into these categories. **Varying Dealing Frequencies Between Share Classes** Pursuant to the references to fair treatment of investors in Article 23(1)(j) of

Question	Industry Response
	AIFMD, we should be grateful if the Central Bank could clarify whether it intends to include specific disclosure requirements in relation to varying dealing frequencies between share classes. **Lending by QIAIFs / Issuance of Debt Securities by AIFs** We welcome the statement in CP 60 that the Central Bank proposes to look at the question of lending by QIAIFs in 2013. We would also encourage the Central Bank to give further consideration to the ability of AIFs to issue debt securities. We note that detailed submissions have been made by the IFIA in the past on these issues and we would be happy to re-engage with the Central Bank as soon as possible in 2013 on these topics.
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?	We note that the Central Bank has confirmed that the AIFM must be identified in the case of each AIF and consideration given to the need to update AIF documentation, including any changes necessary to reflect changes to contractual arrangements. CP 60 states that "*all existing AIFs regulated under the regime outlined in this Consultation Paper will automatically move to being regulated under the new regime. That means that where a manager, or a fund service provider has an obligation that will no longer apply under the new regime, that obligation will automatically cease from the date on which the new regime is applicable. Equally, where the new regime creates an obligation that did not apply hitherto, that obligation will apply automatically from the date on which the new regime goes live. This is without prejudice to the need for AIFs to take the necessary actions, including unitholder approval where necessary, if it is intended to amend existing provisions in relation to diversification requirements*". CP 60 goes on to ask whether there are any transitional measures that it should consider in order to facilitate an orderly transition for existing non-UCITS investment funds into the new regime. We responds as follows: 1. The IFIA welcomes the fact that the Central Bank wants to facilitate an orderly transition to the new regime. 2. The section above refers to the "*date on which the new regime is applicable*". However, there is still significant uncertainty as to when

Question	Industry Response
	AIFMD will become fully applicable, particularly in the case of existing AIFMs and AIFs. CP 60 does not include a section dealing with transitional arrangements and we believe that this should be specifically addressed, either as a separate section of the AIF Handbook or in the introduction to relevant Chapters of the AIF Handbook. 3. As the Central Bank has noted, there will be a very significant amount of work to be completed by existing AIFMs (both in relation to their own structures and to require amendments to any AIF under management) before they will be in a position to comply in full with the new regime. In particular, some of the changes may require updates to constitutional documentation, which in the case of investment companies will require shareholder approval and compliance with all necessary notice periods. Given the sheer volume of changes to be processed in order to comply with these requirements, we believe that the Central Bank should allow existing AIFMs and AIFs as much time as is possible within the framework of AIFMD to comply with the new regime. 4. Article 61 of AIFMD (Transitional Provisions) provides that existing AIFMs performing activities under AIFMD prior to 22 July 2013 shall take all necessary measures to comply with national law stemming from AIFMD and submit an application for authorisation under AIFMD within one year of that date. We believe that the intent of this transitional clause is to allow all existing AIFMs and AIFs until 22 July 2014 to complete their application for authorisation and comply in full with the provisions of AIFMD. 5. This approach is consistent with the approach taken by the Financial Services Authority in the United Kingdom in Consultation Paper CP 12/32 on Implementation of the Alternative Investment Fund Managers Directive (CP 12/32) in Chapter 2, section 5 dealing with transitional arrangements and which states that AIFMD "*allows firms that are already managing or marketing AIFMs, before 22 July 2013, a transitional period of twelve months to comply with the relevant*

Question	Industry Response
	laws and regulations and to apply for authorisation. The Treasury regulations propose that a firm carrying on the activity of managing one or more AIFs as at 22 July 2013 will be permitted to continue its collective portfolio management activities, subject to the Handbook rules applying immediately before that date. A firm which currently carries on business as an AIFM without needing a Part IV permission –for example, an internally managed investment company – will be able to benefit from this transitional period. All these firms, however, must be AIFMD-compliant and have submitted an application for authorisation by the end of that 12 month period". We would agree with this approach and request that the Central Bank issues similar clarification in the context of the AIF Handbook. In practice, this may mean retaining the existing Non-UCITS Notices and Guidance Notes in place for the duration of the one-year transitional period. We note the continuing discussions in respect of the AIFMD Level II rules which are not yet finalised and, against this backdrop, it has become even more important for AIFMs to be allowed sufficient time to put in place appropriate processes to comply with AIFMD. 6. We are conscious that the transitional period will not apply for entities which commence AIFMD activities after 22 July 2013 and that any such entity will need to apply for authorisation and to comply with AIFMD before it can commence managing an AIF. 7. Some managers may wish to avail of the transitional measures (the "Transitional Option") and others may wish to apply immediately in order to avail of the AIFMD passport (the "Passport Option"). Accordingly, a parallel/twin track approach is encouraged. *(i) The Passport Option* As stated, many managers will wish to avail, at the earliest possible opportunity, of the AIFMD passport with the marketing and branding benefits that this will bring. Accordingly, these managers will wish to avail to seek authorisation under the provisions of the Directive with immediate effect so that they can be fully authorised and commence

Question	Industry Response
	marketing activities with effect from 22 July 2013. Article 8(5) of the Directive provides that "*competent authorities of the home member state of the AIF shall inform the applicant in writing within 3 months of the submission of a complete application, whether or not the authorisation has been granted*". At the industry briefing held on 20 November 2012, it was stated that the AIF Handbook would only take effect from 22 July 2013. As an industry, we believe that it is important that Ireland is "AIFMD-ready" at the earliest possible point in time by being able to have both AIFMs and AIFs approved on 22 July 2013. Accordingly, we would like to ensure that the timeframes applied facilitate the issue of AIFM authorisation on, or as close to, 22 July 2013 as possible with certainly being given as to what date applications for authorisation will be accepted by the Central Bank. We would have thought that this date will need to be at least 3 months in advance of 22 July 2013. We will also need clarity on the statement in CP 60 that "All existing AIFs regulated under the regime outlined in this consultation paper will automatically be moved to being regulated under the AIFMD regime. *(ii) The Transitional Option* While the outcome of the discussions regarding the delegation provisions of AIFMD under Level II will be a factor here, it would be very useful to have clarification that all currently approved non-UCITS funds are prima facie considered to be AIFs and that all managers of non-UCITS funds are prima facie considered to be AIFMs, in the absence of notification to the Central Bank of the contrary, for the purposes of Article 61(1). On the basis that there will be consistent interpretation of the "comply and apply by 2014" in all member states, then we consider that it

Question	Industry Response
	would also be permissible for managers of internally-managed umbrella QIAIFs who are availing of the transitional option to continue to launch additional sub-funds of the umbrella during the transitional period without having to make a full AIFM application and that these funds will be able to continue to avail of private placement when marketing. In these circumstances, it is likely that Chapter 2 – Qualifying Investor AIF Requirements of the draft AIF Handbook will apply to these new sub-funds, but not Chapter 3 - Alternative Investment Fund Manager Requirements. If this interpretation was not to apply, it is likely that managers who wish to avail of the full transitional period will hold off from launching new fund products. 8. AIFMD provides that the national competent authorities will have three months to review applications for authorisation. Given that the AIF Handbook is, by necessity, a relatively high-level document it is likely that any particular Central Bank requirements in relation to the content of the "programme of activity" and other documents to be submitted by the Central Bank will only become apparent as the first tranche of AIFMs go through the authorisation process. Accordingly, we think it would be useful to discuss the Central Bank's approach to existing AIFMs who make an application for authorisation on or shortly before 22 July 2014 (having made all good faith efforts to comply with AIFMD by 22 July 2014) but become aware in the course of the Central Bank review process that further amendments are necessary in order to comply with particular Central Bank requirements. 9. The transitional provisions for depositaries should also be clarified. It would appear from AIFMD that depositaries must comply with the eligibility requirements from 22 July 2013. However, the date on which the depositary must comply with the substantive provisions of AIFMD in relation to depositary tasks, liability, delegation and other matters in respect of an AIF will be driven by the date on which the relevant AIFM becomes subject to the new regime.

Question	Industry Response
	10. CP 60 and the AIF Handbook introduce some additional flexibility in terms of the ability to have differing treatment of share classes and other concepts that are unrelated to the transposition of AIFMD. We note the statement by the Central Bank at the industry briefing on 20 November 2012 that such changes would not be implemented until July 2013. We believe that this will be a significant bar to further product development over the first six months of 2013. To the extent that these new provisions are not contingent on the additional protections which will be introduced under AIFMD, we strongly recommend that a process be put in place by the Central Bank to allow AIFs to avail of these enhancements early in 2013. 11. We note that there will be AIFMs of Irish funds which are not within the scope of AIFMD (for example, non-EU AIFMs in respect of which Article 42 regarding private placement will apply or where the AIF is not sold in the EU at all). The transitional provisions that will apply to such AIFMs also need to be considered. We submit that the existing rules should continue to apply to these AIFMs. This is in line with the proposed approach to be adopted in Luxembourg.

SCHEDULE 2
SPECIFIC COMMENTS ON DRAFT AIF HANDBOOK

AIF Handbook Reference	Industry Comments
CHAPTER 1 RETAIL INVESTOR AIF REQUIREMENTS	*Page 12, 1st paragraph*: We would object to this paragraph on the basis that if the law is subsequently amended, the action is no longer in breach. Usually when a breach has occurred, the first course of action would be to correct the breach. This will not be required, or possible, in this instance as the action will no longer be in breach of the Regulations. We would therefore suggest that no enforcement or disciplinary action should be brought against an AIF/AIFM in these circumstances, provided that it is in compliance with the new amended Regulations.
Part I GENERAL RULES	
1. Retail Investor AIF Restrictions	**i General restrictions** Paragraph 1 Delete references to investment company and investment funds and replace with "Retail Investor AIF". Please amend throughout the notices, if applicable. Paragraph 5 The conditions listed for indices are not set out in AIFMD or the UCITS directive. In particular paragraph (b), "in a manner which disadvantages unitholders". More clarity is needed as to what this is seeking to achieve. **ii Investment restrictions** Paragraph 2 Presume that 'date of their launch' refers to the seeding of the relevant sub-fund and not the date of authorisation, but might be worth confirming. Suggest a better date would be the date on which the sub-fund makes its first investment purchase. Also, in the context of closed-ended RIAIF, this six month derogation may not be realistic given the nature of the investments and the time that it takes. Where shares are issued on a drawdown basis, we would suggest that the requirement should be that the investment restrictions will be complied with from the date on which the fund is fully invested. Paragraph 6 The increase to 35% in respect of a single issuer in replicating index funds is only where this is justified in 'exceptional market conditions'. We believe that this is not workable and may, on paper, exclude many smaller indices (e.g., Ireland, Switzerland) from being used, although we recognise that the Central Bank has been flexible in its interpretation for UCITS. We believe that the provision should be that where the fund is replicating an index and the relevant index meets the Central Bank's requirements, it ought to be able to

AIF Handbook Reference	Industry Comments
	invest up 35% in any one issuer on a permanent basis and not just in exceptional market conditions. Paragraph 7 We note the amended diversification requirement and investment restrictions which provide flexibility for the RIAIF product, however we note in paragraph 7 that a RIAIF may not hold more than 10% of any classes or security issued by a single issuer. In light of the other changes, should this not be increased to 20%? Paragraph 12 Where RIAIFs invest more than 20% of net assets in other funds; it must be ensured that the investment funds in which it invests are prohibited from investing more than 20% in other funds. As a Retail fund of funds may now invest up to 30% in any one fund, should this not also be amended to 30%? **iii Borrowing Powers** Paragraph 1 Clarity required around what a fund may use borrowing proceeds for. For example, it should be able to invest in FDI, which is prohibited under the UCITS requirements, and other investments. If borrowing is to be extended to 25% it ought to be able to be used for purposes other than temporary purposes, subject to the overall investment limits. The restriction on netting cash balances against borrowing when determining the percentage of borrowings outstanding should be removed. Paragraph 2 It states that borrowings may not exceed 25% of NAV. Should this not be increased to 30% in line with the increased risk profile of this product? **iv Financial Derivative Instruments** Paragraph 3: (a) Relevant Institution should be upper case as it is a defined term. (b) States that FDI counterparties must have a minimum credit rating. We would be of the view that this should be avoided for the following reasons: (i) It encourages funds to rely on credit ratings as a factor in the determination of the eligibility of a counterparty which is particularly dangerous in the case of a RIAIF as this is not a reliable indication of a counterparty's credit worthiness. (ii) In addition, further to the Central Bank's letter dated 29 June 2012 in relation to credit rating requirements, in light of recent credit downgrading, existing funds can continue to use counterparties with a rating that is less than the required A2, whereas new funds or any existing fund that wants to trade with a new counterparty will

AIF Handbook Reference	Industry Comments
	not be able to do so, due to their credit downgrade. This will create an inequality. This point also applies on *page 35, paragraph 11* in relation to repurchase agreement counterparties. We note that the financial derivative instrument sections are mainly tailored and adopted from the UCITS requirements. We submit that it is not appropriate to apply the various ESMA guidelines to RIAIFs, as these were drafted with the UCITS product in mind. We note that the AIFMD does not include such a requirement. In respect of the possible implications of such criteria being applied to RIAIFs, we would highlight the following potential negative consequences: (aa) In volatile markets such as recent conditions that have resulted in various rating agencies revising credit ratings of a wide range of financial institutions and not just the individual counterparty, a counterparty may become ineligible to continue to act as counterparty to a RIAIF resulting in an inadvertent breach of the regulation by the fund. In the case of open transactions, such automatic ineligibility creates legal uncertainty and may require significant transactions to be terminated in a short time frame potentially incurring termination costs that may be contrary to the interests of the fund and its investors. (bb) Such criteria may contribute to the creation of an increasingly small pool of eligible counterparties and potential counterparty concentration risks for the RIAIF. We would propose that alternative credit risk mitigation techniques, for example bilateral collateral arrangements, are available to the fund and these are equally (if not more) effective in the risk management of counterparty risk exposure. (cc) We are not aware that any other Member State is contemplating the introduction of minimum counterparty credit rating criteria in respect of AIFs and, as this is not a requirement of the AIFMD, such a step would represent gold plating by the Central Bank which does not reflect the maximum harmonisation objectives of the AIFMD and may place Ireland at a competitive disadvantage with comparable fund jurisdictions. **vii Valuation** Paragraph 12 It states that closed ended RIAIFs must value their portfolios on a monthly basis. Why is this required if the fund is closed ended? **ix Share classes** Paragraph 2 We recommend that the Central Bank allow for the fair treatment of investors in different share classes, rather than prescribing that all classes must have the same dealing procedures and frequencies.

