

Banc Ceannais na hÉireann  
Central Bank of Ireland

Eurosystem

2016

## Consultation on Fund Management Company Effectiveness – Managerial Functions, Operational Issues and Procedural Matters

### Consultation Paper CP 86 – Third consultation

## Contents

Introduction	2
Part I - Governance	4
Part II – Compliance	6
Part III - Supervisability	8
Appendix 1 – Draft Guidance	12

## Introduction

The Central Bank has been engaged in a body of work to examine and improve fund management company<sup>1</sup> effectiveness since early 2014 (known as “CP86”). The motivation for this work is a belief that enhancing the effectiveness of fund management companies improves the protection of investors. In considering this matter from a regulator’s perspective, there are three key areas which need to be examined:

- Governance
- Compliance
- Supervisability

Governance relates to the way in which the directors of fund management companies should perform their roles and guide the company.<sup>2</sup> Compliance concerns designated persons carrying out their managerial functions in a manner which ensures that the fund management company complies with its regulatory obligations. Supervisability is the capacity to carry out the Central Bank’s engagement model without undue constraint and the ability to react in a crisis. The Central Bank’s access to a fund management company’s records, directors and designated persons is particularly important in this regard. The Central Bank believes that a fund management company which is strong in each of these three areas is one of substance and one which can better protect investors.

Part I of this paper describes in some detail the work which the Central Bank has already completed in relation to Governance. Part II describes the Central Bank’s proposed approach to Compliance and invites respondents’ views on those proposals. Likewise, Part III deals with Supervisability and invites observations on the proposed approach.

The Central Bank published a feedback statement on CP86 – second consultation<sup>3</sup> in November 2015. At that time, the Central Bank indicated that it would be working on three further chapters of guidance for fund management companies, namely *managerial functions*, *operational issues* and *procedural matters*. The *managerial functions* chapter deals with issues concerning compliance and is discussed in Part II of this paper. The *operational issues* chapter addresses supervisability and is discussed in Part III of this paper.

The *procedural matters* chapter reflects existing Central Bank guidance titled “Organisation of UCITS management companies”. It deals with the application process for authorisation of fund management companies and the information which the Central Bank will require where a fund management company proposes to use its management company passport. The existing guidance has been amended to cover both UCITS management companies and AIFMs. Also,

---

<sup>1</sup> In this document, the term ‘fund management company’ means a UCITS management company, an authorised Alternative Investment Fund Manager, a self-managed UCITS investment company and an internally managed Alternative Investment Fund which is an authorised AIFM.

<sup>2</sup> Principle D.1 of the [G20 / OECD Principles of Corporate Governance](#) –  
*D. The board should fulfil certain key functions, including: 1. Reviewing and guiding corporate strategy, major plans of action, risk management policies and procedures, annual budgets and business plans; setting performance objectives; monitoring implementation and corporate performance; and overseeing major capital expenditures, acquisitions and divestitures.*

<sup>3</sup> Fund Management Company Boards – Feedback statement on CP86; Consultation on delegate oversight guidance; Publication of guidance on organisational effectiveness and directors’ time commitments.

the part of that guidance which refers to the discharge of responsibilities is not retained because the Central Bank has issued separate guidance on delegate oversight and both the UCITS Directive, to some extent, and AIFMD, to a greater extent, address the issue. The “Organisation of UCITS management companies” guidance will be retracted when the final *operational issues* chapter is published.

The draft text for these three chapters is set out in full in Appendix I to this paper.

The Central Bank envisages providing a transitional period of one year following the completion of the consultation process for fund management companies to comply with the new rules and guidance.

## **Part I - Governance**

A key component of the Central Bank's approach to improving fund management company effectiveness has been to focus on directors because they are ultimately responsible for governance and for overseeing delegates. In early 2014, the Central Bank convened a group of industry experts to provide it with advice on how directors of fund management companies should oversee delegates. This advice helped to inform the Central Bank's own guidance on delegate oversight. The Central Bank's delegate oversight guidance was published together with guidance on organisational effectiveness and directors' time commitments in November 2015<sup>4</sup>. The effect of these three chapters on fund management companies is summarised below.

### *Delegate oversight – rule*

In conjunction with the publication of the delegate oversight guidance, the Central Bank revised its rule in relation to the number of designated persons roles. It was decided to streamline these and to reduce them from 15 for AIFMs and 9 for UCITS management companies so that now all fund management companies are required to have designated persons assigned to 6 specific managerial functions. These are regulatory compliance, fund risk management, operational risk management, investment management, capital and financial management and distribution.

### *Delegate oversight - guidance*

Fund management companies are guided to have directors that are very actively engaged in controlling the fund management company and overseeing delegates. There are five specific areas to which the attention of directors is drawn:

- Investment management - this includes review and approval of a detailed investment approach for each sub-fund under management; comprehensive annual presentation; and regular on-site visits.
- Distribution - this includes review and approval of a specific distribution strategy per sub-fund; regular distribution reports; and access to marketing materials on request.
- Risk management - this includes review and approval of a risk management framework which considers investment risk per sub-fund and operational risk and business continuity for the fund management company.
- Investment operations and administration - this deals generally with how directors oversee how well a delegate is performing its tasks.
- Support and resourcing – this deals with how well resourced the fund management company is so that it can do its job properly.

It is a significant undertaking for directors to carry out all of the tasks set out in the Central

<sup>4</sup> [Fund Management Companies - Guidance](#), published November 2015

Bank's delegate oversight guidance. It should be evident from the fund management company's board meeting minutes whether it is complying with this guidance.

*Organisational effectiveness – rule*

Fund management companies are required to have one director who carries out an organisational effectiveness role to ensure that the fund management company continues to be organised and resourced in the most appropriate manner on an on-going basis.

*Organisational effectiveness - guidance*

The guidance explains that the purpose of this rule is to obligate one person to oversee the totality of the delegate arrangements put in place to provide assurance that they all work well together.

The Central Bank has already published its full guidance on the organisational effectiveness role. Fund management companies authorised from 1 November 2015 onwards should not be delaying their implementation of that guidance in the expectation of further Central Bank guidance. Fund management companies are reminded that the individual performing the organisational effectiveness role is guided to keep the effectiveness of the organisational arrangements of the company under ongoing review and to organise periodic board effectiveness evaluations. This should, at a minimum, result in an annual review of organisational effectiveness and fund management companies authorised from 1 November 2015 onwards should view this as a regulatory compliance deliverable. The Central Bank wishes to clarify that responsibility of the individual conducting the organisational effectiveness role is not impeded if he or she is provided with a suggested template for conducting reviews or otherwise supported in conducting the organisational effectiveness role provided that any such support does not substitute for the informed judgement of the responsible person. It would be useful to structure the organisational effectiveness review to ensure that the organisation infrastructure as noted in the business plan/programme of activities documents is tested to confirm the actual control environment in place.

*Directors' time commitments - guidance*

Fund management companies are guided to have directors who have the time available to them to carry out their roles properly. The key risk indicator for the Central Bank in assessing time commitments is 2,000 working hours per year. This figure is published in the Central Bank's guidance so that directors and fund management companies have a clear sense of the risk appetite of the Central Bank.

## **Part II - Compliance**

The UCITS and AIFMD regimes place a substantial regulatory burden on fund management companies. Those obligations are in addition to rules imposed under other legislation such as the Companies Act 2014, market abuse law, EMIR, etc. It is important that fund management companies know and understand their regulatory obligations, comply with them and are able to demonstrate compliance. Designated persons play a key role in this regard. In order to ensure compliance with all relevant regulatory obligations, each designated person carrying out a managerial function must be aware of all tasks and responsibilities that fall under their remit. To assist in this process, the Central Bank has prepared the *managerial functions* guidance. It describes the Central Bank's expectations of designated persons and sets out in detail the measures which should be employed by the fund management companies to ensure compliance with regulatory obligations.

### *Managerial functions – guidance*

In summary, the *managerial functions* guidance provides:

- i. Designated persons are the fund management company's line of management that lies between the directors and the delegates.
- ii. Fund management companies are guided to ensure that designated persons monitor and oversee the approaches and strategies approved by the board which correspond to their managerial function. This means that the designated person for investment management should monitor and oversee compliance with the investment approach, the designated person for distribution should monitor and oversee compliance with the distribution strategy and so on.
- iii. Reporting should include summary information on the activity of each sub-fund. Reporting should not be on an exceptions basis.
- iv. Designated persons are guided to have the capacity necessary (in terms of experience and time available) to carry out their roles. They are guided to know exactly which regulatory obligations fall within their remit and to be up-to-date on developments concerning their managerial function.
- v. Designated persons should be at a sufficient level of seniority such that they are the appropriate individuals to meet with the Central Bank as part of the Central Bank's supervisory engagement process.
- vi. Fund management companies are guided to document in their contractual arrangements exactly which service provider is responsible for performing which task. Fund management companies are guided not to assume that because a service provider is authorised, it will be carrying out the activities necessary for a fund management company to discharge its regulatory obligations. They should determine which service provider will be responsible for each regulatory obligation and should document this accordingly.
- vii. Fund management companies are guided not to rely on the policies and procedures of their delegates or group without considering whether this is appropriate. They should

have their own suite of policies and procedures. Where a fund management company intends to rely on a policy or procedure of its delegate or group, its own policy or procedure should document how this has been verified as appropriate and how it will be kept under review.

#### **Questions for consultation**

***In additional to any general observations which you may have, stakeholders are invited to address the questions set out below.***

***Question 1: The detailed nature of the managerial functions guidance serves to set out the Central Bank's expectations regarding how designated persons should carry out their roles. It also illustrates the full breadth of responsibility under the designated person's remit. Are there further practices that need to be considered for inclusion in this guidance to assist designated person in carrying out their roles? If so, please detail.***

***Question 2: In the first consultation on CP86 and the feedback statement to the first consultation, the Central Bank advised that the organisational effectiveness role included the previous managerial functions of conflicts of interest, internal audit and supervision of delegates (to the extent that this is not performed by the designated persons). The principal purpose of the organisational effectiveness role is to have someone constantly monitoring how well a fund management company is organised and resourced. By also allocating internal audit to the organisational effectiveness role, there may be a risk that it makes it more difficult for the individual performing the organisational effectiveness role to carry out their main purpose. Stakeholders are asked to consider whether responsibility for oversight of internal audit be better placed with the Operational Risk managerial function.***



### **Part III - Supervisability**

As mentioned in the introduction to this paper, supervisability is the capacity to carry out the Central Bank's engagement model without undue constraint and the ability to react in a crisis. The Central Bank's access to a fund management company's records, directors and designated persons is particularly important in this regard. In order to maintain effective oversight of fund management companies, the Central Bank must ensure that it has access to a fund management company's people and records and that there are clear, effective channels of communication with fund management companies. To ensure this, the Central Bank is proposing a number of rules and guidance on operational issues.

#### *Operational issues - location rule*

A fund management company which has a PRISM impact rating of Medium Low or above will be required to have:

- i. have at least three Irish resident directors or at least two Irish resident directors and one designated person based in Ireland; and
- ii. have at least two thirds of its directors in the EEA; and
- iii. have at least two thirds of designated persons in the EEA.

A fund management company which has a PRISM impact rating of Low will be required to have:

- i. at least two Irish resident directors; and
- ii. at least two thirds of its directors in the EEA; and
- iii. at least two thirds of designated persons in the EEA.

#### *Operational issues – Retrievability of records rule*

Fund management companies will be required to keep all of their records in a way that makes them immediately retrievable in or from Ireland. When the Central Bank meets representatives of a fund management company in Ireland and asks them to produce a record of the fund management company (such as board minutes, policies and procedures, letters of engagement, contracts with delegates, reports to designated persons), they should be able to produce this record immediately.

#### *Operational issues – Retrievability of records guidance*

In order to effectively comply with the requirement to keep all records in a way that makes them immediately accessible, the fund management company will need to maintain a clearly defined and understandable records retention schedule outlining where the documents are stored and other relevant information pertaining to each document. Furthermore, these documents are the fund management company's evidence to satisfy the Central Bank of its substance and

compliance with all applicable regulatory requirements.

*Operational issues – monitored email address guidance*

From time to time, the Central Bank has cause to communicate with fund management companies requesting the provision of information within a specified timeframe. It is extremely important from a supervisability point of view that fund management companies deal with such requests in a timely and accurate manner. However, the Central Bank has experienced issues, in terms of timeliness and/or quality of information, when it has conducted these information gathering exercises.

Section 22 of the Central Bank (Supervision and Enforcement) Act 2013, Regulation 123 of the UCITS Regulations 2011 and Regulation 48 of the AIFM Regulations 2013 all provide the Central Bank with broad powers to require *inter alia* fund management companies to provide the Central Bank with information within such time as it may specify. To improve the responsiveness of smaller fund management companies to information requests from the Central Bank, the Central Bank will issue guidance reminding fund management companies of this rule and setting out that fund management companies should maintain a dedicated and monitored email address for the purpose of complying with that rule. This can be structured as a single email address for all investment funds under management or a dedicated email address for each investment fund it manages, provided that that the fund management company ensures constant (i.e. daily) monitoring of the email for communications from the Central Bank.

***Questions for consultation***

***In additional to any general observations which you may have, stakeholders are invited to address the questions set out below.***

***Question 3: The location rule balances the need for sufficient expertise against the need to be able to access persons and supervise fund management companies. Please provide any factual analysis you have on the impact of this.***

***Question 4: The proposed rule and guidance on retrievability of records focus on the outcomes to be achieved rather than the IT systems to be used to achieve those outcomes. Is this the right approach?***

### **Consultation responses**

The Central Bank invites all stakeholders to provide comments on the proposed rules and guidance and on the questions raised in this Consultation Paper. Where a respondent disagrees with a proposal, he/she should set out reasoned arguments as to why the proposal is unnecessary or inappropriate and/or should suggest viable alternatives.

Please make your submissions electronically by email to [fundspolicy@centralbank.ie](mailto:fundspolicy@centralbank.ie) or in writing, to:

**Fund Management Company Effectiveness – Third Consultation  
Markets Policy Division  
Central Bank of Ireland  
Block D  
Iveagh Court  
Harcourt Road  
Dublin 2**

Responses should be submitted no later than 25 August 2016.

It is the policy of the Central Bank to publish all responses to its consultations. All responses will be made available on our website. Commercially confidential information should not be included in consultation responses. We will send an email acknowledgement to all responses sent by email. If you do not get an acknowledgement of an emailed response please contact us on 2246000 to correct the situation.

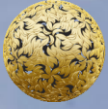
**Markets Policy Division  
Central Bank of Ireland  
2 June 2016**

T +353 1 2246000 F +353 1 1 6716561 [www.centralbank.ie](http://www.centralbank.ie) [fundspolicy@centralbank.ie](mailto:fundspolicy@centralbank.ie)



Banc Ceannais na hÉireann  
Central Bank of Ireland

Eurosystem



Banc Ceannais na hÉireann  
Central Bank of Ireland

Eurosystem

2016

## Fund Management Companies – Guidance: Part 2

DRAFT  
June 2016

## Contents

Part IV. Managerial Functions	2
Part V. Operational Issues	74
Part VI. Procedural matters	81



## **Adherence to guidance**

1. It should be evident from the fund management company's board minutes that the fund management company is acting in accordance with this guidance, if this is the case.

## **PART IV**

### **Managerial Functions**

#### **Purpose of this guidance**

1. The purpose of this guidance is to set out the Central Bank's expectations regarding how persons who conduct managerial functions ("Designated Persons") should carry out their roles.

#### **The role of Designated Persons**

2. The Central Bank has identified six key managerial functions for fund management companies – Capital and Financial Management; Operational Risk Management; Fund Risk Management; Investment Management; Distribution; and Regulatory Compliance. The Central Bank requires fund management companies to identify an individual, known as a Designated Person, who will be responsible for monitoring and overseeing the managerial function assigned to him or her. It is possible for a Designated Person to oversee more than one managerial function. Furthermore, the same Designated Person may carry out the managerial functions of (i) fund risk management and (ii) operational risk management. However, he or she may not perform the investment management managerial function and either the fund risk management managerial function or the operational risk management managerial function.
3. Designated Persons should receive separate letters of appointment from fund management companies. The letter of appointment should include inter alia the time commitment involved and the rate of payment. Where a director acts



as a Designated Person, he or she should receive two letters of appointment – one for the role of director and one for the role of Designated Person.

4. Designated Persons are a fund management company's line of management that lies between the board of directors and delegates. They ensure that the strategies, policies and directions issued by the board are acted upon and complied with. Designated Persons monitor and oversee compliance by a fund management company with its regulatory obligations. They report to the fund management company's board on a regular basis and escalate issues to the board where pre-defined parameters are exceeded or where the Designated Person judges that immediate escalation is warranted.
5. It is clear that the board of directors is not involved in managing a fund management company on a day-to-day basis. This task falls to the Designated Persons. If a fund management company delegated tasks to third parties and did not have Designated Persons in place, then the fund management company would have no-one within the fund management company responsible for its management. It would be entirely dependent on the delegates to manage the tasks delegated to them without sufficient managerial oversight by the fund management company. A fund management company that operated on this basis could be one which had delegated to the extent that it might be a letterbox entity within the meaning of the relevant legislation.
6. Designated Persons will not necessarily be the persons who are carrying out all of the tasks which fall within their scope of responsibility. For example, the Designated Person - Capital and Financial Management will not be the person who prepares the accounts for the fund management company and the investment funds under management. The Designated Person will likely manage fund management employees or oversee delegates who carry out these tasks. In managing those employees or overseeing those delegates, the designated person will review their work on an on-going basis to ensure that it is being carried out properly and that the policies and directions issued by the board are acted upon and that regulatory obligations are being complied with.

7. Fund management companies are under regulatory obligations to act in the best interests of the investors in the investment funds under management. This obligation applies to any Designated Persons engaged by a fund management company. Designated Persons should be mindful of this obligation when carrying out their roles, particularly where the fund management company is part of a larger group of companies or where the Designated Person is also engaged by another entity within that group. The letter of appointment or other contractual arrangements between a fund management company and a Designated Person should specifically provide that the Designated Person must put the best interests of investors ahead of any other interests.
8. Designated Persons can be employees of the fund management company. Alternatively, they can be seconded to the fund management company, on a full or part-time basis, from another firm such as the investment manager or a firm which specialises in the provision of Designated Persons.
9. The Central Bank should be satisfied with any proposed arrangements whereby Designated Persons will not be working in the same location. In these cases, the Designated Persons should be employed by the same group of companies and the fund management company should demonstrate to the Central Bank that the Designated Persons can co-ordinate their roles effectively notwithstanding their different locations. Fund management companies should not proceed with such proposals unless the Central Bank is satisfied with the reasonableness and efficacy of the proposed arrangement.
10. The organisational and structural arrangements put in place by a fund management company should not create any obstacles to the supervision of that fund management company and the investment funds under its management by the Central Bank.