AIF Handbook Reference	Industry Comments
	Paragraph 4 Should add in the following sentence: “Other arrangements will be considered on a case by case basis”. **xii Dealings by management company, general partner, depositary, AIFM, investment manager or by delegates or group companies of these** Paragraph 2 This should include: "(d) in the case of the transaction involving the custodian, the directors of the Retail Investor AIF should be satisfied that such transactions confirm with the principle that it be carried out as if effected on commercial terms negotiated on and in the best interest of shareholders."
2. Application Requirements	ICAVs are not referred to here. The AIF Handbook will need to be updated once the ICAV structure is introduced.
3. Application Process	**iv Closed Ended Retail Investor AIFs** Paragraph 1 The reference to “prudent to authorisation” should be corrected to read “prudent to authorise”. Paragraph 2 This provides that the AIF must have a finite closed-ended period, the duration of which must be provided for in the constitutional document. We would recommend that for umbrella structures the duration is specified in the relevant supplement with a general cross reference in the constitutional documents to the supplement. The constitutional document should provide for the ability to have closed-ended sub-funds but not the specific duration, as this will vary. Paragraph 3 The reference to “this Part” should be corrected to read “this Chapter”.
4. Supervisory Requirements	**General conditions** Paragraph 4 - it would be useful to define “material contracts” for clarity. Paragraph 5 - it appears that the Central Bank does not have the right to object to such cross-investments. We would query therefore why does the rationale for the investment have to be notified to the Central Bank? This appears inconsistent. **ii Directors of Retail Investor AIF investment companies** ii (1) it might be preferable not to cite specific form, such as “Form R” in this case and instead to just refer to the requirements of the Central Bank and its relevant notification procedure as amended from time to time. iii (1) Suspensions - there should be a comma after the word “partnership”.

AIF Handbook Reference	Industry Comments
	iv Replacement of depositary Suggest including the requirement for a report of the new and outgoing depositary to be included in the annual report where there has been a change of depositary during an accounting period here. **v Replacement of management company, general partner or third party** 1- Include a requirement for prior approval of new management companies here as per ILPs below (e.g., in case a new management company was to be appointed to a new sub-fund rather than the existing one being replaced). 3 – Notification of the replacement of any third party seems too broad. We suggest this be restricted to those that are parties to material contracts. **vii Amalgamation** We suggest that amalgamation procedures similar to those in place for UCITS be included. Paragraph 2 (b) first bullet point should have a semi colon at the end thereof and commas around “and rationale for”. (c) clarify that this should occur prior to the circular going out to unitholders. (f) one month seems an excessive notice period for daily dealing funds. (g) include clarification that only the procedure only needs to involve unitholders of the amalgamating sub-funds.

AIF Handbook Reference	Industry Comments
5. Prospectus Requirements	**i General Requirements** Paragraph 2 We would query whether the reference to "unitholders" should refer to "prospective unitholders". **xiii Risk disclosures** This sub-section still includes a paragraph stating that an additional risk warning must be included in the prospectus where a fund invests in emerging markets. This appears to be an arbitrary example and indeed there are other examples given in the application form that would also qualify as high risk funds. It might be better to make the risk disclosure less prescriptive and refer to "higher risk funds", leaving the decision to the fund as to whether to include additional risk warnings. This is also relevant for the response to question 9 of the Questions for Consideration.
6. General Operational Requirements	It would be useful if the Central Bank could clarify what, in its view, would constitute "sufficient management resources" in the context of an internally-managed investment company. Obviously, the final provisions of the Level II Regulation will inform this interpretation. However, this remains a key issue at a practical level and it would be useful at this stage to have a sense of the Central Bank's approach in this regard. **ii Dealing** Paragraph 2 We recommend that the Central Bank allow for director discretion in determining if and when units would be cancelled, rather than prescribing that units "must be cancelled". It may not always be in the interests of the investors to cancel units, particularly if the price of those units has reduced since they were created. Therefore, we recommend that the board of directors of the RIAIF should have some discretion in this regard. Paragraph 3 It is unclear why specific provision is made in relation to the suspension of the calculation of the net asset value and redemption of units of investment limited partnerships and not other forms of RIAIFs.

AIF Handbook Reference	Industry Comments
7. Annual and Half Yearly Reports	**N.B.** The annual and half-yearly reporting requirements that apply to AIFMs pursuant to Section XIX of Part I of the AIFM Requirements (Chapter 3 of CP 60) apply to RIAIFs. This note will therefore examine the provisions of Section 7 of Chapter 1 and Section XIX of Chapter 3. The Central Bank has not taken on board the previous industry comment that it could be beneficial to amend the provisions of Part XIII of the Companies Act to allow for the issuing accounts for individual sub-funds of an investment company. Paragraph 6 of Section 7(i) does however expressly allow for individual periodic reports to be produced for sub-funds of common contractual funds and unit trusts. The requirement for every sub-fund of a RIAIF investment company to be considered in the annual report is burdensome. As a general comment, some of the proposals made tend to bring regulatory reporting requirements into the financial reporting area. This is not appropriate and is not in line with the approach taken by any other jurisdiction. This places Ireland at a competitive disadvantage. **Audit** There is no provision in Section 7 of Chapter 1 in relation to the audit requirements on RIAIFs. Section XIX of Chapter 3 does however require that an issuer for the purposes of the Transparency Directive must have their annual report audited in accordance with Directive 2006/43/EC. Paragraph 1 of NU11 currently requires that all non-UCITS CIS must have their annual report audited by one or more persons empowered to perform the audit under the Companies Acts. Clarity is required as to the standard to which the audit must be performed and the types of CIS which are required to have their annual reports audited. Was it intended that the audit requirements would only apply to those CIS within the scope of the Transparency Directive? **i Publication of annual and half-yearly reports** Paragraph 3 We note the extension of the four month filing deadline for annual reports to six months. Extension of the two month filing deadline for semi-annual reports should also be considered. Please note that where the RIAIF is an issuer for the purposes of the Transparency Directive (2004/109/EC) there is an obligation to produce the annual report or a separate report containing certain minimum financial information, within 4 months. It would be beneficial if the Central Bank could provide clarity on this point in the text of Section 7 and thereby removing the need to cross-refer to Section XIX.

AIF Handbook Reference	Industry Comments
	ii Information to be contained in the annual report Paragraph 1 We query why it is necessary to confirm that the aim of spreading investment risk has been maintained in the annual report. This is already a requirement that investment companies need to comply with and should not need to be included in the annual report. Paragraph 2 This sets out the requirements in relation to reporting of related party transactions which had been introduced by the Central Bank to NU 2 with the intention that they apply to financial reports for periods ending on or after 1 July 2011. These provisions are still the subject of discussions between industry and the Central Bank as to the best way to provide relevant disclosures without being unduly burdensome to produce or revealing commercially sensitive information. The proposal of the Central Bank to list all connected party transactions is not practical, does not add value, will greatly increase the cost and time required to prepare financial statements, the volume of financial statements and in some cases this information will not be available due to commercial sensitivities. For administrators that attempted to comply with this when it was initially introduced it caused significant difficulty, time input and cost (one administrator who has sought to comply with this has found that the requirement added an extra 70 to 80 hours to the cycle for production of the financial statements) The requirement that transactions with connected parties are carried out on an arm's length basis and on a commercial basis is a requirement of the existing regulatory framework and there are procedures in place to ensure this takes place. The financial statements are not the appropriate place to ensure this is complied with and the proposed disclosure is not required in any other jurisdiction and will have a very negative impact on the industry. At this stage, we believe that the previous IFIA proposal that a director compliance statement be included in the directors' report would be the best solution. Paragraph 2 of Section (ii) makes reference to the related party transaction report's inclusion in the annual report only – is it intended to remove the requirement for such a report in the half-yearly reports of RIAIFs? Paragraph 3 None of the provisions in this paragraph appear in AIFMD and, from a review of FSA Consultation Paper, it would appear that there is no intention in the UK to introduce requirements in relation to the disclosure of such matters as cross-investment, soft commissions and use of financial derivative instruments, repurchase agreements and securities lending. We query why this additional disclosure is required. The new obligations on RIAIFs to include details of any transactions undertaken to provide protection against exchange rate risks and, details of all sub-investment managers, are unwarranted and have no basis in the AIFMD text. Para. 3(c) The requirement again goes beyond current requirements which at present are onerous suggesting that

AIF Handbook Reference	Industry Comments
	information be provided "to the extent possible, on fees paid by the underlying investment funds". It is difficult and time consuming to provide information on investments into which an AIF invests in without requiring a second layer of disclosure. This is already time consuming and difficult for administrators and often involves getting information from the investment manager. A second layer of disclosure will not be possible and does not any value to investors. Paragraph 3(k) A requirement to obtain information on commissions paid outside a fund is a new provision, which will add to an existing list which is already extremely long and burdensome to prepare. It extends requirements to obtain information which is outside the fund itself. The requirements on acting in the best interests of investors are covered by existing regulatory requirements and the custodian has oversight ensuring the fund is managed in accordance with regulations and states this in the custodian report. We believe that the financial statements are not the appropriate medium for this requirement and the costs involved do not, ultimately, justify any assurance given to investors. Paragraph 6(c) We note that a portfolio statement is required detailing each individual investment. We had understood that the Central Bank is seeking to introduce a condensed portfolio schedule for non-UCITS. Also, we query whether it is necessary to require RIAIFs holding less than 10% of assets in deposits to submit details in relation to same to the Central Bank with their annual reports. Paragraph 6(f) This refers to information on underlying funds being invested in. We query whether it is necessary to require the underlying fund to disclose this information, to the extent possible. On what basis has the requirement for RIAIFs to disclose details of its investment in underlying funds been increased to include all investment funds? Paragraph 6 of NU25 provides that such disclosure is only required in respect of unregulated investment funds. Paragraph 6(k) and (l) These paragraphs should be indented for clarity. Paragraph 6(n) We believe this requirement is already covered by paragraph 2 above. Paragraph 6(o) We note that full details of the amounts paid under any directed brokerage programmes or similar arrangements must be disclosed and query whether this level of detail is necessary, as this information may be difficult to determine. Paragraph 6(p) This paragraph mentions a requirement to disclose the impact of fees on returns to shareholders. We query

AIF Handbook Reference	Industry Comments
	why disclosure of underlying fees is not sufficient. **iii Information to be contained in the half-yearly report** Paragraph 4 We note that a portfolio statement is required detailing each individual investment. We had understood that the Central Bank is seeking to introduce a condensed portfolio schedule for non-UCITS. Paragraph 11 We note that a description of any material changes in the prospectus during the reporting period is required for semi-annual reports but this does not appear to be a requirement for annual reports. Paragraph 14 The requirement to list transactions and breakdown rates is contrary to what was provisionally agreed with the Central Bank. **Discrepancies between content of annual and half-yearly reports** The following requirements, although required disclosures in the half-yearly reports pursuant to Section 7(iii), and currently required in annual reports by NU11, are not mentioned in the annual reports text: (a) A balance sheet or statement of assets and liabilities; (b) A statement of 'material' changes in the composition of the portfolio during the reference period; and (c) A description of any material changes to the prospectus during the reporting period. It is suggested that these requirements should also feature as information to be contained in annual reports.
Part II SPECIFIC FUND-TYPE REQUIREMENTS	
1. Venture or Development Capital, Retail Investor AIF	The existing one-year derogation from the restriction on permitted investment in any one company or group of companies should be inserted.

AIF Handbook Reference	Industry Comments
2. Money Market Retail Investor AIF	**Short-Term Money Market Funds** Paragraph 13 of NU17 permits investment in other collective investments schemes provided those collective investment schemes are also Short-Term Money Market Funds. Chapter 1 Part II (2) (i) – paragraph 11 as currently drafted appears to limit investment to other RIAIF (which are also Short-Term Money Market Funds). As a RIAIF is permitted to invest in collective investment schemes which are not RIAIF (Part I, section 1.ii paragraph 10), this should be amended to refer to "investment funds" instead of RIAF (for example an RIAIF could invest in a UCITS Short-Term Money Market Fund authorised by the Central Bank). **Money Market Funds** The above comment also applies to Money Market Funds – Paragraph 25 of NU17 and Chapter 1 Part II (2) (ii) paragraph 11. **General** Also we suggest using one term consistently when referring to collective investment schemes (e.g. "investment funds" (the term used under Part I, section 1.ii paragraph 10) or "collective investment undertakings" (the term used under Part II (2) (iv) paragraph 6(g)). Chapter 1 Part II (2) (iv) sub-heading "Money Market Funds (MMFs) Defined" – footnote – there appears to be text missing in footnote 25 (reference to "institutions sector (ECB/2008/32) (ECB/2001/12)").
3. Real Estate Retail Investor AIF	As previously commented, we suggest the restrictions on investment in real estate related assets that are not traded in or dealt on a market and restrictions on investment in vacant real estate and real estate requiring development (currently 25% of net assets) be increased. These restrictions unduly restrict the types of real estate RIAIFs investors may acquire. Concerns regarding investment risk can be addressed by means of enhanced prospectus disclosure. The current restriction on borrowing is limited to 25% of an AIF's net assets. We recommend that retail property funds be permitted to borrow up to 50% of the AIF's net assets. We believe that this limited increase in the amount of leverage available is necessary; otherwise property funds will not be able to compete with individual investors or unregulated products. Retail property funds may have the ability to generate investment activity in the domestic property market without unduly exposing investors to concentrated investments (e.g., one apartment). Is there a rationale behind limiting 'real estate related assets' to issues by a *body corporate?* Should other issuer structures

AIF Handbook Reference	Industry Comments
	not be provided for such as limited partnerships and unit trusts? Paragraph 2 It appears that there is some text missing with regard to the reference to "such a market". The current non-UCITS notice begins with the following language "Property related assets must be traded in or dealt on a market which is provided for in the trust deed, deed of constitution, articles of association or partnership agreement". If it is proposed to delete this text the reference to "such a market" in this paragraph is not appropriate.
4. Funds of Unregulated Funds Retail Investor AIF	Please refer also to our response to Question 2 above. The requirements for the most part transpose the requirements of NU 22 (Feeder Schemes), NU 25 (Funds of unregulated funds schemes) and Guidance Note 1/01 (Feeder Schemes and Fund of Funds Schemes: Acceptable Investments and Related Issues). While these requirements are over and above what is required by AIFMD, we acknowledge that there is the possibility of having a RIAIF which is not managed by a "Full AIFM", i.e., an AIFM authorised under AIFMD. For this reason, the Central Bank has taken the view that they wish to retain its existing requirements in respect of non-UCITS retail funds and apply them in the AIF Handbook. This approach means that the requirements in respect of funds of unregulated funds RIAIFs will apply whether the RIAIF is managed by a Full AIFM or not. Where the RIAIF is managed by a Full AIFM, AIFMD imposes a number of requirements on the AIFM which provide a comprehensive framework for investor protection and the avoidance of systemic risk which obviates the need for additional requirements imposed at the level of the AIF. These requirements include, for example, provisions regarding risk management, maximum leverage, liquidity management, disclosure to investors and detailed reporting to competent authorities. The imposition of the additional requirements in relation to funds of unregulated funds will put Ireland at a competitive disadvantage when compared to other European jurisdictions which do not impose additional requirements beyond the provisions of AIFMD. These requirements should therefore only apply where the Retail Investor AIF is not managed by a full AIFM. We note that the draft AIF Handbook increases the permitted investment in unregulated schemes from 10% to 20%. This is a welcome development. Paragraph 1 This states that underlying investment funds must be subject to audit in accordance with generally accepted accounting standards. This should refer to audit in accordance with international auditing standards or US Generally Accepted Auditing Standards where appropriate.

AIF Handbook Reference	Industry Comments
	Paragraph 13 This paragraph requires disclosure of the impact of the fees of underlying funds invested in. Please clarify the format of this disclosure. This paragraph also requires disclosure of the fees of funds invested in and details of fees to a second layer. This information may be difficult to obtain.
5. Retail Investor AIFs which Invest More Than 30% of Net Assets in Another Investment Fund	Please refer also to our response to Question 2 above. We note that the draft AIF Handbook does not contain a provision to the effect that any proposed investment in an underlying investment fund greater than 30% will be regarded as a feeder-type investment. Presumably this provision has been removed so as not to contradict the provisions of AIFMD which defines "feeder AIF" as an AIF which invests at least 85% of its assets in units or shares of another AIF (the "master AIF"). The draft AIF Handbook imposes a number of conditions where a RIAIF invests more than 30% of net assets in another investment fund. The draft AIF Handbook incorporates a number of requirements currently contained in NU 22 and Guidance Note 1/01 (Collective Investment Schemes other than UCITS: Feeder Schemes and Fund of Funds Schemes: Acceptable Investments and Related Issues), with all references to "feeder funds" removed. The requirements contained in this section of the AIF Handbook are additional to those contained in AIFMD. The relevant provisions regarding feeder funds in AIFMD are set out in the Appendix. We submit that the rules regarding the marketing of feeder AIFs set out in AIFMD are adequate to ensure investor protection and to protect against systemic risk. The additional requirements set out in the draft AIF Handbook, if applied to RIAIFs managed by a Full AIFM, may put Ireland at a competitive disadvantage when compared to other EU jurisdictions which do not impose additional requirements beyond the provisions of AIFMD. We acknowledge, however, that the AIFMD provisions are directed at marketing to professional investors only and that the Central Bank may take the view that the additional requirements are necessary in order to protect retail investors in RIAIFs which invest more than 30% of net assets in another investment fund. Therefore, there may be justification for the requirements in this section where the RIAIF is not managed by a Full AIFM. We submit that where the RIAIF is managed by a Full AIFM, there are adequate protections in place under AIFMD to protect both retail and professional investors. Paragraph 6 This requires disclosure of the fees of the underlying funds in which the fund of funds invests where possible.

AIF Handbook Reference	Industry Comments
	This is not practical and the reference to "where possible" is unclear. Paragraph 7 We note that it is proposed to require a fund that invests in another fund to attach the financial statements of the underlying investment fund. This will add to distribution and printing costs and should be reconsidered.
6. Closed Ended Retail Investor AIFs or Retail Investor AIFs with Limited Liquidity	As previously commented, we suggest the restrictions on investment in real estate related assets that are not traded in or dealt on a market and restrictions on investment in vacant real estate and real estate requiring development (currently 25% of net assets) be increased. These restrictions unduly restrict the types of real estate RIAIFs investors may acquire. Concerns regarding investment risk can be addressed by means of enhanced prospectus disclosure. We would question whether a 5 year limit is appropriate. It may not be in the investor's interest to have what might be considered such a short investment horizon for these types of fund and the illiquid nature of the assets. It may limit the scope of investment and may reduce the investor's potential return. While the ability to have 10 year periods is helpful, it is doubtful whether managers will be able to make the liquidity assurances that are required in order to avail of this. In the example of liquidity provisions the AIF Handbook reference is made to *'unitholders would be assured of obtaining a reasonable price for their units and within a reasonable timeframe'*. It is difficult to see in the context of property or private equity investments how such assurances can be made and how useful they are, particularly when they must be given at the outset in what is by its nature a higher risk investment. We would recommend that the 10 year investment period be permitted as it is in the best interests of investors and is most suited to property and private equity investments. All of the risks will be outlined to investors. The manager may undertake to create a secondary market for units on a best efforts basis. So it will facilitate unitholders in a secondary sale but cannot give any liquidity assurances at the outset. **iv Other changes** The reference to "or changes to the valuation policies" should be deleted. We note the reference to proposed changes being considered by the Central Bank on a "case by case" basis. It would be useful to understand the criteria the Central Bank will apply in this regard.
7. Guaranteed Retail Investor AIF	Paragraph 4 We note that the existing statement that "this should be a credit institution …" in Guidance Note 3/97 has been changed to state that "this must be a credit institution …" This is inconsistent with the description of this paragraph as a "general guideline".

AIF Handbook Reference	Industry Comments
	Paragraph 6 We note that the previous reference to "investors" in Guidance Note 3/97 has been amended to refer to "unitholders". We would query whether this should refer to "prospective unitholders".
8. Distributions out of and Charging Fees and Expenses to Capital	The required risk warning should be amended as follows: "unitholders/shareholders must note that all/part of the fees and expenses may be charged to the capital of the RIAIF. This may have the effect of lowering the value of your investment". We note that this section, despite its heading, appears to refer only to charging fees and expenses to capital and does not address distributions out of capital. We believe that distributions out of capital should be disclosed in the financial statements.
Part III PROVISIONS APPLICABLE TO RETAIL INVESTOR AIFS WHICH DO NOT HAVE A FULL AIFM	Please refer also to our response to Question 11 above.
Part IV INWARD MARKETING OF AIF TO RETAIL INVESTORS	Please refer also to our response to Question 16 above. As per the corresponding UCITS Notices, paragraph 2 should be amended to clarify that it is not necessary for the facilities agent to receive and transmit the redemption order to the UCITS or the redemption proceeds to the investor (see UCITS Notice 15.6, para. 12). Under the heading "Documentation" there is a reference to the Central Bank being provided with "[a] copy of any other document affecting the rights of unitholders in the AIF". It would be helpful if it was clarified what this was referring to or, in the alternative, refer to a document "materially" affecting the rights. We suggest that the word "material" also be inserted in paragraph 7 where it refers to an obligation to provide the Central Bank of details of any changes in the operation of the AIF since the initial approval to market.

CHAPTER 2 QUALIFYING INVESTOR AIF REQUIREMENTS	**General Comments** As far as possible, AIF obligations should be kept separate to AIFM obligations, other than for internally-managed AIFs (it is appreciated that there may be unregulated or non-Irish AIFs). The reference to AIFs and AIF constitutional docs should be broader to catch new/different vehicles. There is very little reference to internally-managed AIFs. Given that we expect the majority of Irish AIFMs to be constituted as internally-managed AIFs, it would be worthwhile to have the AIF Handbook address itself to this category either throughout the relevant sections of the notice or in a dedicated section which explains those provisions which are inapplicable or amended in the case of a SMAIF. Certain provisions of AIFMD for internally-managed investment companies, for example, section (ii) (1) (b) of Part II, should be disapplied. There are a lot of references back to the Regulations. As much detail as possible should be provided in this document so that it is a stand-alone document and cross referrals are not required. The notices also do not address timelines for authorisation, although AIFMD refers to authorisation being granted within six months. Clearly, a drawn-out authorisation process could have a significant impact on competitiveness for Ireland. We would like to discuss the authorisation procedures with the Central Bank to determine how this can be streamlined to the fullest extent possible. In particular, we would like to confirm that it will be possible to retain aspects of the current fast-track / self-certification process or the agreement of standard checklists, application documents and "programme of activity" / business plan templates in order to ensure that the authorisation process is efficient as possible. It would be helpful if the Central Bank could outline what (presumably limited) additional information should be submitted by a UCITS management company authorised by the Central Bank that is seeking to extend its authorisation to act as an AIFM. It would be helpful from a planning perspective if the Central Bank could outline its approach/requirements to authorising third country managers under the country of reference provisions of AIFMD. Non-EU managers of QIAIFs that are not marketed in the EU should only have to comply with a modified version of Chapter 2. For example, without the minimum capital requirement.

Part I GENERAL RULES	
1. Qualifying Investor AIF Restrictions	**i. General restrictions** Paragraph 2 This prohibits a QIAIF from granting loans. However, we welcome the Central Bank's statement in the introduction to CP 60 that this position will be reviewed in 2013. **ii. Constitutional Documents** Paragraph 6 The requirement that the depositary shall issue registered certificates or bearer certificates, although not new, does not apply to depositaries in practice and should be removed, particularly given that in most cases written confirmations of entry in the register are given. We do not agree that rights attaching to fractions of units should be exercised in proportion to the fraction of a unit held except for voting rights which can only be exercised by whole units. The holders of fractional units should not be disenfranchised and many existing QIFs provide for voting rights for fractional shares. **iii. Valuation** Paragraph 1 The current wording suggests that all valuation rules and variations from such rules must be set out in the constitutional document and only additional details in the prospectus. Usually in practice these rules are largely contained in the prospectus. It would be helpful if the Central Bank could confirm that the new form of wording is designed to ensure that only certain valuation rules must be included in the constitutional document and that the prospectus can set out the other rules on valuation and that any subsequent changes to the valuation rules can be made by means of the prospectus and will not require unitholder approval to make a change to the constitutional document. Paragraph 4 This does not provide for series accounting. This paragraph should be amended to read "Units of a Qualifying Investor AIF shall be issued or sold at a price arrived at by dividing the net asset value of the Qualifying Investor AIF (calculated in accordance with the rules) by the number of units outstanding or an equivalent price in the case of a series being issued in the share class of the Qualifying Investor AIF; such price may be increased by duties and charges." **vi. Umbrella Qualifying Investor AIFs** Paragraph 4 The key here is that there should not be two management charges and that the fee can only be charged at

	one level. Different structures should be accommodated.
2. Application Requirements	**i General Information Required for Qualifying Investor AIFs** Paragraph 4 The reference to the proposed AIFM should include circumstances where the AIF is the AIFM (internally managed AIFs). Paragraph 9 The reference to "any third party which will be contracted" is too broad and requires clarification. **v Requirement for authorisation** Paragraph 1 The statement that a QIAIF may not be established in Ireland without prior approval by the Central Bank should be amended to provide that a QIAIF may not <u>commence trading/raise capital</u> without prior approval by the Central Bank, as corporate AIFs may be incorporated in advance of approval by the Central Bank.
3. Application Process	*Page 143, paragraph 2 – Applications* 1 (c) states that an application for authorisation as a QIAIF can only be made where the AIFM has already been approved and cleared by the Central Bank in advance of the application. This would not apply to an internally managed AIF as it would both be the QIAIF and the AIFM. This should be clarified. *Page 145, (v) Closed-ended Qualifying Investor AIF, paragraph 1:* The reference to the requirements of the Prospectus Directive should include, "*if applicable"*, at the end of the sentence.
4. Supervisory Requirements	**i General Conditions** Paragraphs 2-4 These sections serve to entirely alter the basis on which Qualifying Investor funds can make changes to their documentation. At the moment, the process is that Qualifying Investor Funds can (provided no derogations are being sought) amend their documentation and notify the Central Bank by way of a filing process. The revised documentation will then be effective immediately. The provisions of this section now require that (1) amendments to a prospectus must be pre-notified to the Central Bank and that any amendments objected to it cannot be made; (2) the prior approval to constitutional documents of a QIAIF is required; and that (3) no amendments can be made to agreements "with third parties unless these are notified in advance to the Central Bank who can object to such amendments". These provisions will radically alter the current fast-track process as they require that all amendments have to pre-notified, that the Central Bank can object to the amendments and that can be agreed with the Central Bank. These provisions are onerous, without justification and not appropriate in an environment where AIFM and by extension QIAIF will already be highly regulated. As a matter of clarification, we do not have any issue with the proposal for prior approval of a proposed change of name of a QIAIF. Paragraph 5 requires prior notification of transfers for consideration of subscription for units in another sub-fund by

way of transfer for consideration. Section 255 (3) of the Companies Act 1990 permits an umbrella investment company to acquire shares in a sister sub-fund by way of subscription or transfer for consideration. There is no statutory basis for prior approval of the Central Bank. Furthermore, we would ask that the Central Bank clarify what the rationale for such prior notification is.

ii Directors of Qualifying Investor AIF companies

We do not consider the provisions in respect of obligations on the board of AIFs in the event of the proposed resignation of directors to be appropriate. Requiring the board of directors to "form a view as to the impact of the resignation on the AIF management company taking into account the current and financial state of the AIF Management Company and AIF" is particularly problematic. As a matter of company law, a director can resign from the board of a company and the other directors do not have the power to prevent a resignation. These provisions would imply that they do. Furthermore, expecting the board to form a view on the impact of the resignation on "the current and prospective financial state of the AIF management company" is impractical and highly subjective. How would a director's resignation have an impact on the current and prospective financial state? The financial state of the AIF is surely determined by economic factors, external events, etc. The provisions are not appropriate and should be removed.

v Replacement of third parties

This provision is not reasonable and should be removed. Third parties with whom the management company contracts could refer to a wide range of parties who may be engaged to provide services to the AIF, i.e., not just investment managers, investment advisors, administrators but could also be valuation agents, legal advisers, payroll providers, tax advisers, etc. An AIF will engage a service provider under contract and the terms of appointment and termination of that engagement will be set out in the contract. For example, an AIF could terminate a contract with a service provider for poor performance, breach, fees, commercial considerations or simply a change of group policy. To impose a requirement which requires a QIAIF to notify the Central Bank in advance of any proposed replacement of third parties is not appropriate.

vii Amalgamation of qualifying investor AIF

This section should be substantially revised. The principle objections are as follows:

1. The requirement to have votes in favour representing more than half of the total number of units in issue. Many investors in funds do not attend (either in person or proxy) at general meetings and do not vote on resolutions. This is simply the nature of funds. Accordingly, these provisions have long been regarded as impractical and an obstacle to the restructuring of fund operations.

2. The requirement to redeem holdings of non-voting unitholders prior to the amalgamation. Again this is problematic, impractical and does not serve to benefit or protect investors. In fact, may investors would not vote at resolutions and the fund cannot force an investor to vote. To redeem investors may well not be in their interests.

3. The provision that a derogation may be obtained from the above two requirements for mergers of Irish QIAIFs is protectionist and inappropriate.

4. The provisions take no account of closed ended funds, limited liquidity funds and funds with lesser frequency in terms of paragraph (e) (the requirement to notify investors of the outcome so that they can redeem their units and the notice provisions.