**Capacity of Designated Persons**

11. In order to assess whether work is being carried out properly, that instructions are being followed and that no issues are arising, Designated Persons should normally have experience and expertise in the managerial function they are managing or, otherwise, evidence as would satisfy a reasonable person as to their capability. For example and by way of analogy, the Central Bank would not expect a MiFID firm to appoint a Head of Risk where that person had no knowledge or experience in the field of risk management. A Designated Person should have enough knowledge in the area they are managing to interrogate the information being provided to them and constructively challenge their employees or delegates.
12. Designated persons should understand the managerial function they have responsibility for and should be up-to-date on latest developments in order to perform their role effectively. They should be familiar with their managerial function and with the investment funds under management. They should be able to address queries raised, for example by boards or the Central Bank, in a fashion which demonstrates reasonable knowledge of the operations of the fund management company and those investment funds and any issues affecting them.
13. If a Designated Person occupied a role within the fund management company's organisation which was more junior than the delegates he or she was monitoring and overseeing, he or she would be unlikely to be able to challenge delegates effectively. Accordingly, Designated Persons should be sufficiently senior in their role such that their challenge of delegates carries weight and authority and they are the appropriate individuals to meet with the Central Bank as part of the Central Bank's supervisory engagement process.
14. Designated Persons should have enough time available to them to carry out their roles thoroughly and to a high standard.

**Documenting the delegation of tasks**

15. Where a fund management company delegates the performance of tasks, each delegate should know precisely what is being delegated to them. This should be documented in written contractual arrangements. It is not enough to assume that because a delegate is authorised, it will discharge the regulatory obligations placed on the fund management company. The delegate may not be subject to equivalent regulatory obligations. Where it is, it may not be carrying out these tasks to the same standard as required by the fund management company's regulatory obligations. For example, an AIFM should not assume that because it has delegated investment management to an authorised entity, the investment manager is carrying out all of the liquidity management obligations placed on the AIFM by Regulation 18 of the EU (AIFM) Regulations 2013. The AIFM and the investment manager should agree and document in writing that the investment manager will carry out these tasks in accordance with requirements of the AIFM Regulations and the parameters instructed by the AIFM.

**Policies and procedures**

16. Fund management companies are required to maintain a number of documented policies and procedures. In many instances, the fund management company will rely on the policies and procedures of its delegates or its group to satisfy its own regulatory obligations. Where this is the case, it is not appropriate for the fund management company to rely on the fact that its delegate is an authorised entity subject to its own regulatory obligations concerning policies and procedures. The fund management company must maintain its own written policies and procedures in each instance where this is required by regulation – it cannot rely on the delegate's written policies and procedures to satisfy the fund management company's obligation to have its own written policies and procedures. Where a fund management company intends to rely on the substance of its delegates' policies and procedures, the fund management company's policies and procedures should document:
- that this is the case;

- how the fund management company has satisfied itself that relying on its delegates' policies and procedures will ensure that it is complying with its regulatory obligations i.e. how the fund management company has mapped its regulatory obligations against those of its delegates;
  - how the fund management company will test that the delegates' policies and procedures are being complied with;
  - the frequency with which the fund management company will review its policies and procedures;
  - the role of the relevant Designated Person.
17. A fund management company should also follow this approach where it proposes to rely on its group policies and procedures.

**Allocation of regulatory obligations to managerial functions**

18. Each fund management company should review the regulatory obligations placed on it and should identify precisely under which managerial function each regulatory obligation falls. This systematic approach of allocating regulatory obligations to managerial functions will ensure that a fund management company has identified each regulatory obligation and that there is a Designated Person with responsibility for overseeing each such regulatory obligation. It will ensure that no obligations are unmonitored. It also helps Designated Persons to understand the expectations placed on them so that they can allocate and price their time accordingly.
19. Annexes I and II set out a framework of how the Central Bank believes the regulatory obligations set out in the EU (AIFM) Regulations 2013 and EC (UCITS) Regulations 2011 (including Level 2 measures) respectively could be allocated to each managerial function. Fund management companies may decide that, for that company, particular regulatory obligations should be attributed differently. The precise allocation of regulatory obligations amongst managerial functions is not as important as ensuring that the exercise is undertaken and that each regulatory obligation is attributed to a specific managerial function. While Annexes I and II contain requirements stemming

from the EU (AIFM) Regulations 2013 and EC (UCITS) Regulations 2011 (including Level 2 measures), the fund management company must also take account of other regulatory obligations (e.g. Central Bank UCITS Regulations, AIF Rulebook, EMIR, MiFID, MAD, etc.).

### **Coordination with boards**

#### Delegate Oversight Guidance

20. The Central Bank's Delegate Oversight Guidance identifies six distinct areas where boards should direct specific attention in the oversight of delegates. These areas are aligned with the key managerial functions for fund management companies. Accordingly, fund management companies should ensure that Designated Persons for the corresponding managerial function are responsible for monitoring and oversight of the approaches and strategies approved by the Board. This means that the Designated Person – Investment Management should monitor and oversee compliance with the investment approach, the Designated Person – Distribution should monitor and oversee compliance with the distribution strategy and so on.

#### Reporting from Designated Persons to the board

21. Designated Persons should be satisfied with or be responsible for the production of management information, or equivalent, for the board (or board sub-committee as appropriate), so that the conduct of the Designated Person's work receives both appropriate monitoring by the board on a regular basis and on an exceptional basis where issues arise.

#### Escalation to the board

22. Designated Persons should propose and agree with the board appropriate thresholds and key performance indicators which trigger immediate escalation from delegates and Designated Persons to the board. In addition, Designated Persons should immediately escalate matters to the board where they judge that this is warranted.

**Performance of managerial functions**

23. Designated Persons are responsible for performing the managerial functions assigned to them. A large part of performing this role involves close monitoring and oversight of employees and/or delegates. Fund management companies should consider and agree with the Designated Person how it expects the Designated Person to carry out this monitoring and oversight.

**Performance of managerial functions - Monitoring and oversight of regulatory obligations****Matters of fact**

24. Some regulatory obligations are rules where compliance is a matter of fact. For example, an internally managed AIFM must have initial capital of at least €300,000 and an external AIFM must have initial capital of at least €125,000. Compliance with this rule is objectively verifiable – either the AIFM has the requisite capital or it does not.
25. Where a regulatory obligation – matter of fact falls within a Designated Persons' remit, he or she should ensure that it is evident from the reporting he or she receives that the fund management company is complying with the rule.

**Matters of judgement**

26. There are a number of regulatory obligations where compliance is not a simple objective matter and where a fund management company is required to exercise judgement. For example, an AIFM must ensure a high standard of security during the electronic data processing and integrity and confidentiality of information.
27. Where a regulatory obligation – matter of judgement falls within a Designated Persons' remit, he or she should receive sufficient reporting and have sufficient expertise to assess whether the judgement made is reasonable. This assessment should be documented so that the rationale for it can be explained if it is queried at a later time.

Matters requiring design

28. The regulatory frameworks set out a number of obligations for fund management companies to have policies and procedures ('P&Ps') in relation to a certain matter, have a particular organisational structure or establish a limit. Appropriate P&Ps, structures and limits must be (i) designed, (ii) implemented and complied with on an on-going basis and (iii) reviewed periodically. Designated Persons should have a role in each of these three tasks proportionate to being a key representative of the fund management company in meeting the obligation.

*(i) Design*

29. Designated Persons, using their expertise, should manage the design process and should help create the structure or prepare the P&P or set the limit that is appropriate for the fund management company and investment funds under management given nature, scale and complexity considerations. Boards should provide input, should constructively challenge proposals where they see fit and should approve structures, limits and P&Ps.

30. A fund management company may receive assistance from its delegates or engage third parties to aid the design process. However, it will be ultimately the fund management company's responsibility to ensure that it has designed appropriate structures or limits or P&Ps and the Designated Persons should be central to this process.

31. The Designated Person should ensure that the fund management company documents why the proposed structure, limit or P&P was reasonable and appropriate.

*(ii) Implemented and complied with*

32. Once designed, the structure must be established, the P&P must be put into action or the limit must be imposed and complied with on an on-going basis. It is part of the Designated Person's role to monitor and oversee this subject always to the higher level of monitoring and oversight by the board itself, any



sub-committee and the person responsible for assessing organisational effectiveness.

*(iii) Reviewed periodically*

33. Designated Persons should keep structures, limits and P&Ps under on-going review to determine whether they remain appropriate. For example, increased market volatility may mean that current leverage limits are not appropriate and so a fund management company may wish to consider whether decreasing a leverage limit is appropriate in the new environment. Designated Persons should advise the board where they believe a change should be considered and should make a proposal to the board for its review, consideration and approval. Changes to structures, limits and P&Ps should be a matter for the board, and in some cases unitholders, to decide upon.

**Frequency of monitoring and oversight**

34. Fund management companies should, among other things, review each of the regulatory obligations attributed to each managerial function and consider the frequency of interaction appropriate. The frequency of monitoring and oversight, including the frequency of receipt of information from delegates, should be determined based on the activities of the investment funds under management. This includes but is not limited to:
- the complexity of the investment strategy;
  - the markets in which the investment fund operates;
  - the types of investment instruments utilised;
  - the underlying investment activities (as positions are bought and sold);
  - the frequency of investor subscriptions/redemptions;
  - the utilisation, valuation and security of margin and/or collateral;
  - the number of and functions provided by fund service providers; and
  - the use of efficient portfolio management techniques.
35. For example, a proposal whereby the Designated Person – Investment Management received monthly reporting in relation to an investment fund that

deals and trades in complex securities on a daily basis might not be viewed favourably whereas a proposal to receive reporting on a monthly basis for an investment fund that pursues a long-term buy and hold strategy may be acceptable.

36. In addition to regularly scheduled monitoring and oversight, more frequent review should occur on an ad hoc basis where circumstances demand this, for example where breaches are occurring or where market volatility has increased.
37. Designated Persons should monitor the tasks for which they are responsible on a day-to-day basis. This does not necessarily mean that monitoring and oversight has to take place daily – although this might be the case. As described above, the frequency of monitoring and oversight will be driven by the activities of the fund management company and its investment funds under management. Furthermore, the Designated Persons should have the capability to review delegates on a continuous basis and should be available on a day-to-day basis.