With regard to our specific comments on the provisions:

1. It would be helpful at the outset to distinguish between a merger where the QIAIF is the receiving party, (i.e., it will remain in place after the merger) and a QIAIF which is the transferring entity, i.e. the merging QIF. This is particularly relevant in terms of the information that may be required to be provided to the unitholders of the relevant entities. We therefore suggest that the following definition could be helpful at the outset;

   "*Merging AIF means an AIF or a sub-fund thereof which transfers their net assets to another sub-fund or to another existing AIF or a sub-fund thereof ("Receiving Fund").*"

   The remainder of this section should they clarify the information and requirements imposed on the Merging Fund, e.g. paragraph 2 (b) – fund disclosure to unitholders of the Merging Fund. Par (c) – the depositary of the Merging AIF – Par (d) unitholder meeting of the Merging AIF.

2. We do not see why restriction 2(a) in respect of the dealing/redemption frequency should be relevant in the context of a QIAIF. For example, there may be a scenario where the QIAIF is the Receiving AIF and it has a quarterly dealing whereas the Merging AIF has monthly dealing. In this scenario, upon merger, the AIF will be subject to the dealing frequency of the Receiving AIF fund. This is not a relevant consideration as i.e. investors for the QIAIF will be able to vote and consider the impact.

3. As above, the requirement (1) that the votes in favour of the merger represents more than half of the total units in issue and (2) that provision is made to redeem holdings of non-voting unitholder prior to the amalgamation should be removed. They are no practical, do not reflect the commercial reality of the way funds operate and do not serve to protect the interests of investors. Ultimately, if investors do simply do not cast a vote, it does not follow that their

	interests would be served by a redemption. In addition, they are out of step with the UCITS IV merger provisions under the UCITS Regulations which will create an unlevel playing field between UCITS and QIAIFs. 4. Paragraph (e); the notice provisions following the shareholder meeting are also problematic and unpractical. A requirement that unitholders should be notified of the outcome of the general meeting and timelines by which they must submit their redemption request are problematical. Furthermore, the footnote regarding "reasonable notification period" (i.e. footnote 40) is impractical in the context of quarterly dealing/limited liquidity funds. It is also out of sync with the merger requirements under the UCITS Regulations. Perhaps a uniform 2 week notification period could be proposed. 5. Paragraph (e) - the requirement to give a reasonable notification period in order to allow investors "to submit a redemption request". This needs to be amended to provide for closed-ended funds which do not provide for redemption facilities, or limited liquidity funds. Furthermore, this section should be amended to allow for notification by newspaper publication or by website publication notwithstanding the constitutional documents of the merging AIF. Furthermore, the footnote regarding "reasonable notification period" (i.e. footnote 40) is impractical in the context of quarterly dealing/limited liquidity funds. It is also out of sync with the merger requirements under the UCITS Regulations. We suggest that this is replaced with a 2 week notification period. The above comments also apply to the relevant provisions of Chapter I, i.e. the amalgamation of RIAIF requirements.
5. Prospectus Requirements	Advance notification to unitholders in respect of material changes to investment policies, as opposed to unitholder approval, as set out in Section 5 Part (i) (5) should be sufficient. We therefore request that Section 5 Part (i) (5) should be amended to provide that unitholder approval is required for a change to investment objectives and advance notification is required for a material change to investment policies of a QIAIF. The commercial reality is that in practice, investor apathy results in non-receipt of investor proxies and this in turn leads to situations where proposed changes to fund documentation, which are being suggested for the benefit of investors, cannot be effected. In addition, the requirement that advance notification, rather than approval, should be provided in respect of material changes to investment policies is consistent the requirements in place in other jurisdictions and the current wording in Section 5 Part (i) (5) arguably puts Ireland at a competitive disadvantage. We would be happy to provide more detail on why this change should be incorporated. Section 5 Part (xi) requires amendment as the current wording presents practical difficulties for both the QIAIF and the warehousing agent. The current wording does not allow QIAIFs to engage in a normal warehousing arrangement, i.e., whereby the warehousing agent agrees to acquire assets for a specified fee and deliver those assets to the fund at that price regardless once the fund launches, therefore receiving no market benefit or loss in the event that the asset price rises or falls. The current wording does not facilitate this and we would argue that simple provision of full disclosure of a

	warehousing arrangement in the prospectus is sufficient. We therefore request that the following sentence be deleted: "The prospectus must state that assets will only be acquired at market value or cost price (where this is lower than current market value)". Pursuant to the references to fair treatment of investors in Article 23(1) (j) of AIFMD, we should seek the Central Bank's views as to whether it intends to include specific disclosure requirements in relation to varying dealing frequencies between share classes.
6. General Operational Requirements	**i. Financial resources of investment companies** Paragraph 1(b) with regard to the cross reference to section iii of the AIF Management Company Requirements it would be useful to include a statement there that the permanent compliance function may be provided by a third party (such as is included in the UCITS Notices). **ii Dealing** Paragraph 3 it might be useful to also extend this requirement regarding suspensions to other legal structures for clarity. The equivalent section for RIAIF Requirements also has sections dealing with "V. Hedged Share Classes", "IV. Regulated Markets" and "V. Directed brokerage programmes or similar arrangements" and the first and last of these might be included here also for consistency. **iii Hedged share classes** Paragraph 1 This states that valuation systems operated by the management company, investment company or administrator must be capable of processing and identifying the relevant hedge fund transactions at a share class level. This may be a challenge for some funds where this is done using spreadsheets. **v Directed brokerage programmes or similar arrangements** Paragraph 1 It is unclear if the required formal review of directed brokerage programmes and associated costs need to be formally documented, what precisely needs to be documented and by whom.
7. Annual Reports	We note that the Central Bank has certain comments raised by industry during the pre-consultation process on board and welcome this. We have set out below the remaining items that we believe should be considered by the Central Bank at this time. A unit-trust or common contractual fund established as an umbrella may produce separate periodic reports for individual sub-funds. In such cases, the report for each sub-fund should name the other sub-funds and state that the reports for such sub-fund are available free of charge on request. However, an investment company must include accounts for all sub-funds

	in its periodic reports. This is due to current requirements of company law but we would suggest amending this as part of the update to the primary legislation and updating the provisions in relation to annual reports of companies to reflect the position for unit trusts and CCFs.
Part II SPECIFIC FUND-TYPE REQUIREMENTS	
1. Money Market Qualifying Investor AIFs	**Money Market Funds** Paragraph 11 We have the same comment as above for RIAIF – the reference to "collective investment Qualifying Investor AIFs" should be replaced by "investment funds" (or equivalent). Chapter 2 Part II (1) (iv) sub-heading "Money Market Funds (MMFs) Defined" – footnote - appears to be text missing in footnote 41 (reference to "institutions sector (ECB/2008/32) (ECB/2001/12)").
2. Qualifying Investor AIFs Which Invest More than 50% of Net Assets in Another Investment Fund	Please refer to our response to Question 2 above.
3. Closed-ended Qualifying Investor AIFs	The Central Bank has removed its requirement regarding the maximum initial duration of the closed-ended AIF which is welcomed. We repeat our original comment that the reference to "a specified future date" in Section 3, Article i 1 (page 183) should be amended for clarity. As currently drafted, the sentence could be interpreted as requiring the constitutional documents to specify the closed ended term of the AIF. The liquidity provisions for closed-ended AIFs apply in circumstances where there is a change in fees or perhaps a change to the investment objective or material change to the investment policy of an AIF. It should be clarified in the AIF Handbook that, in the absence of such circumstances, closed-ended AIFs are not required to provide liquidity or to redeem shares/units prior to the expiry of the closed-ended term.
Part III PROVISIONS OF	Please refer to our response to Question 11 above.

AIFM REQUIREMENTS APPLICABLE TO QUALIFYING INVESTOR AIFS WHICH DO NOT HAVE A FULL AIFM	

CHAPTER 3 ALTERNATIVE INVESTMENT FUND MANAGER REQUIREMENTS	**Introduction** We reiterate the detailed comments previously provided to the Central Bank on this topic and note that the Central Bank has not advanced any reasons for not accepting these comments. In particular, we request that the comments previously raised in relation to internally-managed AIFs, authorisation procedures, proportionality, information to be included in the constitutional documentation and monitoring of managerial functions on a "day-to-day" basis be considered further by the Central Bank. These requirements may supplement those of the AIFMD Requirements and AIFMD Level 2 so it is not necessarily the case that if there is any difference between them the latter would prevail. Paragraph 3 We would reiterate previous comments raised by the industry in respect of the wording of this paragraph which provides that: (i) where a requirement in the notices is amended or deleted, any legal proceedings, investigations, disciplinary matters or enforcement actions may be continued; and (ii) any breach of a requirement so amended or deleted may subsequently be the subject of such action, proceeding, etc. as if the requirement had not been amended or deleted. Firstly, we do not believe that such proceedings/actions, etc. can be brought once the requirement has been amended or deleted in a manner where at the point in time that the proceedings are initiated, the matter which is the subject of the proceedings/actions no longer constitutes a breach or contravention. An attempt to bring such proceedings/actions may have no legal basis and may be unconstitutional. We also believe that there would be considerable uncertainty as to whether a proceeding/action which has been initiated but has not concluded could be continued where the requirement has been amended or been deleted prior to a conclusion (including an appeal). Note Article 39 (1) of the Constitution which provides that "no person shall be tried on any criminal charge save in due course of law." Paras. 1&4 It would be useful to have further clarification from the Central Bank within the AIF Handbook as to what entities are captured by some of the terms used in these paragraphs. Our understanding is that the reference

	to an "authorised AIF" is to an AIF authorised or regulated by the Central Bank (essentially a RIAIF or QIAIF under the AIF Handbook) while an "unregulated AIF" may mean an Irish collective investment scheme which is not currently regulated by the Central Bank (examples might be exempt unit trusts or limited partnerships under the Limited Partnerships Act 1907). However, the precise meaning of these phrases could be clarified by the Central Bank. Paragraph 4 Similarly, the distinction between an "authorised AIFM" and a "registered AIFM" needs to be clarified. In this regard, the understanding is that the reference to an "authorised AIFM" is to any AIFM, required to be authorised by the Central Bank as home member state under Article 7 of AIFMD and that the reference to "registered AIFM" is to an AIFM which is not required to be formally authorised under AIFMD as its assets under managed do not exceed the thresholds specified in Article 3 of AIFMD. **Definitions** Further to the points raised above, it may be useful to include a definition of "unregulated AIF" and "registered AIFM" here. The definition of "unitholder" could be clarified by inserting "registered shareholder" and "registered unitholder". Alternatively, AIFMD uses the term "investor" throughout and it may be possible to substitute the term "investor" for "unitholder" in the notices. If this is done, it would need to be considered whether obligations are extended in some cases to persons who are not yet unitholders but are considering a subscription. The definition of "investment fund legislation" should refer to the amended legislation. It might be useful to include additional defined terms to assist clarity. For example, a different term to AIFM might be used for AIFMs which fall under the requirement to register under Part II - such as adding the term "Registered" or "External" to the acronym. There are various other such terms or concepts in the legislation which could be included as new defined terms for clarity. It might also be useful to include the different legal structures possible in Ireland in the defined terms (rather than just within other terms) especially given the potential new corporate entity proposed. **Part 1: AIFMs which require authorisation or are authorised under the AIFMD Regulations** The title of this part should refer to AIFMS which require authorisation, are authorised or apply for authorisation under the AIFMD Regulations. There are a few references to "internally managed" AIFs (e.g., in section viii. Capital, the capital requirement for an internally managed AIF is disclosed). However, there are many instances in this chapter where requirements are not relevant to internally managed AIFs or the requirements will need to be amended to reflect the difference in operations between an internally managed AIF and an AIF with substance and employees. References should, therefore, be inserted

	to internally managed AIFs throughout this chapter or a distinction should be made as to how the requirements of this chapter will apply to internally managed AIFs, taking into account the nature, scale and complexity of the internally managed AIF (as is the case in UCITS Notice 2). **ii Application requirements** We note that these requirements correspond to Article 8 of AIFMD (Conditions for granting authorisation). However, the wording does not fully track AIFMD; please clarify why some additional requirements have been included. For example, applicants have been restricted to bodies corporate under paragraph (ii) (1) (i) and could exclude entities such as limited partnerships. There is also an additional requirement that the applicant's group structure does not prevent the effective supervision by the Central Bank. This requirement is not contained in AIFMD and its inclusion in the draft Handbook does not appear to be necessary. Paragraph 2(b) We are concerned about the proposal that shareholders/those with significant influence of the AIFM comply in full with the fitness and probity requirement, particularly if this included the completion of the online IQ and full due diligence process. In particular, it is not practical to ask shareholders/those with significant influence to complete an online IQ. While Article 8(1) (d) imposes a requirement that shareholders of the AIFM be "suitable", it is not clear that suitability ought to be established by reference to all of the requirements of the fitness and probity regime. Other jurisdictions may not impose similar standards to our fitness and probity standards and we may be placed at a competitive disadvantage if we require full compliance with those standards. It may be appropriate to provide that a modified form of the online IQ be completed by shareholders in order to establish suitability. In this regard, we note that under the existing regime, management companies are still permitted to complete the old-form written IQ. This may still be excessive by comparison to the AIFMD "suitability" requirement and what will ultimately be introduced in other member states. Paragraph 2(c) Whilst AIFMD references "Programme", the term "business plan" is more familiar within the industry. Given that a UCITS-type organisational reporting structure (subject to the outcome of the Level 2) is preferred, we think this would give greater consistency. Business plan could be defined with reference to the programme of activity in AIFMD, if it was thought necessary to retain some reference programme of activity. However, we are open to other suggestions on this, in particular given that the obligations in the UCITS business plan are different and the use of the term "business plan" within both regimes may cause confusion. **iv Operating conditions** Paragraph 1(g) References to the "constitutional document" should be phrased to ensure that they reflect the flexibility currently provided for in the Bank's requirements (i.e. typically that this document references full disclosure in the offering document). Some of the references in regard to this term seem inappropriate. For example, the

potential for the creation of share classes with preferential treatment would be disclosed in the constitutional document but "such preferential treatment" would not normally be so disclosed.

Paragraph 2 There is no requirement in AIFMD that the AIFM submits annual audited accounts; the requirements in relation to the annual report apply to the AIFs which the AIFM manages. In particular, there should not be a requirement to submit half-yearly accounts in respect of any AIFM. We note that this requirement has been disapplied in respect of internally-managed AIFs in the draft Handbook and we believe that it should not be included in respect of externally managed AIFs either.

iv Operating conditions to xv Financial control and management information

The application of these provisions to third country managers if the passport is extended to non-EU AIFM in 2015 needs to be considered in more detail.

v Remuneration

References to "control functions" - this should be clarified that it is at PCF level and not CF level, i.e. the principles of proportionality need to apply.

vi Organisational requirements

This provision would benefit from providing more inclusive detail on each of the elements (or perhaps in a Code of Conduct), i.e. electronic data processing, internal control mechanisms, recording of AIF portfolio transactions, personal transactions, etc. Please refer to draft NU Notice on organisational requirements and draft Code of Conduct circulated by industry previously.