#### **Reporting from delegates to Designated Persons**

38. It is important that the reporting received by Designated Persons provides them with the information necessary to oversee and monitor compliance by the fund management company with its regulatory obligations, limits, P&Ps and any directions issues by the board. Accordingly, fund management companies should create a monitoring and oversight framework that allows Designated Persons to receive the information necessary to carry out their roles. Designated Persons should assist in this process.
39. Fund management companies should be able to demonstrate compliance with limits and P&Ps at all times. Accordingly, Designated Persons should ensure the monitoring and reporting framework designed allows the fund management company to comply with this obligation.

40. Designated Persons should have expertise in their managerial functions such that they can review the information received and interrogate it to identify actual or potential issues. Receiving reports which only identify exceptions would not be sufficient in this regard. A summary of relevant information concerning each investment fund under management would be more appropriate. This should summarise the activity in the investment fund over the period, any breaches which occurred or any flags raised and underlying trends.

#### **Meetings between Designated Persons and delegates**

41. Designated Persons should hold regular meetings with delegates. These could be in the form of sub-committee meetings, conference calls, physical meetings or a combination of these. Designated Persons should also perform on-site visits of delegates.
42. These meetings could be less frequent than the regular reporting frequency but more frequent than the board meeting schedule. For example, an arrangement whereby the Designated Person – Investment Management for an investment fund with activity on a weekly basis had regular reporting on a weekly basis, meetings with delegates on a monthly basis and attended quarterly board meetings might be appropriate.

#### **Approach to information received from delegates**

43. Designated persons should approach information received from delegates with healthy scepticism. They should not necessarily accept such information at face value and should interrogate information received. Designated persons should constructively challenge employees and delegates and should follow up on issues raised to ensure that they are concluded satisfactorily.
44. Designated persons may be relying on confirmations from employees or delegates that tasks are being carried out properly. There is a risk to the fund management company that a confirmation is incorrect i.e. that a designated person has received a confirmation that a task is operating normally when that

is not the case. A designated person might receive an incorrect confirmation because the employee or delegate has made a mistake or does not have the expertise necessary to interpret information and provide an accurate confirmation or is deliberately attempting to misinform the designated person.

45. Fund management companies should consider instances where this risk might arise and how it could be mitigated. There may be someone better placed to provide a confirmation or it may be possible to receive a secondary confirmation from another independent source. For example, a fund management company may seek confirmations from both its investment manager and its legal advisers concerning the contents of a new prospectus or from the fund administrator and external auditor concerning the contents of annual reports.
46. Designated Persons should record their engagement on reports received. Where a Designated Person enquires further into information received from a delegate, a record of this engagement should be retained. Evidence of constructive challenge by Designated Persons and interrogation by Designated Persons of the information received by them might point towards a fund management company which is well managed and that takes compliance with its regulatory obligations seriously.

## ANNEX I – Obligations on AIFMs

This Annex lists obligations placed on AIFMs by Level 1 and Level 2 of the AIFMD. Further obligations are placed on AIFMs by other legislation and rulebooks (e.g. the AIF Rulebook). AIFMs should also consider which Designated Person should be responsible for monitoring and overseeing compliance with those obligations.

Obligations highlighted in **green** apply to each AIF under management. Obligations highlighted in **blue** will only apply if the AIFM or the AIFs under management engage in certain activities (e.g. if they acquire control of non-listed companies).

DRAFT

**Capital and Financial Management**

<b>Legislative Provision</b>	<b>Managerial obligation</b>
<i>AIF annual reports</i>	
Reg. 23(1) AIFM Regulations	The AIFM must make available an annual report for each AIF it manages and each of the AIFs it markets in the Union within 6 months of year end.
Article 106(2) Level 2	The AIFM must assess changes in the information referred to in Reg. 24 of the AIFM Regulations during the financial year in accordance with Art 106(1) of Level 2.
Article 107(4) Level 2	The AIFM must provide general information in the annual report relating to the financial and non-financial criteria of the remuneration policies and practices for relevant categories of staff to enable investors to assess the incentives created. The AIFM must disclose at least the information necessary to provide an understanding of the risk profile of an AIF and the measures it adopts to avoid or manage conflicts of interest.
<i>Capital</i>	
Reg. 10(1)-(3) AIFM Regulations	An internally managed AIFM must have initial capital of at least €300,000 and an external AIFM must have at least €125,000. It must also have own funds where a threshold of €250 million in assets under management is exceeded.
Article 14(2) Level 2	The AIFM must recalculate additional own funds requirement at end of each financial year. AIFM must have procedures to monitor on an ongoing basis the value of portfolios of AIFs managed and shall adjust additional own funds where the value of AIF portfolios managed increases significantly.
Reg. 10(7) AIFM Regulations	The AIFM must have professional indemnity insurance or additional own funds to cover potential professional liability risks.
Reg. 10(8) AIFM Regulations	The AIFM's own funds including additional own funds must be invested in liquid assets or assets readily convertible to cash.

Article 15(5) Level 2	Where professional indemnity risk is covered through professional indemnity insurance the AIFM must review the professional indemnity insurance policy and its compliance with Article 15 provisions at least once a year.
<b><i>Organisational requirements</i></b>	
Reg. 19(2) AIFM Regulations	The AIFM must have sound administrative and accounting procedures.
Article 51(4) Level 2	The AIFM must have accounting policies and procedures and valuation rules to enable them to deliver in a timely manner financial reports and which comply with Article 59 of Level 2.
Reg. 19(2) AIFM Regulations	The AIFM must have control and safeguard arrangements for electronic data processing and mechanism to ensure that each transaction involving an AIF can be reconstructed.
Article 57(1)(e) Level 2	The AIFM must maintain adequate and orderly records of their business and internal organisation.
Article 57(2) Level 2	The AIFM must have systems and procedures adequate to safeguard the security, integrity and confidentiality of information.
Article 58(1) Level 2	The AIFM must have appropriate and sufficient arrangements for suitable electronic systems for the timely and proper recording of each portfolio transaction and subscriptions and redemptions.
Article 58(2) Level 2	The AIFM must ensure a high standard of security during the electronic data processing and integrity and confidentiality of recorded information.
Article 64(1) Level 2	The AIFM must make without delay a record of information which is sufficient to reconstruct the details of an order, executed transaction or agreement made in relation to an AIF under management.
Article 65(1) Level 2	The AIFM must take all reasonable steps to ensure that subscription and redemption orders are recorded without delay.
Article 66(1) Level 2	The AIFM shall ensure that records of portfolio transactions and subscription and redemption orders are kept for a period of at least 5 years.

<b>Reporting to competent authorities</b>	
Reg. 25 (1), (2) and (3) AIFM Regulations	The AIFM must regularly report certain information to the Central Bank and must comply with the Central Bank's requests for further information.
<b>Valuation</b>	
Reg. 20(1) AIFM Regulations	The AIFM must ensure that appropriate and consistent procedures are established for the proper and independent valuation of AIF assets.
Article 67(1) Level 2	The AIFM shall establish, maintain, implement and review written policies and procedures that ensure a sound, transparent, comprehensive and appropriately documented valuation process which must be in accordance with Article 67(1) and (2) of Level 2.
Article 67(3) Level 2	The AIFM must conduct initial and periodic due diligence on third parties appointed to perform valuation services.
Article 68(1) Level 2	If a model is used to value the assets of an AIF, the model and its main features shall be explained and justified in the valuation policies and procedures. The reason for the choice of the model, the underlying data, the assumptions used in the model and the rationale for using them, and the limitations of the model-based valuation shall be appropriately documented.
Article 68(3) Level 2	The AIFM's senior management must approve any valuation model used.
Article 69(1) and (4) Level 2	The AIFM must ensure that valuation policies and procedures and methodologies are applied consistently including across all AIFs managed by the same AIFM.
Article 70(1) Level 2	The AIFM must conduct a periodic review of valuation policies.
Article 71(1) Level 2	The AIFM must ensure that all assets are fairly and appropriately valued and must be able to demonstrate that the portfolios of AIFs it manages are properly valued.



Reg. 20(3) AIFM Regulations	The AIFM must ensure that NAV is calculated and disclosed to AIF investors. Valuation to be carried out when NAV is calculated and at least once per year. If the AIF is of the open-ended type, such valuations and calculations shall also be carried out at a frequency which is both appropriate to the assets held by the AIF and its issuance and redemption frequency. If the AIF is of the closed-ended type, such valuations and calculations shall also be carried out in case of an increase or decrease of the capital by the relevant AIF.
Article 72(1) Level 2	The AIFM must ensure that the NAV per unit is calculated on the occasion of each dealing in units but at least once a year.
Article 72(2) Level 2	The AIFM must ensure that the procedures and methodology for calculating the NAV per unit is fully documented and subject to regular verification.
Article 72(3) Level 2	The AIFM must ensure that remedial procedures are in place in the event of an incorrect calculation of the NAV.
Article 72(4) Level 2	The AIFM must ensure that the number of units in issue is subject to regular verification, at least as often as the unit price is calculated.
Reg. 20(8) AIFM Regulations	The AIFM shall ensure that valuation is performed by external valuer or by AIFM itself.
Reg. 20(10) AIFM Regulations	Where an external valuer is used, the AIFM must demonstrate that the external valuer satisfies certain conditions.
Reg. 20(12) AIFM Regulations	The AIFM must notify the appointment of an external valuer to the Central Bank. .
Reg. 20(15) AIFM Regulations	The AIFM is responsible for the proper valuation of AIF assets and the publication of the NAV.