This section would benefit from a section dealing with "Control by senior management and board", i.e. clarifying what functions the board and senior management are responsible for and what the review, approve and verify, e.g., implementation of investment strategy, policy, ensuring that the AIFM has a permanent compliance function, approval and review of the risk management policy and arrangements for implementing that policy (see Schedule 3, Part A for suggested wording). This will provide greater clarity regarding the functions of the board, board reporting, etc.

Paragraph 3 AIFMD incorporates the proportionality principle and the draft Level 2 text states that "when establishing procedures to comply with the organisational requirements in AIFMD, AIFMs should take into account the principle of proportionality which allows the calibration of procedures, mechanisms and of the organisational structure to the nature, scale and complexity of the AIFM's business and to the nature and range of activities carried out in the course of its business" (page 8 May 2012 draft of Level 2). The proportionality principle needs to be expressly incorporated here to the effect that "AIFMs shall take into account the nature, scale and complexity of their business and the nature and range of services and activities undertaken in the course of that business". This had been done in the draft Notice on "Organisation of AIFM – [not engaged in

	Individual Portfolio Management / Non Core Services]" which was submitted by industry to the Central Bank earlier this year. The notice should clearly indicate to which sections the proportionality principle will apply. Guidance could then be provided (either in these notices or perhaps as a draft guidance note which sets out details of the business plan) on the criteria for assessing the "nature, scale and complexity" of an AIFM's business. See Schedule 3, Part A for sample wording. Paragraph 5 The reference to "managerial functions" should be amended to refer to "investment management functions" and the reference to "monitoring of investment policy, investment strategies and performance" should be amended to refer to "portfolio management functions" to conform to the terminology used in AIFMD. When listing the managerial functions, it would be useful to clarify that they should be proportionate to the size and scale of the AIFM. The internal audit procedures for an AIF should be in line with those for a UCITS. Paragraph 6 We note that this sets out the provisions and principles set out in Article 20 of AIFMD. The AIF Handbook would benefit from providing as much detail as possible once the draft Level 2 Regulations are finalised. Paragraph 6(a), bullet point no. 4 We assume that cooperation will be in place by the time the AIF Handbook comes into force so that investment managers from all of the major third countries (particularly the USA) will be able to continue to act for Irish funds. The provision to review the services provided by each delegate "on an ongoing basis". This is vague and we suggest is replaced with "periodic". Paragraph 6(a), bullet point no. 7: This provision is unclear and is unnecessary given the preceding sub-paragraph. This is not a requirement of AIFMD. Paragraph 7 It should be clarified in the AIF Handbook that escalation procedures ought to be put in place to meet the "day-to-day" monitoring requirement. The wording implies that only one board member/individual can carry out a designated function, i.e. it should allow for a function(s) to be designated to more than one board member/individual. Also, it would be helpful to include provision which allows for a secondment arrangement along the lines permitted for UCITS. Paragraph 8(d) The level of disclosure in relation to exceptional reports should be given consideration. Often it is difficult to cover all examples of exceptional reporting and the need to provide examples in the business plan can be of little use. **vii Directors** Paragraph 2 We do not consider the provisions in respect of obligations on the board of AIFs in the event of the proposed

	resignation of directors to be appropriate. Requiring the board of directors to "form a view as to the impact of the resignation on the AIF management company taking into account the current and financial state of the AIF Management Company and AIF" is particularly problematic. As a matter of company law, a director can resign from the board of a company and the other directors do not have the power to prevent a resignation. These provisions would imply that they do. Furthermore, expecting the board to form a view on the impact of the resignation on "the current and prospective financial state of the AIF management company" is impractical and highly subjective. How would a director's resignation have an impact on the current and prospective financial state? The financial state of the AIF is surely determined by economic factors, external events, etc. The provisions are not appropriate and should be removed Paragraph 4 This sub-paragraph sets out the requirements for "AIFMs whose registered office and its head office is in Ireland" to have two Irish resident directors. As the AIFM Handbook will only apply to Irish AIFM (at least until 2015, when the passporting provisions make it likely that we will need an update to the AIF Handbook in any event), it is not clear why it is necessary to include this wording. **viii Capital** Paragraph 2 Why is there a requirement to have an "expenditure amount" i.e. the higher of €125,000 or one quarter of the total expenditure? This section of the AIF Handbook applies to authorised AIFM (or who opt in) by AIFMD and the requirement is in excess of the requirements under AIFMD. Paragraph 2(b) The Central Bank has included an alternative in respect of minimum capital requirements that refers to one quarter of total expenditure ("Expenditure Requirement") (drawn from UCITS 2 para. 26). This should be removed as it does not appear in AIFMD and we understand that it is rarely, if ever, applicable in practice. Paragraph 5 This clause would benefit from setting out the provisions of the [draft] Regulations regarding potential liability risk insurance, so that the notice is as all inclusive as possible (perhaps in Annex 1). See suggested wording at Schedule 3, Part B. In addition, how will the determination be made as to whether additional own funds are required and the level of such additional own funds? See suggested wording at Schedule 3, Part B. Paragraph 6 We note that an internally managed AIFM will not be able to hive off some of its capital and hold it in liquid assets. **ix Recordkeeping requirements** Paragraph 1 Consider including additional provisions from Article 69 of draft Regulations (see Schedule 3, Part A). Paragraph 2 If an AIFM is liquidated after its authorisation, who will meet this requirement to retain records for six years?

	x Risk management Paragraph 1 This notice would benefit from being as all-inclusive as possible, i.e. setting out the requirements for risk management policy, risk limits, etc. See Schedule 3, Part A. The policy itself, the functional and hierarchical separation of the risk management function, safeguards, measurement, etc. all need to be subject to the proportionality principle. Is it envisaged that an RMP will be required? Paragraph 3 We note that the proportionality principle mentioned is mentioned in this paragraph regarding separation of portfolio management and risk management. Although we believe that it should be applicable in general, it may not be appropriate to apply the proportionality principle in this particular case as it would seem more appropriate to impose an absolute requirement regarding the segregation of these areas. This also appears to conflict with the requirement of para. (xii)(2). **xi Liquidity risk management** This notice would benefit from being as all-inclusive as possible, i.e. setting out the requirements for risk management policy, risk limits, etc. See suggested wording for notice in Schedule 3, Part A. The liquidity policy should be appropriate to the size and organization of the AIFM and the nature, scale and complexity. **xii Conflict of interest** Paragraphs 1-3 This notice would benefit from being as all-inclusive as possible. See suggested wording for notice in Schedule 3. The conflicts policy also needs to be subject to the proportionality principle. Paragraphs 4-5 These might be moved to the "Risk Management" section rather than the "Conflicts of Interest" section. Paragraph 5 Is it proposed to include details of the prudential requirements for prime brokers here? What about OTC counterparties? We note there is no reference in the QIAIF section of the AIF Handbook either. **xiii Permitted activities** We note that in respect of the provisions in this chapter dealing with liquidity management, risk management, conflicts of interest, etc. and so forth, that the level of detail in respect of such policies set out in the draft Level 2 Regulations and set out in draft Notices/Code of Conduct proposed by the industry to the Central Bank earlier this year have not been included. We would consider it useful to set out this level of detail in the AIF Handbook (once the Level 2 Regulations are finalised). Paragraph 1 The phrase "the additional management of UCITS" is misleading insofar as it suggests that the main activity of the AIFM should be managing AIF and the management of UCITS is ancillary. The word "additional" should be removed. This should not impact on the Central Bank's intention in this sentence. Paragraph 3 This seeks to impose client money requirements which do not appear in the text AIFMD. The final wording

	ought to be consistent with the ongoing discussions between industry and the Central Bank around client money requirements. The wording in (xiii)(3) could be amended to state "If an AIFM maintains client assets accounts for processing subscriptions and redemption monies, the following requirements shall apply…." This would remove any suggestion that AIFMs are obliged to maintain such accounts. It needs to be considered how these requirements would apply to an internally-managed AIF. Paragraph 4 It should be clarified here that this relates only to AIF Management companies, not internally-managed AIFs. **xiv Relationship with the Central Bank** Paragraph 1 Some of the provisions in this paragraph are quite onerous, particularly given that the vast majority of the Central Bank's actions under the sanctions regime have arisen from self-reported breaches. We acknowledge that this reflects current wording in the UCITS Notices but the references to "any breach" is broad and perhaps a materiality threshold should be included. Similarly, the reference to "other Irish legislation" is broad in scope and should be circumscribed in some way. Another point to consider is that, once the passporting provisions come into place from 2015, an authorised Non-EU AIFM which has an existing primary regulator may find itself subject to competing regulatory requirements (for example a duty of confidentiality that may be owed to other regulators who may visit the AIFM, which may conflict with the Central Bank's requirement that it be notified of all such visits). Paragraphs 5-7 Equivalent requirements to those imposed on Irish funds at present should be imposed on foreign AIFs with Irish AIFMs in all regards. The requirements in these paragraphs seem weaker in this regard in terms of disclosures regarding the (lack of a) guarantee or endorsement by the Central Bank as there is no requirement to state this as there is for Irish funds. Paragraph 7 We query whether the Central Bank will require quarterly returns as set out in this paragraph. It is understood that the rationale for retaining quarterly statistical reporting was for the purposes of the Central Bank's PRISM monitoring process and to provide industry statistics. However, even if this information is required at AIF level, it is not necessary that it also apply at AIFM level, particularly since this paragraph seeks information on all AIFs under management, including non-Irish AIFs. In the event that this requirement is retained, the reporting frequencies ought to correspond with the reporting frequencies set out in the draft Level 2 requirements, which provides for different reporting frequencies depending on the level of AUM. "AIFM shall report the information listed in paragraph 1 as follows: AIFM managing portfolios of AIFs whose assets under management calculated according to Article 3 in total do not exceed the thresholds of either EUR 100 million or EUR 500 million according to Article 3(2) (a) or (b) of Directive 2011/61/EU shall report the information on an annual basis;" (Draft Level 2 text May 2012 Article 111(3)). **xv Financial control and management information**

	Paragraph 2(e) It is not apparent that the requirement to furnish "any working papers necessary to show the preparation of any return submitted to the Central Bank" is necessary. **xvii Valuation** Paragraph 3 The valuation rules need not be set out in constitutional documents of the AIF, as they are set out in "law". Paragraph 12 This requirement does not work; it would be preferable to include an obligation to include that standard of care in the contract appointing an external valuer. Paragraph 14 We do not believe that the appointment of an external valuer should require advance notification to the Central Bank. **xix Transparency obligations** Currently, a fund can choose which GAAP it reports under and this paragraph should be amended to retain this flexibility. (For example, an Irish AIF should be able to produce its annual report under US GAAP if it wishes.) Paragraphs 1-3 It is noted that the sections of the AIF Handbook in relation to QIAIF requirements and AIFM requirements both contain reporting requirements. It is acknowledged that the AIFM may be a manager of a non-Irish AIF and therefore the requirements must also expressly apply to the AIFM. The QIAIF requirements provide "A Qualifying Investor AIF must comply with section (xix) of Part 1 of the AIFM requirements concerning annual reports. In addition to the disclosures required by the AIFM requirements, the information set out in this section must be incorporated into the annual report." It may be preferable to put all reporting requirements in a single section which would set out which requirements apply to QIFs and AIFs respectively. It is not clear that paragraph 2 only applies to issuers required to make public an annual financial report in accordance with Directive 2004/109/EC. The reference to an "annual report" here should be expanded to refer to "an additional part of the annual financial report", as referred to in the preceding paragraph. **xxi Leveraged AIF** It would be appropriate to ensure that obligations in the AIF Handbook completely reflect underlying obligations in the legislation to ensure clarity and transparency in this regard. For example, this only reflects the obligation to demonstrate that leverage limits are "reasonable" and are complied with, but draft Regulation 25 goes on to provide that the Bank may impose limits, subject to the provisions set out therein, and which the AIFM will need to comply with. Such additional provisions might be reflected here in the AIF Handbook for clarity rather than essentially incorporated through the Bank's generic oversight powers. Also, how is it proposed that an AIFM demonstrate that its leverage is reasonable? **Part 2: AIFMs which require registration under the AIFMD Regulations**

	We note that the AIFs managed by AIFMs which require registration under the AIFMD Regulations are made subject to rules elsewhere in the AIF Handbook. There should be a cross-reference to those rules here.

CHAPTER 4 AIF MANAGEMENT COMPANY REQUIREMENTS	**General Comment** Chapter 4 relates to AIF Management Companies which do not require authorisation or are not authorised under the AIFMD Regulations. Presumably, this Chapter only applies to Irish incorporated AIF Management Companies of AIFs (both authorised and unauthorised). It would be useful if the scope of this Chapter was further clarified to ensure that the three possible categories of AIFM are recognised, namely (i) full (authorised) AIFM; (ii) sub-threshold or registered AIFM; and (iii) non-EU AIFM. It is entirely possible that an AIF could have a management company which is not the AIFM. For example, an Irish authorised AIF could appoint its investment manager and not its management company as the AIFM. In such circumstances, there would appear to be a significant overlap and/or duplication between the organisational requirements imposed on the AIF Management Company and the AIFM. Chapter 4 of the AIF Handbook expands upon the existing management company requirements set out in Non-UCITS Notice 5 to a significant degree. Significant additional operating conditions and organisational requirements, drawn from the UCITS IV management company / AIFMD Chapter III requirements are proposed for AIF Management Companies. Given that the AIFM of the AIF(s) managed by the AIF Management Company will separately be subject to the onerous corporate governance, organisational, operating and risk requirements set out in Chapter 3 of the AIF Handbook, it is unnecessarily onerous and duplicative to impose the additional operating conditions and organisation requirements on AIF Management Companies. Ultimately, this will result in increased costs for investors in the AIFs without any obvious benefit accruing to them. It should be sufficient that the AIFM in the structure is subject to requirements of this nature. In addition to this high level comment, please note the following specific comments. **Organisational Requirements** It would be helpful if the individual with responsibility for compliance with all legal and regulatory requirements could be appointed at either management or board level. Also, it should be possible for an individual located outside the State to discharge such functions. It is suggested that an AIF Management Company should be entitled to rely on the business continuity policies of its service providers. **Resources** It is suggested that an AIF Management Company should be entitled to rely on the skills, knowledge and expertise of its delegates in discharging its responsibilities and this provision should be clarified accordingly.

CHAPTER 5 FUND ADMINISTRATION REQUIREMENTS	**Introduction** It is not clear from the introduction whether the Requirements or the Prudential Handbook for Investment Firms will prevail in the event of difference or discrepancy between the two. This should be clarified. **Conditions Relating to Fund Administrators** **ii Organisational requirements** Paragraph 1 Is reference to paragraph 2.3 of the Prudential Handbook for Investment Firms correct here? Also the reference to the AIF handbook requirements at the end of this sentence - should this not refer to the Prudential Handbook for Investment Firms? Paragraph 2 Paragraph 2.5 of the Prudential Handbook for Investment Firms provides that the firm is required to ensure that the compliance officer has freedom to report to the board of the firm at all times, however the AIF handbook differs in that it requires the compliance officer to report to the board on a regular basis and at least quarterly. It needs to be clarified which applies here. Paragraph 7 As previously commented on, in practice subscription monies in relation to a fund are lodged by investors into the administrator's cash account and held on a pooled basis. Should this paragraph refer to the administrator holding such cash in a segregated account so in the event of the insolvency of the administrator, the cash is ring-fenced? Paragraph 10(b) It states here that annual audited accounts must be submitted to the Central Bank within four months of the relevant reporting period. This contradicts the Prudential Handbook for Investment Firms where the requirement is to submit annual audited accounts within six months of the relevant reporting period. It needs to be clarified which timing is to apply. **Annex II** We propose that section 3.2 would say that "…the outsourcing service provider may release the NAV for dealing purposes provided the final check is performed on the following day." Rather than saying "…the Fund Administrator may release the NAV for dealing purposes provided the final check is performed on the following day." This would be consistent with the wording in footnote 53. It is also proposed that footnote 53 be copied across to the definition of "Core Administration Activities" at the beginning of Chapter 5; this is an important clarifying footnote and again would be consistent with the footnote being included in the current outsourcing requirements definitions as per Annex II of the UCITS and Non UCITS Notices. See also our response to Question 15 raised by the Central Bank.

CHAPTER 6 AIF DEPOSITARY REQUIREMENTS	**To whom these requirements apply** AIFMD will not apply to all non-UCITS schemes: some AIFs will not be regulated under AIFMD (for example, below-threshold AIFs). The application of the AIF Depositary Requirements to "unregulated AIFs established in Ireland" is too broad and should be clarified. **Depositary requirements** Above the Section (i) entitled "Eligibility Criteria", we suggest it be clarified that the AIF Depositary Requirements do not apply to the exempted categories of AIFs, such as below-threshold AIFs and schemes not otherwise covered by AIFMD. **i. Eligibility criteria** Paragraph 1(c) The text of this paragraph regarding the eligibility of firms that are not credit institutions or MiFID firms should be amended for consistency with Article 21(3). Paragraph 1 The AIF Depositary Requirements should clarify (at the end of Art 1) that Central Bank may in its discretion authorise a separate category of depositary for AIFs that are closed-ended that fall within the scope of Article 21(3). Paragraph 4 Below this paragraph, we suggest an additional paragraph be included to reference Article 21(1) i.e. that a single depositary be appointed for each AIF. **iii Depositary tasks** Paragraph 2 The word "must" in Articles 2(a)(i), 2(a)(ii), 2(b)(i), 2(b)(ii) and 2(b)(iii) should be replaced with "shall" in order to be consistent with the wording of Article 21(8)(a) and (b) of the Directive. Paragraph 3(c) Remove reference to "or the depositary contract" – this is broader than Article 21(9) of the Directive and it is not clear what risks the Central Bank is trying to mitigate here. Paragraph 4 Depositary Report: Under AIFMD and AIFMD draft Level 2 requirements, there is no requirement for a depositary to prepare an annual report and this requirement should be deleted. As we are trying to achieve consistency across Europe the requirement that Irish depositaries be required to report to shareholders would be purely a domestic requirement which would be disadvantageous for Irish depositaries. Firstly, if the depositary has any safekeeping issues to raise, it is obliged to raise these to the AIFM. The auditors, as part of their audit work, are obliged to raise their findings to the AIFM. The AIFM is required to report and disclose issues to investors. The depositary report is at best a duplication of these reporting

		requirements. The risk which it appears the Central Bank is seeking to address is more appropriately addressed by the requirement for AIFs, AIFMs to report material breaches as they arise to the Central Bank. Under the Corporate Governance Code AIFs are required, among other matters, to (i) ensure that all risk pertaining to an AIF are identified, monitored and managed at all times, (ii) implement the processes and systems to monitor and manage risks identified by the AIF or its service providers and (iii) to receive prompt reports in relation to that risk pertain to an AIF so that such risks can be managed. Such requirements emphasise the control and risk mitigation procedures that AIFs must adopt. The annual reporting of historic breaches by the depositary is not as effective as prompt reporting coupled with a requirement to take immediate remedial action in the interests of investors, which is adequately addressed for Irish AIFs.
	Paragraph 5	With regard to the reporting of material matters, the comments above are relevant. The reporting of material breaches by the depositary is not governed by AIFMD and this provision should be deleted from the Central Bank AIF Depositary Requirements. Reporting by depositaries to the Central Bank under AIFMD is governed by AIFMD draft Level 2 requirements which are already reflected in the AIF Depositary Requirements. Paragraph (viii) 1 on p. 288 properly reflects Article 21(16) of AIFMD in terms of the depositary's obligation to make available to the Central Bank all information it has obtained while performing its duties. We suggest that no further provision be made in the regard in the depositary chapter. Furthermore, CP59 is the "de facto" reporting obligation imposed on depositaries. However, we were disappointed with the Central Bank feedback on this consultation paper considering the lack of clarity surrounding some of the terms used by the Central Bank, for example "material" and "significant", which we brought to the attention of the Central Bank both before and during CP59. We request the opportunity to engage further with the Central Bank to ensure that, from a reporting perspective, Irish depositaries are not at a competitive disadvantage to their European counterparts.
	Paragraph 6	Where a depositary acts in relation to a RIAIF or a QIAIF, we believe that, as the AIF or AIFM is primarily responsible for the investment policy of the RIAIF or QIAIF, it should be the entity that confirms to the Central Bank that the authorised AIF has procedures in place to ensure that the underlying investment fund meets the Central Bank's regulatory requirements and that it will regularly review the operation of these procedures to ensure that the underlying investment funds continues to meet with the Central Bank's regulatory requirements. As additional comfort to the Central Bank, the depositary will be monitoring these guidelines on a periodic basis. This requirement is not currently contained within AIFMD and should not be a depositary task.
	iv Operating conditions	
	Paragraph 4	It is not a function of the depositary to issue written confirmations of entry in the register or to issue

		certificates or bearer securities. The issue of securities falls within the authority and discretion of the directors/AIFM. As a matter of practice, confirmations of ownership and certificates of ownership are issued by the AIF/AIFM, or, on behalf of the AIF, by the transfer agent and the depositary has no role in relation to this function. To the extent that the Central Bank would like clarity on the treatment of bearer securities, this could be specified in the Central Bank's application forms. In the event that a particular AIF wishes to issue certificates that should be dealt with on a case by case basis, with reference to the fund's constitutional documents. In practice, this rarely occurs and presently, where it does, it generally does so without the involvement of the trustee / custodian with no detriment to the fund. In light of depositary liability under AIFMD, there is no desire on the part of depositaries to see an increase in this practice, as depositaries will not wish to incur liability for the certificates. We submit therefore that this area would be better served by handling on an ad-hoc basis rather than as a provision in the AIF Handbook.
	Paragraph 5	This reflects a legacy requirement of the NU Notices, which is not required under AIFMD and should be removed. If there is an issue with the transfer of assets, this would be a matter for the depositary to regularise as part of its day-to-day safekeeping obligations. This obligation is creating unnecessary additional paperwork which is not required. Article 89 'Safekeeping duties with regard to assets held in custody', of the draft Level 2 requirements supersedes this historic requirement and set out a number of obligations which are set out below: (a) the financial instruments are properly registered in accordance with Article 21(8) (a)(ii) of Directive 2011/61/EU; (b) records and segregated accounts are maintained in a way that ensures their accuracy, and in particular record the correspondence with the financial instruments and cash held for AIFs; (c) reconciliations are conducted on a regular basis between the depositary's internal accounts and records and those of any third party to whom custody functions are delegated in accordance with Article 21(11) of Directive 2011/61/EU; (d) due care is exercised in relation to the financial instruments held in custody in order to ensure a high

	standard of investor protection; (e) all relevant custody risks throughout the custody chain are assessed and monitored and the AIFM is informed of any material risk identified; (f) adequate organisational arrangements are introduced to minimise the risk of loss or diminution of the financial instruments, or of rights in connection with those financial instruments as a result of fraud, poor administration, inadequate registering or negligence; and (g) the AIF's ownership right or the ownership right of the AIFM acting on behalf of the AIF over the assets is verified. As depositaries will need to fulfil these obligations in order not to be liable, it is in their best interests to ensure all of the above are met. In that regard, the Central Bank can take comfort and should not need the unnecessary comfort of an additional confirmation from the depositary which is beyond AIFMD requirements, and at best, an additional administrative burden. Please also refer to Chapter 2, Section 4, iv Replacement of depositary of the AIF Handbook. Paragraphs 6-8 Policy requirements concerning permitted markets for RIAIFs are outside of the scope of AIFMD, are not addressed in the NU Notices and should not be included in the AIF Depositary Requirements. Depositary obligations are to safe-keep the assets of the AIF and not to determine which markets the fund can invest in. The obligation regarding permitted markets sits with the AIF/AIFM as deals with portfolio management and not safekeeping of assets. Taking into account Article 89 above, these suggested obligations create unnecessary additional paperwork that is not required. If a depositary cannot provide safekeeping for the assets entrusted to it, it would be liable, which constitutes an adequate safeguard for investors. Paragraph 9 This requirement is not specified in AIFMD and should be deleted from the AIF Depositary Requirements. Our understanding of Articles 67 to 72 of the AIFMD draft Level 2 text is that they cover in detail the valuation aspects of an AIF and it is very clear that the AIFM has an extensive role to play in this and in particular, AIFMs shall establish, maintain, implement and review, for each AIF they manage, written policies and procedures that ensure a sound, transparent, comprehensive and appropriately documented valuation process. The valuation policy and procedures shall cover all material aspects of the valuation process and valuation procedures and controls in respect of the relevant AIF. In addition with regard to the calculation of the NAV, our understanding of Article 72 of the draft Level 2 regulations below is relevant:

Article 72
Calculation of the net asset value per unit or share

1. An AIFM shall ensure that for each AIF it manages the net asset value per unit or share is calculated on the occasion of each issue or subscription or redemption or cancellation of units or shares, but at least once a year.
2. An AIFM shall ensure that the procedures and the methodology for calculating the net asset value per unit or share are fully documented. The calculation procedures and methodologies and their application shall be subject to regular verification by the AIFM, and the documentation shall be amended accordingly.
3. An AIFM shall ensure that remedial procedures are in place in the event of an incorrect calculation of the net asset value.
4. An AIFM shall ensure that the number of units or shares in issue is subject to regular verification, at least as often as the unit or share price is calculated.

With regard to in-specie subscriptions and redemptions, we do not believe they should be treated any differently or need any additional attestation, if the AIF is following its valuation and NAV procedures correctly. It is clear from Article 72 above that the AIFM will be required to have the procedures and verifications in place to ensure in-specie subscriptions and redemptions are accurately calculated in accordance with the fund documentation. As depositary, we are responsible for the safekeeping of assets and not the valuation of the fund. This is the responsibility of the AIFM.

Paragraph 10 This requirement is not specified in AIFMD and should be deleted. Auditors already review the calculation of the performance fee as part of their review of the financial statements, where material. Having the depositary review the calculation of the performance fee confuses the existing depositary's role of oversight of NAV with a duty (that does not exist) to ensure accuracy of NAV.

Furthermore it is contrary to the objective of establishing a harmonised regulatory framework for AIFs. Additionally, it would impose far too onerous responsibility (with associated costs) for depositaries to review performance fee calculations on an ongoing basis.

We would suggest that the AIF be required to appoint an appropriate third party to verify the calculation. In this model, the responsibility will lie with a party with the appropriate expertise to carry out this function, e.g. the auditors, the Manager, or a third party vendor. The depositary could, as in the current Competent

	Person requirements set out in GN 1/00, deem, and approve that appointment of the third party, adding a further check or control. This is in line with the requirements on depositaries in the AIFMD Level 2 draft regulations, which provides for the depositary performing due diligence on external valuers appointed by the AIF (Article 92 (4)). **vi Liability** Paragraph 1 The liability for depositaries is set out in very extensive and prescriptive terms under AIFMD and applies to negligent or intentional failure to fulfil its obligations pursuant to the Directive (see Article 21(12)). The liability for depositaries should not be extended beyond the scope of AIFMD and in particular to compliance with the AIF Handbook which may contain requirements over and above AIFMD. The basis of the liability provisions is to ensure conformity throughout the EU on the liability of depositaries and this is key for a harmonised depositary approach. **vii Depositary contract** Paragraph 1 The final sentence of this paragraph needs to be completed. **viii Relationship with the Central Bank** Paragraph 3 This should be deleted as it is not a requirement of AIFMD. The subject of review meetings is addressed under the Central Bank's administrative sanctions procedures and need not be specified here. Paragraph 4 This requirement should be deleted. An Irish depositary cannot reasonably be expected to safeguard/control or be liable for the contents of an offshore scheme's offering document. It should be understood that for foreign funds the depositary has no legal ability to change, alter or insist on certain conditions being included in the offering documentation as the depositary is not responsible for the accuracy of the document. In many cases the depositary may not be informed of changes to offering documentation and should not be imposed with requirements relating to its contents.

SCHEDULE 3

Part A
Suggested additional provisions to be included in Chapter 3 of AIF Handbook – Alternative Investment Fund Manager Requirements

Assessment of Nature Scale and Complexity (perhaps at outset of notice of section vi of Part I)

In assessing the nature scale and complexity of its business the following must, at least, be taken into account:

- the number of the AIFs, including sub-funds of umbrella AIFs, under management;
- the size of AIFs, including sub-funds of umbrella AIFs, under management;
- the regulatory status and jurisdiction of the AIFs under management;
- investment strategies of the AIFs, including the extent to which the AIFs will employ leverage;
- types of investments and investment location;
- distribution model and investor base.

Where the AIFM provides services to third party AIFs (i.e. where it is not the designated AIFM), these activities must also be considered in accordance with the above criteria when assessing the nature, scale and complexity of the business of the applicant management company.

Control by senior management and board [Art. 63] (for insertion after section (vi) (4) of Part I)

1. When allocating functions internally, an AIFM shall ensure that senior management and, where appropriate, the board, are responsible for the AIFM's compliance with its obligations under the AIFMD Regulations.