**Fund Risk Management**

Legislative Provision	Managerial obligation
<i>Risk management</i>	
Reg. 16(4) AIFM Regulations	The AIFM shall implement adequate risk management systems in order to identify, measure, manage and monitor appropriately all risks relevant to each AIF investment strategy and to which each AIF is or may be exposed.
Article 40(1) Level 2	The AIFM must 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 may be exposed.
Article 45(1) Level 2	The AIFM must adopt adequate and effective arrangements, processes and techniques in order to identify, measure, manage and monitor at any time the risk to which AIFs under management are exposed and to ensure compliance with risk limits.
Article 45(3)(a) Level 2	The AIFM must put in place such risk measurement arrangements as are necessary to ensure that risks of portfolio positions are accurately measured.
Article 45(3)(b) Level 2	The AIFM must conduct periodic back-tests of risk measurement arrangements.
Article 45(3)(c) Level 2	The AIFM must conduct periodic stress tests and scenario analyses of risks arising from changes in market conditions.
Article 45(3)(d) Level 2	The AIFM must ensure that current level of risk complies with risk limits.
Article 45(3)(e) Level 2	The AIFM must establish, implement and maintain adequate procedures that, in the event of actual or anticipated breaches of the risk limits of the AIF, result in timely remedial actions in the best interest of investors.
Article 53(2) Level 2	The AIFM must establish formal monitoring procedures in relation to the credit risk of a securitisation position in order to monitor performance information on the exposures underlying such securitisation positions.

Reg. 16(6) (b) AIFM Regulations	The AIFM must ensure that risks associated with each investment position and overall effect on AIF's portfolio can be properly identified, measured, managed and monitored including through stress testing procedures.
Reg. 16(6)(c) AIFM Regulations	The AIFM must ensure that the risk profile of the AIF corresponds to the size, portfolio structure and investment strategies of the AIF.
Article 44(1) Level 2	The AIFM must establish and implement quantitative or qualitative risk limits or both for each AIF it manages.
<b><i>Exposure of AIFs</i></b>	
Article 6(2) Level 2	The AIFM must calculate exposure of AIFs in accordance with gross method and commitment method.
Article 6(5) Level 2	The AIFM must have appropriately documented procedures to calculate the exposure of each AIF under management.
<b><i>Investment of AIF assets</i></b>	
Reg. 19(2) AIFM Regulations	The AIFM must have internal control mechanisms to ensure that AIF assets are invested in accordance with AIF rules/instruments of incorporation and the legal provisions in force.

## Operational Risk Management

Legislative Provision	Managerial obligation
<i>Risk management function</i>	
Reg. 16(1) AIFM Regulations	The AIFM must functionally and hierarchically separate the functions of risk management from the operating units.
Article 39(1) Level 2	The AIFM must establish and maintain a permanent risk management function.
Article 39(1)(a) Level 2	The AIFM's permanent risk management function must implement effective risk management policies and procedures.
Article 39(1)(b) Level 2	The AIFM's permanent risk management function must ensure that the risk profile of the AIF disclosed to investors in accordance with Regulation (4)(c) of the AIFM Regulations is consistent with the risk limits set in Article 44 of Level 2.
Article 39(1)(c) Level 2	The AIFM's permanent risk management function must monitor compliance with the risk limits set in accordance with Article 44 of Level 2 and notify the AIFM's governing body and, where it exists, the AIFM's supervisory function in a timely manner when it considers the AIF's risk profile inconsistent with these limits or sees a material risk that the risk profile will become inconsistent with these limits.
Article 39(1)(d) Level 2	The AIFM's permanent risk management function shall provide the updates in (i) and (ii) to the governing body of the AIFM and where it exists the AIFM's supervisory function at a frequency which is in accordance with the nature, scale and complexity of the AIF or the AIFM's activities.
Article 39(1)(e) Level 2	The AIFM's permanent risk management function shall provide regular updates to the senior management outlining the current level of risk incurred by each managed AIF and any actual or foreseeable breaches of any risk limits set in accordance with Article 44 of Level 2, so as to ensure that prompt and appropriate action can be taken.

Article 42(2) Level 2	The functional and hierarchical separation of the risk management function shall be reviewed by the governing body and, where it exists, the supervisory function of the AIFM.
Article 70(3) Level 2	The AIFM's risk management function shall review and, if needed, provide appropriate support concerning the policies and procedures adopted for the valuation of assets.
<b><i>Risk management policy</i></b>	
Article 41(1) Level 2	The AIFM must assess, monitor and periodically, at least once a year, review (a) the adequacy and effectiveness the risk management policy; (b) the degree of compliance by the AIFM with the risk management policy; (c) the adequacy and effectiveness of measures taken to address any deficiencies in the performance of the process; (d) the performance of the risk management function; (e) the adequacy and effectiveness of measures aiming to ensure the functional and hierarchical separation of the risk management function in accordance with Article 42 of Level 2.
Article 41(3) Level 2	The AIFM shall update the risk management systems on the basis of the outcome of the review per Article 41(1) and (2) of Level 2.
Article 41(4) Level 2	The 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 Article 45 of Level 2.
<b><i>Operational risk management</i></b>	
Article 13(1) Level 2	The AIFM must 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 an AIFM is or could reasonably be exposed.
Article 13(2) Level 2	The AIFM must set up a historical database in which any operational failures, loss and damage experienced shall be recorded.
Article 13(3) Level 2	The AIFM must use its internal historical loss data and external data, scenario analysis and factors reflecting business environment and internal control systems in

	within its risk framework.
Article 13(4) Level 2	The AIFM must monitor operational risk exposures and loss experience on an ongoing basis with regular internal reporting.
Article 13(5) Level 2	The AIFM's operational risk management policies and procedures must be well documented.
Article 13(5) Level 2	The AIFM must have arrangements in place for ensuring compliance and effective measures for treatment of non-compliance.
Article 13(5) Level 2	The AIFM must have procedures in place for taking appropriate corrective action.
Article 13(6) Level 2	The AIFM must review operational risk management policies and procedures and measurement systems regularly and at least annually.
<b><i>Business continuity policy</i></b>	
Article 57(3) Level 2	The AIFM shall establish, implement and maintain an adequate business continuity policy aimed at ensuring, in the event of an interruption to their systems and procedures, the preservation of essential data and functions, and the maintenance of services and activities, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of their services and activities.
<b><i>Appointment of prime broker</i></b>	
Reg. 15(5), (6) AIFM Regulations	The AIFM must conduct due diligence before appointing prime brokers and must set the terms of the appointment out in a written contract.
Article 20(1) Level 2	The AIFM must exercise due skill, care and diligence before appointing a prime broker and on an ongoing basis.
Article 20(2) Level 2	The AIFM must ensure that prime brokers fulfil certain conditions.
Article 20(4) Level 2	The AIFM's senior management must approve list of selected prime brokers. Other prime brokers may be selected but AIFM must be able to demonstrate reasons for such a choice and the due diligence it exercised in selecting and monitoring these.

<i>Delegation</i>	
Reg. 21(1)(a) AIFM Regulations	The AIFM must notify the Central Bank before the delegation arrangements become effective. AIFM must be able to justify the entire delegation structure on objective reasons.
Article 75(d) Level 2	The AIFM must ensure that delegation arrangements take the form of a written agreement.
Article 75(e) Level 2	The AIFM must ensure that delegate carries out its functions effectively and in compliance with applicable law and regulatory requirements and must have procedures for reviewing on an ongoing basis the services provided by the delegate. An AIFM must take appropriate action if delegate cannot carry out functions effectively or in compliance with applicable laws.
Article 75(f) Level 2	The AIFM must supervise effectively the delegated functions and manage the risks associated with the delegation.
Article 75(g) Level 2	The AIFM must ensure that the continuity and quality of the delegated functions is maintained in the event of the termination of the delegation or the transfer of these functions.
Article 75(h) Level 2	The AIFM shall contractually ensure its instruction and termination rights, its rights of information, and its right to inspections and access to books and premises. The agreement shall make sure that sub-delegation can take place only with the consent of the AIFM.
Article 75(i) Level 2	The AIFM must instruct the delegate how to implement the investment policy and the AIFM must monitor this on an ongoing basis.
Article 75(j) Level 2	The AIFM must ensure that the delegate discloses any development that might have a material impact on the delegate's ability to carry out the delegated function effectively and in compliance with applicable laws.
Article 75(k) Level 2	The AIFM must ensure that delegate protects confidential information concerning the AIFM, the AIF and its investors.
Article 75(l) Level 2	The AIFM must ensure that delegate has a contingency plan for disaster recovery and periodic testing of backup facilities.

Article 76(1) and (2) Level 2	The AIFM must provide the Central Bank with a detailed description, explanation and evidence of the objective reasons for delegation and shall provide further information where requested by the Central Bank.
Reg. 21(1)(e) AIFM Regulations	The delegation must not prevent the effectiveness of supervision of the AIFM.
Reg. 21(1)(f) AIFM Regulations	The AIFM must be able to demonstrate that <ul style="list-style-type: none"> <li>- delegate is qualified and capable of undertaking the functions in question;</li> <li>- the delegate has been selected with all due care;</li> <li>- the AIFM is in a position to monitor effectively at any time delegated activity;</li> <li>- the AIFM can give at any time further instructions; and</li> <li>- the AIFM can withdraw delegation with immediate effect.</li> </ul>
Reg. 21(1) AIFM Regulations	The AIFM shall review the services provided by each delegate on an ongoing basis.
Article 21(5) (b) AIFM Regulations	The AIFM must notify the Central Bank before sub-delegation arrangements become effective.



**Investment Management**

<b>Legislative Provision</b>	<b>Managerial obligation</b>
<i>Due diligence in selection of investments</i>	
Reg. 16(6) (a) AIFM Regulations	The AIFM must implement an appropriate, documented and regularly updated due diligence process when investing on behalf of the AIF.
Article 18(1) Level 2	The AIFM must apply a high standard of due diligence in selection and ongoing monitoring of investments.
Article 18(2) Level 2	The AIFM must have adequate knowledge and understanding of the assets in which AIF is invested.
Article 18(3) Level 2	The AIFM must establish, implement and apply written policies and procedures on due diligence and implement effective arrangements for ensuring that investment decisions are carried out in compliance with objectives, strategy and risk limits of AIF.
Article 18(4) Level 2	The AIFM must regularly review and update due diligence procedures.
Article 19(1) Level 2	The AIFM must comply with specific due diligence requirements where investing in assets of limited liquidity. This includes an obligation to set out and regularly update a business plan consistent with the duration of the AIF and market conditions.
Article 19(2) Level 2	The AIFM must retain records of the due diligence activities carried out pursuant to Article 19(1) of Level 2 for at least 5 years.
<i>Leverage</i>	
Reg. 17 AIFM Regulations	The AIFM must set a maximum level of leverage and must specify the extent of the right to reuse collateral or grant a guarantee.
Reg. 26(3)(a) AIFM Regulations	The AIFM shall demonstrate that the leverage limits set by it for each AIF it manages are reasonable.  The AIFM shall demonstrate that it complies with the leverage limits set for each AIF at all times.

<i>Liquidity management</i>	
Reg. 18(1) AIFM Regulations	For unleveraged closed ended-AIF, the AIFM must employ an appropriate liquidity management system adopt procedures to monitor liquidity risk and ensure liquidity profile of underlying investments complies with underlying obligations.
Article 45(3)(f) Level 2	The AIFM must ensure that there are appropriate liquidity management systems and procedures for each AIF in line with requirements per Article 46 of Level 2.
Article 46 Level 2	The AIFM must be able to demonstrate that an appropriate liquidity management system and effective procedures are in place.
Article 47(1)(a) Level 2	The AIFM must maintain a level of liquidity in the AIF appropriate to its underlying obligations.
Article 47(1)(b) Level 2	The AIFM must monitor the liquidity profile of the AIF's portfolio of assets.
Article 47(1)(c) Level 2	The AIFM must, were AIF invests in other investment funds, monitor the approach adopted by manager of underlying investment fund to the management of liquidity.
Article 47(1)(d) Level 2	The AIFM must implement and maintain appropriate liquidity measurement arrangements and procedures to assess quantitative and qualitative risk of positions and intended positions.
Article 47(1)(e) Level 2	The AIFM must consider and put into effect the tools and arrangements necessary to manage the liquidity risk of each AIF under management.
Article 47(2) Level 2	The AIFM must document their liquidity management policies and procedures and review them at least annually.
Article 47(3) Level 2	The AIFM must include appropriate escalation measures in their liquidity management system and procedures to address anticipate or actual liquidity shortages or other distressed situations.
Article 48(1) Level 2	The AIFM must implement and maintain adequate limits for the liquidity or illiquidity of the AIF.

Article 48(1) Level 2	The AIFM must monitor compliance with liquidity limits and determine the required course of action if these are exceeded or likely to be exceeded.
Reg. 18(2) AIFM Regulations	The AIFM must regularly conduct liquidity stress tests.
Article 48(2) Level 2	The AIFM must conduct stress tests under normal and exceptional liquidity conditions to assess the liquidity risk of each AIF.
Reg. 18(3) AIFM Regulations	The AIFM must ensure that investment strategy, liquidity profile and redemption policy are consistent for each AIF.
Article 49(2) Level 2	The AIFM must have regard to the impact that redemptions may have on the underlying prices or spreads of individual assets of the AIF in assessing the alignment of investment strategy, liquidity profile and redemption policy.
<b><i>Investment in securitisations</i></b>	
Article 51(1) Level 2	The AIFM shall assume exposure to the credit risk of a securitisation on behalf of one or more AIFs it manages only if the originator, sponsor or original lender has explicitly disclosed to the AIFM that it retains, on an ongoing basis, a material net economic interest, which in any event shall not be less than 5 %.
Article 52 Level 2	Prior to the AIFM assuming exposure to the credit risk of a securitisation on behalf of one or more AIFs, it shall ensure that the sponsor and originator performs certain actions.
Article 53(1) Level 2	The AIFM must be able to demonstrate that it has a comprehensive and thorough understanding of a proposed securitisation position and that it has implemented formal policies and procedures prior to investing in a securitisation.
Article 53(2) Level 2	Where the AIFM has assumed exposure to a material value of the credit risk of a securitisation on behalf of one or more AIFs, it shall regularly perform stress tests appropriate to such securitisation positions in accordance with point (b) of Regulation 16(6) of the AIFM Regulations. The stress test shall be commensurate with the nature, scale and complexity of the risk inherent in the securitisation positions.

Article 53(3) Level 2	The AIFM must properly identify, measure, monitor, manage, control and report the risks that arise because of mismatches between the assets and liabilities of the relevant AIF.
Article 53(3) Level 2	The AIFM shall ensure that the risk profile of such securitisation positions corresponds to the size, overall portfolio structure, investment strategies and objectives of the relevant AIF as laid down in the AIF rules or instruments of incorporation, prospectus and offering documents.
Article 53(4) Level 2	The AIFM shall ensure an adequate degree of internal reporting to the senior management so that senior management is fully aware of any material assumption of exposure to securitisations and that the risks arising from those exposures are adequately managed.
Article 53(5) Level 2	The AIFM must include appropriate information on their investments in securitisations in the annual report, disclosures to investors and reporting to competent authorities.
Article 54(1) Level 2	The AIFM must take corrective action where they discover that the retained interest did not meet the requirements laid down in Level 2.
Article 54(2) Level 2	The AIFM must take corrective action where they discover that the retained interest has fallen below the 5% limit (where not due to the natural payment mechanism of the transaction).
<b><i>Exercising voting rights</i></b>	
Article 37(1) Level 2	The AIFM must develop adequate and effective strategies for determining when and how voting rights will be exercised.
Article 37(3) Level 2	A summary description of the voting right strategies and details of the actions taken on the basis of those strategies shall be made available to the investors on their request.

**Distribution**

Legislative Provision	Managerial obligation
Reg. 32(2) AIFM Regulations	In relation to marketing of units or shares of EU AIFs in the home Member State of the AIFM the AIFM shall submit a notification to the competent authorities of its home Member State in respect of each EU AIF that it intends to market.
Reg.32(4) AIFM Regulations	The AIFM must advise the Central Bank in writing when information previously provided under Regulation 32(2) of the AIFM Regulations is materially changed.
Reg. 33(4) AIFM Regulations	The Irish AIFM shall submit a notification to the Central Bank in respect of each EU AIF that it intends to market in another Member State. That notification shall comprise the documentation and information set out in Schedule 4 of the AIFM Regulations.
Reg. 33(7) AIFM Regulations	The AIFM must advise the Central Bank in writing, in the timelines set out when any of the particulars previously communicated under Regulation 33(4) of the AIFM Regulations is materially changed.
Reg. 34(3) AIFM Regulations	The AIFM intending to manage EU AIF established in another Member State for the first time shall provide relevant information to the Central Bank.
Reg. 34(4) AIFM Regulations	Where the AIFM intends to establish a branch in must provide additional information to the Central Bank.
Reg. 34(6) AIFM Regulations	The AIFM must advise the Central Bank in writing, in the timelines set out, when any of the particulars previously communicated under Regulation34(3) or Regulation 34(4) are changed.
Reg. 36(3) AIFM Regulations	In relation to marketing non-EU AIF in the Union with a passport AIFM must comply with all the requirements of the AIFM Regulations with the exception of Chapter 7.
Reg. 36(5) AIFM Regulations	If the AIFM intends to market units or shares of non-EU AIFs in the State, the AIFM shall submit a notification to the Central Bank in respect of each non-EU AIF that it intends to market. That notification shall comprise the documentation and information set out in Schedule 3 of the AIFM Regulations.

Reg. 36(7) AIFM Regulations	If the Irish AIFM intends to market units or shares of non-EU AIFs in another Member State, the AIFM shall submit a notification to the Central Bank in respect of each non-EU AIF that it intends to market. That notification shall comprise the documentation and information set out in Schedule 4 of the AIFM Regulations
Reg.36(11) AIFM Regulations	The AIFM must advise the Central Bank in writing, in the timelines set out, when information previously provided under Regulation 36(5) or Regulation 36(7) is materially changed.
Article 37(2)(a) AIFM Regulations	In relation to marketing in the State without a passport of non-EU AIFs and of EU feeder AIF which do not fulfil the requirements of Regulation 32(1)(b) the AIFM must comply with all the requirements of the AIFM Regulations with the exception of Regulation 22. That AIFM shall ensure that one or more entities are appointed to carry out the duties referred to in Regulation 22(7), (8) and (9) of the AIFM Regulations. The AIFM shall not perform those functions.
Reg. 37(2)(a) AIFM Regulations	The AIFM shall provide the Central Bank with information about the identity of those entities responsible for carrying out the duties referred to in Regulation 21(7), (8) and (9) of the AIFM Regulations
Reg. 43 AIFM Regulations	The AIFM marketing AIF to retail investors must comply with the requirements of the Central Bank in relation to such marketing.