2. An AIFM shall ensure that its senior management

   (a) is responsible for the implementation of the general investment policy for each managed AIF, as defined, where relevant, in the fund rules, the instruments of incorporation, the prospectus or offering documents;

   (b) oversees the approval of the investment strategies for each managed AIF;

   (c) is responsible for ensuring that valuation procedures according to [Article 19 of the AIFM Directive] are established;

   (d) is responsible for ensuring that the AIFM has a permanent and effective compliance function, even if this function is performed by a third party;

(e) ensures and verifies on a periodic basis that the general investment policy, the investment strategies and the risk limits of each managed AIF are properly and effectively implemented and complied with, even if the risk management function is performed by third parties;

(f) approves and reviews on a periodic basis the adequacy of the internal procedures for undertaking investment decisions for each managed AIF, so as to ensure that such decisions are consistent with the approved investment strategies;

(g) approves and reviews on a periodic basis the risk management policy and arrangements, processes and techniques for implementing that policy including the risk limit system for each managed AIF;

(h) is responsible for establishing and applying a remuneration policy in line with [Annex II of AIFMD.]

3. An AIFM shall also ensure that its senior management and, where appropriate, its board should:

(a) assess and periodically review the effectiveness of the policies, arrangements and procedures put in place to comply with the obligations in the AIFMD Regulations;

(b) take appropriate measures to address any deficiencies.

4. An AIFM shall ensure that its senior management receives on a frequent basis, and at least annually, written reports on matters of compliance, internal audit and risk management indicating in particular whether appropriate remedial measures have been taken in the event of any deficiencies.

5. An AIFM shall ensure that its senior management receives on a regular basis reports on the implementation of investment strategies and of the internal procedures for taking investment decisions referred to in points (b) to (e) of paragraph 29.

6. An AIFM shall ensure that the board receives on a regular basis written reports on the matters referred to in paragraph 31.

Organisational Requirements (for insertion into section (vi) (5) of Part I)

7. (k) Setting of geographical spread (if any) of investment of the AIF(s) being managed.

8. (l) Setting of sectoral spread (if any) of investment of the AIF(s) being managed.

9. (m) Setting of risk profile of the AIF(s) being managed.

10. (n) Setting of investment strategy of the AIF(s) being managed.

Record Keeping requirements (after section (ix) (2) of Part I)

11. Where an AIFM transfers its responsibilities in relation to an AIF to another AIFM, the transferring AIFM must ensure that records for the past six years are accessible to the receiving AIFM.

12. The records shall be retained in a medium that allows the storage of information in a way accessible for future reference by the Central Bank, and in such form and manner that the following conditions are met:

    (i) the Central Bank must be able to access them readily and to reconstitute each key stage of the processing of each portfolio transaction;

    (ii) it must be possible for any corrections or other amendments, and the contents of the records prior to such corrections or amendments, to be easily ascertained; and

    (iii) it must not be possible for the records to be otherwise manipulated or altered.

Risk Management (for insertion after paragraph (x) (4) of Part I)

Risk management systems [Art. 39]

13. For the purposes of this Notice, risk management systems shall be understood as systems comprised of relevant elements of the organisational structure of the AIFM, with a central role for a permanent risk management function, policies and procedures related to the management of risk relevant to each AIF investment strategy as well as arrangements, processes and techniques related to risk measurement and management employed by an AIFM in relation to each AIF it manages.

Permanent Risk Management Function [Art. 40]

14. An AIFM shall establish and maintain a permanent risk management function that shall:

    (a) implement effective risk management policies and procedures in order to identify, measure, manage and monitor on an on-going basis all risks relevant to each AIF's investment strategy, to which each AIF is or may be exposed;

    (b) ensure that the risk profile of the AIF disclosed to investors in accordance with Article 23(4)c of Directive 2011/61/EU, is consistent with the risk limits that have been set in accordance with paragraphs 76 and 77;

(c) monitor compliance with the risk limits set in accordance with paragraphs 76 and 77 and notify the AIFM's board in a timely manner when it considers the AIF's risk profile is inconsistent with these limits or where it is aware there is a material risk that it will be inconsistent with these limits;

(d) provide the following regular updates to the board of the AIFM at a frequency which is in accordance with the nature, scale and complexity of the AIF and/or the AIFM's activities:

(i) the consistency between and the compliance with, the risk limits set out in paragraphs 76 and 77 and the risk profile of that AIF as disclosed to investors in accordance with Article 23(4)(c) of Directive 2011/61/EU; and

(ii) the adequacy and effectiveness of the risk management process, indicating in particular whether appropriate remedial measures have been or will be taken in the event of any actual or anticipated deficiencies; and

(e) provide regular updates to the senior management outlining the current level of risk incurred by each managed AIF and any actual or foreseeable breaches to any risk limits set out in paragraphs 76 and 77, so as to ensure that prompt and appropriate action can be taken.

15. An AIFM shall ensure that the permanent risk management function shall have the necessary authority and access to all relevant information necessary to fulfil the tasks set out in paragraph 58.

Risk Management Policy [Art. 41]

16. An AIFM shall establish, implement and maintain an adequate and documented risk management policy which identifies all the relevant risks to which the AIFs it manages are or might be exposed to.

17. The risk management policy shall comprise such procedures as are necessary to enable the AIFM to assess for each AIF it manages the exposure of that AIF to market, liquidity and counterparty risks, and the exposure of the AIF to all other relevant risks, including operational risks, which may be material for each AIF it manages.

18. An AIFM shall address at least the following elements in the risk management policy:

(a) the techniques, tools and arrangements that enable them to comply with the obligations set out in paragraphs 78 to 80;

(b) the techniques, tools and arrangements that enable the assessment and monitoring of the liquidity risk of the AIF, under normal and exceptional liquidity conditions including through the use of regularly conducted stress tests in accordance with paragraphs 90 to 92;

(c) the allocation of responsibilities within the AIFM pertaining to risk management;

(d) the limits set in accordance with paragraphs 76 and 77 and a justification of how these are aligned with the risk profile of the AIF disclosed to investors in accordance with Article 23(4)(c) of Directive 2011/61/EU;

(e) the terms, contents, frequency and addresses of reporting of the permanent risk management function referred to in paragraphs 58 and 59.

19. Where the risk management function is not functionally or hierarchically separate the AIFM shall include a description of the safeguards referred to in paragraphs 68 to 71 that allow for an independent performance of the risk management function. This description shall include:

(i) the nature of the conflict of interest;

(ii) the remedial measures put in place;

(iii) the reasons why this measure should be reasonably expected to result in an independent performance of the risk management function; and

(iv) how the AIFM expects to ensure that the safeguards are consistently effective.

20. For the purposes of paragraph 60, an AIFM shall take into account the nature, scale and complexity of their business and of the AIFs it manages.

Assessment, Monitoring and Review of the Risk Management Policy [Art. 42]

21. An AIFM shall assess, monitor and periodically review:

(a) the adequacy and effectiveness of the risk management policy and of the arrangements, processes and techniques referred to in paragraphs 78 to 80;

(b) the level of compliance by the AIFM with the risk management policy and with the arrangements, processes and techniques referred to in paragraphs 78 to 80;

(c) the adequacy and effectiveness of measures taken to address any deficiencies in the performance of the risk management process;

(d) the performance of the risk management function; and

(e) adequacy and effectiveness of measures aiming to ensure the functional and hierarchical separation of the risk management function in accordance with paragraphs 68 to 71.

22. An AIFM shall notify the Central Bank of any material changes to the risk management policy and of the arrangements, processes and techniques referred to in paragraphs 78 to 80.

23. An AIFM shall ensure that the periodic review in accordance with paragraph 68 is carried out:

(a) at a set frequency which is in accordance with the principle of proportionality including its appropriateness given the nature, scale and complexity of their business and the AIF it manages, that frequency being at least annual;

(b) when material changes are made to the risk management policy and to the arrangements, processes and techniques referred to in paragraphs 78 to 80;

(c) when internal or external events indicate that an additional review is required; and

(d) when material changes are made to the investment strategy and objectives of an AIF the AIFM manages.

Functional and Hierarchical Separation of the Risk Management Function [Art. 43]

24. The risk management function of an AIFM may be said to be functionally and hierarchically separate from the operating units, including the portfolio management function, where all the following conditions are satisfied:

(a) Those engaged in the performance of the risk management function are not supervised by those responsible for the performance of the operating units, including the portfolio management function, of the AIFM;

(b) Those engaged in the performance of the risk management function are not engaged in the performance of activities within the operating units, including the portfolio management function;

(c) Those engaged in the performance of the risk management function are compensated in accordance with the achievement of the objectives linked to that function, independent of the performance of the other conflicting business areas;

(d) The remuneration of the senior officers in the risk management functions is directly overseen by the remuneration committee, where the AIFM is sufficiently significant in terms of its size or the size of the AIF it manages, its internal organisation and the nature, the scope and the complexity of its activities to have established such a committee; and

(e) The separation is ensured up to the board of the AIFM.

25. The functional and hierarchical separation of the functions of risk management in accordance with paragraph 68 shall be reviewed by the Central Bank in line with the principle of proportionality, in the understanding that the AIFM shall in any event be able to demonstrate that specific safeguards against conflicts of interest allow for the independent performance of risk management activities.

26. The board of the AIFM shall review the risk management function in accordance with paragraph 68. Where compliance cannot be achieved the board of the AIFM shall identify conflicts of interest that may pose a risk to the independent performance of risk management activities and shall ensure that procedures are in place which may reasonably be expected to result in an independent performance of the risk management function. These safeguards shall be documented in the risk management policy and must include from the list below (a), (b), (c) and (e) and may also include (d) and (f) where this is proportionate taking into account the nature, scale and complexity of the AIFM:

(a) procedures to ensure that the data used by the risk management function in making decisions is reliable and subject to an appropriate degree of control by the risk management function so as to allow for the independent performance of its duties;

(b) that staff members engaged in risk management are compensated in accordance with the achievement of the objectives linked to the risk management function, independent of the performance of the business areas in which they are engaged;

(c) that risk management function is subject to an appropriate independent review to ensure that decisions are being arrived at independently

(d) that there is a review of the risk management function by an independent external party or, where applicable the internal audit function;

(e) segregation of conflicting duties; and

(f) an appropriately resourced risk committee that reports directly to the AIFM's board where the non-independent members of such a committee do not have undue influence over the process.

27. The safeguards referred to in paragraph 70 must be subject to regular review by the governing body of the AIFM and, where it exists, the supervisory function, which shall require timely remedial action to be taken to address deficiencies.

Safeguards [Art. 44]

28. The board of the AIFM shall employ safeguards against conflicts of interest that may pose the risk to the independent performance of risk management activities. These safeguards shall be documented in the risk management policy of AIFMs.

29. The safeguards referred to in paragraph 72 shall ensure that:

(a) decisions taken by the risk management function are based on reliable data, which are subject to an appropriate degree of control by the risk management function;

(b) the remuneration of those engaged in the performance of the risk management function reflects the achievement of the objectives linked to the risk management function, independently from the performance of the business areas in which they are engaged. Where the risk management function is not functionally separated, this refers to the part of the remuneration which is linked to the risk management function;

(c) where remuneration of those engaged in the performance of the risk management function is performance related, it shall be constructed in such a way as to reward the achievement of the objectives linked to the risk management function, sound risk–taking, in line with the business strategy of the AIFM and the risk profile of the AIF it manages;

(d) the conflicting duties should be properly segregated.

30. Where it is proportionate, taking into account the nature, scale and complexity of the AIFM, the safeguards referred to in paragraph 72 shall also ensure that:

(a) the performance of the risk management function shall be reviewed regularly by the internal audit function, or, in case the former has not been established, by an external party appointed by the board;

(b) where a risk committee has been established, it shall be appropriately resourced and its non-independent members shall not have undue influence over the performance of the risk management function.

31. The board of the AIFM shall regularly review the effectiveness of the safeguards laid down in paragraphs 73 and 74 and take timely remedial action to address deficiencies.

Risk Limits [Art. 45]

32. An AIFM shall establish and implement quantitative and/or qualitative risk limits for each AIF it manages, taking into account all relevant risks. Where only qualitative limits are set, the AIFM shall be able to justify this approach to the Central Bank.

33. The qualitative and quantitative risk limits for each AIF shall, at least, cover the following risks:

(a) market risks;

(b) credit risks;

(c) liquidity risks;

(d) counterparty risks; and

(e) operational risks.

When setting risk limits an AIFM shall take into account the strategies and assets employed in respect of each AIF it manages as well as the national rules applicable to each of those AIFs. These risk limits should be aligned with the risk profile of the AIF as disclosed to investors in accordance with Article 23(4) (c) of Directive 2011/61/EU and approved by the governing body.

Measurement and Management of Risk [Art. 46]

34. An AIFM shall adopt adequate and effective arrangements, processes and techniques in order to:

(a) identify, measure, manage and monitor at any time the risks to which the AIF under its management are or might be exposed to; and

(b) ensure compliance with the limits set in accordance with paragraphs 76 and 77.

35. The arrangements, processes and techniques referred to in paragraph 78 shall be proportionate to the nature, scale and complexity of the business of the AIFM and of the AIF it manages and shall be consistent with the AIF risk profile as disclosed to investors in accordance with Article 23(4) (c) of Directive 2011/61/EU.

36. For the purposes of paragraph 78, an AIFM shall take the following actions for each AIF it manages:

(a) put in place such risk measurement arrangements, processes and techniques as are necessary to ensure that the risks of positions taken and their contribution to the overall risk profile are accurately measured on the basis of sound and reliable data and that the risk measurement arrangements, processes and techniques are adequately documented;

(b) conduct periodic back-tests in order to review the validity of risk measurement arrangements which include model-based forecasts and estimates;

(c) conduct periodic appropriate stress tests and scenario analyses to address risks arising from potential changes in market conditions that might adversely impact the AIF;

(d) ensure that the current level of risk complies with the risk limit policy and procedures as set out in accordance with paragraphs 76 and 77;

(e) establish, implement and maintain adequate procedures that, in the event of actual or anticipated breaches of the risk limit policy and procedures of the AIF, result in timely remedial actions in the best interests of investors; and

(f) ensure that there are appropriate liquidity management processes for each AIF in line with the requirements set out in paragraphs 81 to 83.

Liquidity Management Policies and Procedures [Art. 47 – 50] (for insertion after paragraph (xii) (2) of Part I)

37. An AIFM shall, for each AIF that they manage with the exception of an unleveraged closed-ended AIF, employ an appropriate liquidity management system and adopt procedures which enable them to monitor the liquidity risk of the AIF and to ensure that the liquidity profile of the investments of the AIF complies with its underlying obligations.

38. AIFMs shall regularly conduct stress tests, under normal and exceptional liquidity conditions, which enable them to assess the liquidity risk of the AIFs and monitor the liquidity risk of the AIFs accordingly.