**Regulatory Compliance**

Legislative Provision	Managerial obligation
<i>General</i>	
Reg. 6(3) AIFM Regulations	In cases where an external AIFM is unable to ensure compliance with requirements of the AIFM Regulations for which an AIF or another entity on its behalf is responsible, it shall immediately inform the Central Bank and, if applicable, the competent authorities of the EU AIF concerned. The Central Bank shall require the AIFM to take the necessary steps to remedy the situation.
Reg. 7(1) AIFM Regulations	The AIFM authorised in accordance with the AIFM Regulations shall meet the conditions for authorisation established in the AIFM Regulations at all times.
Reg. 7(6) AIFM Regulations	Regulations 5(2), 32, 33 and 76 of European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007) shall apply to the provision of services referred to in Regulation 7(4) of the AIFM Regulations by AIFMs.
Reg. 7(7) AIFM Regulations	The AIFM shall provide the Central Bank with the information it requires to monitor compliance with the conditions referred to in the AIFM Regulations at all times.
Reg. 9(1)(a)(iii) AIFM Regulations	The persons who effectively conduct the business of the AIFM must be of sufficiently good repute and sufficiently experienced in relation to the investment strategies pursued by the AIFs managed by the AIFM, the names of those persons and of every person succeeding them in office must be communicated forthwith to the Central Bank and the conduct of the business of the AIFM must be decided by at least two persons meeting such conditions.
Reg. 11(1) AIFM Regulations	The AIFM shall, before implementation, notify the Central Bank of any material changes to the conditions for initial authorisation, in particular material changes to the information provided in accordance with Regulation 8 of the AIFM Regulations.
Reg. 13(1)(a) AIFM Regulations	The AIFM shall at all times act honestly, with due skill, care and diligence and fairly in conducting its activities.

Reg. 13(1)(b) AIFM Regulations	The AIFM shall at all times act in the best interests of the AIFs or the investors of the AIFs they manage and the integrity of the market.
Article 17(1) Level 2	The AIFM shall apply policies and procedures for preventing malpractices, including those that might reasonably be expected to affect adversely the stability and integrity of the market.
Article 17(2) Level 2	The AIFM shall ensure that the AIFs they manage or the investors in these AIFs are not charged undue costs.
<b>Resources</b>	
Reg. 13(1)(c) AIFM Regulations	The AIFM must have and employ effectively the resources and procedures that are necessary for the proper performance of their business activities.
Article 22(1) Level 2	The AIFM shall employ sufficient personnel with the skills, knowledge and expertise necessary for discharging the responsibilities allocated to them.
Article 13(7) Level 2	The AIFM must maintain financial resources adequate to its assessed risk profile.
Reg. 19(1) AIFM Regulations	The AIFM shall use, at all times, adequate and appropriate human and technical resources that are necessary for the proper management of each AIF.
<b>Best execution</b>	
Article 25(1) Level 2	The AIFM shall establish, implement and apply procedures and arrangements which provide for the prompt, fair and expeditious execution of orders on behalf of the AIF.
Article 25(4) Level 2	The AIFM shall not misuse information related to pending AIF orders, and shall take all reasonable steps to prevent the misuse of such information by any of their relevant persons.
Article 26(1) Level 2	Where the AIFM has carried out a subscription or, where relevant, a redemption order from an investor, they shall promptly provide the investor, by means of a durable medium, with the essential information concerning the execution of that order or the acceptance of the subscription offer, as the case may be.



<p>Article 26(2) Level 2</p>	<p>Article 26(1) of Level 2 shall not apply where a third person is required to provide the investor with a confirmation concerning the execution of the order and where the confirmation contains the essential information. The AIFM shall ensure that the third person complies with its obligations.</p>
<p>Article 26(4) Level 2</p>	<p>The AIFM shall supply the investor, upon request, with information about the status of the order or the acceptance of the subscription offer, or both as the case may be.</p>
<p>Article 27(1) Level 2</p>	<p>The AIFM shall act in the best interests of the AIFs or the investors in the AIFs they manage when executing decisions to deal on behalf of the managed AIF in the context of the management of their portfolio.</p>
<p>Article 27(2) Level 2</p>	<p>Whenever the AIFM buy or sell financial instruments or other assets for which best execution is relevant, and for the purposes of Article 26(1) of Level 2, they shall take all reasonable steps to obtain the best possible result for the AIFs they manage or the investors in these AIFs, taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order. The relative importance of such factors shall be determined by reference to the specified criteria.</p>
<p>Article 27(3) Level 2</p>	<p>The AIFM shall establish and implement effective arrangements for complying with the obligations referred to in Article 26(1) and (2) of Level 2. In particular, the AIFM shall establish in writing and implement an execution policy to allow AIFs and their investors to obtain, for AIF orders, the best possible result in accordance with Article 26(2) of Level 2.</p>
<p>Article 27(4) Level 2</p>	<p>The AIFM shall monitor on a regular basis the effectiveness of their arrangements and policy for the execution of orders with a view to identifying and, where appropriate, correcting any deficiencies.</p>
<p>Article 27(5) Level 2</p>	<p>The AIFM shall review its execution policy on an annual basis. A review shall also be carried out whenever a material change occurs that affects the AIFM's ability to continue to obtain the best possible result for the managed AIFs.</p>

<p>Article 27(6) Level 2</p>	<p>The AIFM shall be able to demonstrate that it has executed orders on behalf of the AIF in accordance with their execution policy.</p>
<p>Article 28(1) Level 2</p>	<p>Whenever the AIFM buys or sells financial instruments or other assets for which best execution is relevant, it shall act in the best interest of the AIFs it manages or the investors in the AIFs when placing orders to deal on behalf of the managed AIFs with other entities for execution, in the context of the management of their portfolio.</p>
<p>Article 28(2) Level 2</p>	<p>The AIFM shall take all reasonable steps to obtain the best possible result for the AIF or the investors in the AIF taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order. The relative importance of such factors shall be determined by reference to the criteria laid down in Article 27(2) of Level 2.</p> <p>The AIFM shall establish, implement and apply a policy to enable them to comply with the obligation referred to in the first subparagraph. The policy shall identify, in respect of each class of instruments, the entities with which the orders may be placed. The AIFM shall only enter into arrangements for execution where such arrangements are consistent with the obligations laid down in this Article. The AIFM shall make available to investors in the AIFs it manages appropriate information on the policy established in accordance with this paragraph and on any material changes to that policy.</p>
<p>Article 28(3) Level 2</p>	<p>The AIFM shall monitor on a regular basis the effectiveness of the policy established in accordance with Article 28(2) of Level 2 and, in particular, the quality of the execution by the entities identified in that policy and, where appropriate, correct any deficiencies.</p> <p>In addition, the AIFM shall review the policy on an annual basis. Such a review shall also be carried out whenever a material change occurs that affects the AIFM's ability to continue to obtain the best possible result for the managed AIFs.</p>
<p>Article 28(4) Level 2</p>	<p>AIFMs shall be able to demonstrate that they have placed orders on behalf of the AIF in accordance with the policy established pursuant to Article 28(2) of Level 2.</p>

Article 28(5) Level 2	Whenever there is no choice of different execution venues Article 28(2) to (5) Level 2 shall not apply. However, the AIFM shall be able to demonstrate that there is no choice of different execution venues.
Article 29(1) Level 2	The AIFM can only carry out an AIF order in aggregate with an order of another AIF, a UCITS or a client or with an order made when investing their own funds where: (a) it can be reasonably expected that the aggregation of orders will not work overall to the disadvantage of any AIF, UCITS or clients whose order is to be aggregated; (b) an order allocation policy is established and implemented, providing in sufficiently precise terms for the fair allocation of aggregated orders, including how the volume and price of orders determines allocations and the treatment of partial executions.
<b>Conduct of business</b>	
Reg. 13(1)(e) AIFM Regulations	The AIFM shall comply with all regulatory requirements applicable to the conduct of their business activities so as to promote the best interests of the AIFs or the investors of the AIFs they manage and the integrity of the market.
Reg. 13(1)(f) AIFM Regulations	The AIFM shall treat all AIF investors fairly. No investor in an AIF shall obtain preferential treatment, unless such preferential treatment is disclosed in the relevant AIF's rules or instruments of incorporation.
<b>Depositary</b>	
Reg. 22 AIFM Regulations	The AIFM must ensure that a single depositary is appointed in accordance with this Regulation 22
<b>Obligations for AIFMs managing AIFs which acquire control of non-listed companies and issuers</b>	
Reg. 28(1) AIFM Regulations	The AIFM must provide notification (proportion of voting rights) to the Central Bank in relation to acquisition/disposal/holding by an AIF of shares of a non-listed company when the proportion of voting rights reaches, exceeds or falls below certain thresholds. This also applies to AIFMs managing AIFs that acquire a non-controlling participation in a non-listed company.

Reg. 28(2) AIFM Regulations	The AIFM must notify the Central Bank, the non-listed company and its shareholders (where details are available) where an AIF it manages acquires (individually or jointly) control over a non-listed company.
Reg. 29(1) AIFM Regulations	Where an AIF acquires, individually or jointly, control of a non-listed company or an issuer pursuant to Regulation 27(1), the AIFM must make relevant information (Regulation 29(2)) available to the non-listed company, its shareholders (where details available) and the Central Bank.
Reg. 29(3) AIFM Regulations	The AIFM shall use its best efforts to ensure that the employees' representatives of the non-listed company or, where there are none, the employees themselves, are duly informed by the board of directors in accordance with Regulation 29.
Reg. 29(4) AIFM Regulations	Where an AIF acquires, individually or jointly, control of a non-listed company pursuant to Regulation 27(1), the AIFM shall ensure that the AIF, or the AIFM acting on behalf of the AIF, disclose its intentions with regard to the future business of the non-listed company and the likely repercussions on employment, including any material change in the conditions of employment, to: the non-listed company and its shareholders. In addition it shall use its best efforts to ensure the board of the non-listed company makes available the information to the employee representative or where there are none, the employees.
Reg. 29(6) AIFM Regulations	Where an AIF acquires, individually or jointly, control of a non-listed company or an issuer pursuant to Regulation 27(1), the AIFM shall provide the Central Bank with information on the financing of the acquisition.
Reg. 30(1) AIFM Regulations	The AIFM shall either (a) request and use best efforts to ensure that the annual report of the non-listed company (including the information per Regulation 30(2)) is made available by the board of the company to the employee representatives/employees; or (b) include relevant information in the AIF annual report.
Reg. 30(3) AIFM Regulations	The AIFM shall (within specific timeframes) either (a) request and use its best efforts to ensure the board of the non-listed company makes available to its employee reps/employees the annual report of the AIF (in accordance with Regulation 30(1)(b)); or (b) make available to the investors of the AIF the annual of the