39. AIFMs shall ensure that, for each AIF that they manage, the investment strategy, the liquidity profile and the redemption policy are consistent.

40. The liquidity management system and procedures set out in paragraph 81 above must address and, at least, ensure that:

(a) The AIFM maintains a level of liquidity in the AIF appropriate to its underlying obligations, based on an assessment of the relative liquidity of the AIF's assets in the market, taking account of the time required for liquidation and the price or value at which those assets can be liquidated, and their sensitivity to other market risks or factors;

(b) The AIFM monitors the liquidity profile of the portfolio of the AIF's assets, having regard to the marginal contribution of individual assets which may have a material impact on liquidity, and the material liabilities and commitments (contingent or otherwise) which the AIF may have in relation to its underlying obligations. For these purposes the AIFM shall take into account the profile of the investor base of the AIF, including the type of investors, the relative size of investments and the redemption terms to which these investments are subject;

(c) The AIFM shall, where the AIF invests in other collective investment undertakings, monitor the approach adopted by the managers of those other collective investment undertakings to the management of liquidity, including through conducting periodic reviews, to monitor changes to the redemption provisions of the underlying collective investment undertakings in which the AIF invests. Notwithstanding the requirements set out in [AIFM Regulation implementing A 16 (1) of AIFMD and paragraph 81 above], this provision shall not apply where the other collective investment undertakings in which the AIF invests is actively traded on a regulated market within the meaning of Article 4(1) point (14) of Directive 2004/39/EC or an equivalent third country market;

(d) The AIFM shall implement and maintain appropriate liquidity measurement arrangements and procedures to assess the quantitative and qualitative risks of positions and of intended investments which have a material impact on the liquidity profile of the portfolio of the AIF's assets to enable their effects on the overall liquidity profile to be appropriately measured. The procedures employed shall ensure that the AIFM has the appropriate knowledge and understanding of the liquidity of the assets

in which the AIF has invested or intends to invest including, where applicable, the trading volume and sensitivity of prices and/or spreads of individual assets in normal and exceptional liquidity conditions;

(e) The AIFM shall consider and put into effect the tools and arrangements, including special arrangements, necessary to manage the liquidity risk of each AIF under its management. The AIFM shall identify the types of circumstances where these tools and arrangements may be used in both normal and exceptional circumstances, taking into account the fair treatment of all AIF investors, in relation to each AIF under management. The AIFM may only use such tools and arrangements in these circumstances and if appropriate disclosures have been made in accordance with [AIFM Regulation implementing A 2] concerning transparency requirements/disclosures to investors] and [Notice NU 9 (Prospectus disclosure)].

41. AIFMs shall document their liquidity management policies and procedures, as referred to in paragraph 81, review these on at least an annual basis and update these for any changes or new arrangements.

42. AIFMs shall include appropriate escalation measures in their liquidity management system and procedures to address anticipated or actual liquidity shortages, or other distressed situations of the AIF.

43. Where an AIFM manages an AIF which is a leveraged closed-ended AIF, points (c) and (e) of paragraph 84 and paragraph 88 shall not apply.

44. AIFMs shall implement appropriate policies and procedures to ensure that the redemption policies of the AIF are disclosed to investors, in sufficient detail, before they invest in the AIF and in the event of material changes in accordance with the requirements set out in NU 9 [paragraph X – dealing with disclosure/transparency].

45. AIFMs shall identify, manage and monitor conflicts of interest arising between investors wishing to redeem their investments and those investors wishing to maintain their investments in the portfolio, and any conflicts between the AIFM's incentive to invest in illiquid assets and the AIF's redemption policy in accordance with their obligations under [AIFM Regulation X – dealing with Article 14(i) on conflicts of interest].

Liquidity management limits and stress tests [Art. 51]

46. AIFMs shall, where appropriate, considering the nature, scale and complexity of each AIF they manage, implement and maintain adequate limits for the liquidity/illiquidity of the AIF consistent with its redemption policy in accordance with the requirements laid down in [Par dealing with risk requirements] relating to quantitative and qualitative limits.

AIFMs shall monitor compliance with these limits and where the limits are exceeded or likely to be exceeded the AIFM shall determine the required (or necessary) course of action. In determining appropriate action, AIFMs shall consider the adequacy of the liquidity

management policies and procedures, the appropriateness of the liquidity profile of the AIF's assets and the effect of atypical levels of redemption requests.

47. AIFMs shall regularly conduct stress tests, under normal and exceptional liquidity conditions, which enable them to assess the liquidity risk of each AIF under their management. The stress tests shall:

(a) be conducted on the basis of reliable and up-to-date information in quantitative terms or, where this is not appropriate, in qualitative terms;

(b) where appropriate, simulate a shortage of the liquidity of the assets in the AIF as well as atypical redemption requests;

(c) cover market risks and any resulting impact, including on margin calls, on collateral requirements or credit lines;

(d) account for valuation sensitivities under stressed conditions; and

(e) be conducted at a frequency which is appropriate to the nature of the AIF, taking in to account the investment strategy, liquidity profile, type of investor and redemption policy of the AIF, but, at a minimum, annually.

48. AIFMs shall act in the best interest of investors in relation to the outcome of any stress tests.

Alignment of investment strategy, liquidity profile and redemption policy [Art. 52]

49. For the purposes of [Regulation X – implementing Article 16(2) of Directive 2011/61/EU] the investment strategy, liquidity profile and redemption policy for each AIF managed by an AIFM shall be considered to be aligned when investors have the ability to redeem their investments:

(a) in a manner consistent with the fair treatment of all AIF investors; and
(b) in accordance with the AIF redemption policy and its obligations.

In assessing the alignment of the investment strategy, liquidity profile and redemption policy the AIFM shall also have regard to the impact that redemptions may have on the underlying prices or spreads of the individual assets of the AIF.

Conflicts of Interest [Arts. 31 - 38] (for insertion at end of section xii of Part I)

50. For the purpose of identifying the types of conflicts of interest that arise in the course of managing AIFs, an AIFM shall take into account, by way of minimum criteria, the question of whether the AIFM, a relevant person or a person directly or indirectly linked by way of control to the AIFM

(a) is likely to make a financial gain, or avoid a financial loss, at the expense of the AIF or its investors;

(b) has an interest in the outcome of a service or an activity provided to the AIF or its investors or to a client or of a transaction carried out on behalf of the AIF or a client, which is distinct from the AIF interest in that outcome;

(c) has a financial or other incentive to favour (i) the interest of a UCITS, a client or group of clients or another AIF over the interest of the AIF or (ii) the interest of one investor over the interest of another investor or group of investors of the same AIF;

(d) carries on the same activities for the AIF and for another AIF, a UCITS or client; or

(e) receives or will receive from a person other than the AIF or its investors an inducement in relation to collective portfolio management activities provided to the AIF, in the form of monies, goods or services other than the standard commission or fee for that service

Conflicts of Interest Policy

51. An AIFM shall establish, implement and maintain an effective conflicts of interest policy. That policy shall be set out in writing and shall be appropriate to the size and organisation of the AIFM and the nature, scale and complexity of its business.

Where the AIFM is a member of a group, the policy should also take into account any circumstances of which the AIFM is or should be aware which may give rise to a conflict of interest resulting from the structure and business activities of other members of the group.

52. The conflicts of interest policy established in accordance with paragraph 99 shall include the following:

(a) the identification of, with reference to the activities carried out by or on behalf of AIFM including activities carried out by a delegate, sub-delegate, external valuer or counterparty, the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of the AIF or its investors;

(b) procedures to be followed and measures to be adopted in order to manage such conflicts.

Managing Conflicts

53. The procedures and measures provided for the management of conflicts of interest should be designed to ensure that relevant persons engaged in different business activities involving a conflict of interest carry on these activities at a level of independence appropriate to the size and activities of the AIFM and of the group to which it belongs, and to the materiality of the risk of damage to the interests of the AIF or its investors.

54. The procedures to be followed and measures to be adopted in accordance with 100(b) shall include the following where necessary and appropriate for the AIFM to ensure the requisite degree of independence:

(a) effective procedures to prevent or control the exchange of information between relevant persons engaged in collective portfolio management activities or other activities pursuant to Article 6(2) and (4) AIFMD involving a risk of a conflict of interest where the exchange of the information may harm the interest of one or more AIFs or its investors;

(b) the separate supervision of relevant persons whose principal functions involve carrying out collective portfolio management activities on behalf of, or providing services to clients or to investors whose interest may conflict, or who otherwise represent different interests that may conflict, including those of the AIFM;

(c) the removal of any direct link between the remuneration of relevant persons principally engaged in one activity and the remuneration of, or revenues generated by, different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;

(d) measures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person carries out collective portfolio management activities;

(e) measures to prevent or control the simultaneous or sequential involvement of a relevant person in separate collective portfolio management activities or other activities pursuant to Article 6(2) and (4) AIFMD where such involvement may impair the proper management of conflicts of interest.

Where the adoption or the practice of one or more of those measures and procedures does not ensure the requisite degree of independence, AIFM should adopt such alternative or additional measures and procedures as are necessary and appropriate for those purposes

Part B

Criteria to be used for calculating Additional Own Funds

Section A

Professional liability risks

1. Professional liability risks to be covered pursuant to article 9 paragraph 7 of Directive 2011/61/EU are risks of loss or damage caused by a relevant person through the negligent performance of activities for which the AIFM has legal responsibility.

2. For the purpose of professional liability, 'relevant person' means any of the following:

   (a) a director, partner or equivalent, or manager of the AIFM;
   (b) an employee of the AIFM, as well as any other natural person whose services are placed at the disposal and under the control of the AIFM and who is involved in the services of collective portfolio management by the AIFM;
   (c) a natural or legal person who is directly involved in the provision of services to the AIFM under a delegation arrangement to third parties for the purpose of the provision of collective portfolio management by the AIFM.

3. Professional liability risks include, without being limited to:

   (a) negligent loss of documents evidencing title of assets of the AIF;
   (b) misrepresentations or misleading statements made to the AIF or its investors;
   (c) negligent acts, errors or omissions resulting in a breach of:
      - legal and regulatory obligations;
      - duty of skill and care towards the AIF and its investors;
      - fiduciary duties;
      - obligations of confidentiality;
      - AIF rules or instruments of incorporation;
      - terms of appointment of the AIFM by the AIF;
   (d) failure to establish, implement and maintain appropriate procedures to prevent dishonest, fraudulent or malicious acts;
   (e) improper valuation of assets and calculation of unit/share prices;
   (f) business disruption, system failures, failure of transaction processing or process management.

4. Professional liability risks shall be covered at all times either through appropriate **Additional Own Funds** determined according to Section A or through appropriate coverage of professional indemnity insurance determined according to Section B.

Section B

Qualitative requirements addressing professional liability risks

1. The AIFM shall implement effective internal operational risk management policies and procedures in order to identify, measure, manage and monitor appropriately operational risks including professional liability risks to which the AIFM is or could be reasonably exposed. The operational risk management activities shall be performed independently.

2. The AIFM shall set up a historical loss database, in which any operational failures, loss and damage experience shall be recorded. This database shall record without being limited to any occurred professional liability risk events as described under paragraph 3 in Section A above.

3. Within the risk management framework the AIFM shall make use of its historical internal loss data and where appropriate of external data, scenario analysis and factors reflecting the business environment and internal control systems.

4. Operational risk exposures and loss experience shall be monitored on an on-going basis and shall be subject to regular internal reporting.

5. The AIFM's operational risk management policies and procedures shall be well documented. The AIFM shall have arrangements in place for ensuring compliance with its risk management policies and effective measures for the treatment of noncompliance with these policies. The AIFM shall have procedures in place for taking appropriate corrective action.

6. The operational risk management policies and procedures and measurement systems shall be subject to regular reviews at least on an annual basis.

7. The AIFM shall maintain financial resources adequate to its assessed risk profile.

Section C

Additional own funds

1. This Section applies to AIFMs that choose to cover professional liability risks through Additional Own Funds. [See comment above]

2. An AIFM shall provide additional own funds for covering liability risks arising from professional negligence at least equal to 0.01 % of the value of the portfolios of AIFs managed.

The value of the portfolios of AIFs managed shall be the sum of the absolute value of all assets of all AIFs managed by the AIFM, including assets acquired through use of leverage, whereby derivative instruments shall be valued at their market value.

3. The **Additional Own Funds** requirement shall be recalculated at the end of each financial year and the amount of additional own funds shall be adjusted accordingly.

   An AIFM shall establish, implement and apply procedures to monitor on an ongoing basis the value of portfolios of AIFs managed. Where before the annual recalculation referred to in the previous subparagraph the value of portfolios of AIFs managed increases significantly, the AIFM shall proceed without undue delay to the recalculation of the additional own funds requirement and adjust the additional own funds accordingly.

4. The Central Bank may authorise the AIFM to provide **Additional Own Funds** lower than the amount referred to in paragraph 2 of this Section 3 only if it is satisfied - on the basis of the historical loss data of the AIFM as recorded over an observation period of at least three years prior to the assessment - that the AIFM provides sufficient additional own funds to appropriately cover professional liability risks. The authorised lower amount of additional own funds shall not be less than 0.008 % of the value of the portfolios of AIFs managed by the AIFM.

5. The Central Bank may request the AIFM to have additional own funds higher than the amount referred to in paragraph 2 if it is not satisfied that the AIFM provides sufficient additional own funds to appropriately cover professional liability risks.

Section D

Professional indemnity insurance

1. This article applies to AIFMs that choose to cover professional liability risk through professional indemnity insurance. [See comment above]

2. An AIFM shall take out and maintain at all times professional indemnity insurance that is complying with the following requirements:

   (a) the insurance policy shall have an initial term of no less than one year;
   (b) the insurance policy shall have a notice period for cancellation of at least 90 days;
   (c) the insurance policy shall cover professional liability risks as defined in Article 1 paragraphs (1) to (3) of this Regulation;
   (d) any defined excess shall be fully covered by own funds which are in addition to the own funds to be provided according to Article 9(1) and 9(3) of Directive 2011/61/EU;
   (e) the insurance is taken out from an insurance undertaking authorised to transact professional indemnity insurance, which is subject to prudential regulation and on-going supervision in accordance with Union law;
   (f) the insurance is provided by a third party entity.

3. The coverage of the insurance for an individual claim must be at least equal to 0.7 % of the value of the portfolios of AIFs managed by the AIFM calculated as set out in article 3(2).

4. The coverage of the insurance for claims in aggregate per year must be at least equal to 0.9 % of the value of the portfolios of AIFs managed by the AIFM calculated as set out in article 3(2).

5. The AIFM shall review the professional indemnity insurance policy and its compliance with the requirements set in this article at least once a year and in the event of any change which affects compliance of the policy with the requirements.