	non-listed company(in accordance with Regulation 30(1)(a)).
Reg. 31(1)(a) AIFM Regulations	Following acquisition of control by an AIF, the AIFM (for a period of 24 months) shall not facilitate, support or instruct any distribution, capital reduction, share redemption and/or acquisition of own shares by the company.
Reg. 31(1)(b) AIFM Regulations	In so far as the AIFM is authorised to vote on behalf of the AIF at the meetings of the governing bodies of the company, it shall not vote in favour of a distribution, capital reduction, share redemption and/or acquisition of own shares by the company (for a period of 24 months).
Reg. 31(1)(c) AIFM Regulations	The AIFM shall use its best efforts to prevent distributions, capital reductions, share redemptions and/or the acquisition of own shares by the company (for a period of 24 months).
<b><i>Decision making</i></b>	
Article 23(1) Level 2	The AIFM shall ensure that its decision-making procedures and its organisational structure, referred to in Article 57 Level 2, ensure fair treatment of investors.
Article 57(1)(a) Level 2	The AIFM shall establish, implement and maintain decision-making procedures and an organisational structure which specifies reporting lines and allocates functions and responsibilities clearly and in a documented manner.
Article 57(1)(b) Level 2	The AIFMs shall ensure that their relevant persons are aware of the procedures to be followed for the proper discharge of their responsibilities.
Article 57(1)(c) Level 2	The AIFM shall establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the AIFM.
Article 57(1)(d) Level 2	The AIFM shall establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the AIFM and effective information flows with any third party involved.

Article 57(6) Level 2	The AIFM must monitor and, on a regular basis, evaluate the effectiveness of the systems etc. established in accordance with Article 57(1) to (5) of Level 2 and take appropriate measures to address any deficiencies.
<b><i>Permanent compliance function</i></b>	
Article 61(1) Level 2	The AIFM shall establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the AIFM to comply with its obligations under Directive 2011/61/EU, and the associated risks, and put in place adequate measures and procedures designed to minimise such risk. The AIFM shall take into account the nature, scale and complexity of its business, and the nature and range of services and activities undertaken in the course of that business.
Article 61(2) Level 2	The AIFM shall establish and maintain a permanent and effective compliance function which operates independently and has the responsibilities listed in Article 61(2) Level 2 and complies with the conditions listed in Article 61(3) Level 2.
<b><i>Remuneration</i></b>	
Article 13 AIFMD	The AIFM must have remuneration practices and policies in accordance with AIFMD and ESMA guidelines.
<b><i>Disclosure to investors</i></b>	
Reg. 24(1) AIFM Regulations	The AIFM must disclose certain information to investors before they invest.
Reg. 24(1) AIFM Regulations	The AIFM must disclose material changes to information provided to investors.
Reg. 24(2) AIFM Regulations	The AIFM must inform investors before they invest of any arrangements made by the depositary to contractually discharge its liability in accordance with Regulation 22(13)
Reg. 24(2) AIFM Regulations	The AIFM must inform investors without delay of any changes regarding depositary liability.
Article 57(5) Level 2	The AIFM must have policies and procedures to ensure redemption policies of the AIF are disclosed to investors before they invest in the AIF and in the event

	of material changes.
Reg. 24(4) AIFM Regulations	The AIFM must (for each EU AIF managed and each AIF it markets in the EU) periodically disclose to investors: <ul style="list-style-type: none"> <li>- the percentage of assets which are subject to special arrangements;</li> <li>- any new arrangements for managing the liquidity of the AIF;</li> <li>- the current risk profile and risk management systems employed.</li> </ul>
Article 108(2) Level 2	The AIFM must, when disclosing the percentage of assets subject to special arrangements (as part of periodic reporting to investors), provide an overview of any special arrangements in place, the valuation methodology in place and how management and performance fees apply to these assets.
Article 108(3) Level 2	The AIFM must, for any new arrangement for managing the liquidity of the AIF, notify investors whenever they make material changes to liquidity management systems, immediately notify investors when they activate liquidity management tools and provide an overview of the changes to liquidity arrangements.
Reg. 24(5) AIFM Regulations	The AIFM (for AIFs employing leverage) must disclose on a regular basis: <ul style="list-style-type: none"> <li>- any changes to maximum level of leverage or to any right to reuse collateral or to grant a guarantee</li> <li>- the total amount of leverage employed by the AIF.</li> </ul>
<b><i>Senior management</i></b>	
Article 60(1) Level 2	When allocating functions internally, the AIFM shall ensure that the governing body, the senior management and, where it exists, the supervisory function are responsible for the AIFM's compliance with its obligations under Directive 2011/61/EU.
Article 60(2)(a) Level 2	The AIFM shall ensure its senior management 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 the offering documents;

Article 60(2)(b) Level 2	The AIFM shall ensure its senior management oversees the approval of the investment strategies for each managed AIF.
Article 60(2)(c) Level 2	The AIFM shall ensure its senior management is responsible for ensuring that valuation policies and procedures in accordance with Regulation 20 of the AIFM Regulations are established and implemented.
Article 60(2)(d) Level 2	The AIFM shall ensure its senior management is responsible for ensuring that the AIFM has a permanent and effective compliance function, even if this function is performed by a third party.
Article 60(2)(e) Level 2	The AIFM shall ensure its senior management 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.
Article 60(2)(f) Level 2	The AIFM shall ensure its senior management 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.
Article 60(2)(g) Level 2	The AIFM shall ensure its senior management approves and reviews on a periodic basis the risk management policy and the arrangements, processes and techniques for implementing that policy, including the risk limit system for each AIF it manages.
Article 60(2)(h) Level 2	The AIFM shall ensure its senior management is responsible for establishing and applying a remuneration policy in line with Schedule 2 of the AIFM Regulations.
Article 60(3) Level 2	The AIFM shall also ensure that its senior management and, where appropriate, its governing body or supervisory function assess and periodically review the effectiveness of the policies, arrangements and procedures put in place to comply with the obligations laid down in the AIFM Regulations and take appropriate measures to address any deficiencies.



Article 60(4) Level 2	The 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.
Article 60(5) Level 2	The 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 Article 60(2) of Level 2.

DRAFT

**Organisational Effectiveness**

Legislative Provision	Obligation
<i>Conflicts of interest</i>	
Reg. 13(1)(d) AIFM Regulations	The AIFM shall take all reasonable steps to avoid conflicts of interest and, when they cannot be avoided, to identify, manage and monitor and, where applicable, disclose, those conflicts of interest in order to prevent them from adversely affecting the interests of the AIFs and their investors and to ensure that the AIFs they manage are fairly treated.
Reg. 15(1) –(3) AIFM Regulations	The AIFM must take all reasonable steps to identify conflicts of interest. AIFM must maintain and operate effective organisational and administrative arrangements to identify, prevent, manage and monitor conflicts. Segregate tasks and responsibilities which may be regarded as incompatible with each other and potentially generate systemic conflicts of interest.
Article 31(1) Level 2	The AIFM must establish, implement and apply an effective conflicts of interest policy.
Article 32 Level 2	The AIFM for open-ended AIF must identify, manage and monitor conflicts between redeeming investors and remaining investors and any conflicts between the AIFM’s incentive to invest in illiquid assets and the AIF’s redemption policy in accordance with its obligations under Regulation 15(1) of the AIFM Regulations.
Article 34 Level 2	Where organisational or administrative arrangements are not sufficient to prevent conflicts, senior management of AIFM must be promptly informed in order to take any necessary decision or action to ensure that AIFM acts in best interests of AIFs or the investors in that AIF..
Article 35(1) Level 2	The AIFM must keep and regularly update a record of the types of activities undertaken by or on behalf of the AIFM in which a conflict of interest entailing a material risk of damage to the interests of one or more AIFs or its investors has arisen or, in the case of an ongoing activity, may arise.
Article 35(2) Level 2	Senior management must receive frequent reports, at least annually, written report on conflicts of interest record.

Reg. 15(4) AIFM Regulations	Where organisational arrangements are not sufficient to prevent conflicts, the AIFM must disclose conflicts to investors before undertaking business on their behalf and develop appropriate policies and procedures.
Article 36(2) Level 2	Where disclosure regarding conflicts of interest is made via a website, certain obligations apply.
<b><i>Dealings by employees and on own account</i></b>	
Reg. 19(2) AIFM Regulations	The AIFM must have internal control mechanisms including for: - personal transactions by employees; or - holding or management of investments for investing on own account.
Article 63(1) Level 2	The AIFM must have adequate arrangements aimed at preventing insider dealing, misuse or improper use of confidential information; advising or inducing other than in the proper course of employment; disclosing information in particular circumstances.
Article 63(2) last para Level 2	For the purposes of Article 63(2)(b) Level 2 where certain activities of the AIFM are performed by third parties, the AIFM shall ensure that the entity performing the activity maintains a record of personal transactions entered into by any relevant person covered by paragraph Article 63(1) Level 2 and provides that information to the AIFM promptly on request.
<b><i>Internal audit function</i></b>	
Article 62(1) Level 2	The AIFM shall, where appropriate taking into account is nature, scale and complexity, have an internal audit function which is separate and independent from its other functions and complies with the provisions in Article 62(2) of AIFMD Level 2.

**ANNEX II – Obligations on UCITS management companies**

This Annex lists obligations placed on UCITS management companies by the EC (UCITS) Regulations 2011. Further obligations are placed on UCITS management companies by other legislation (e.g. the Central Bank UCITS Regulations 2015). UCITS management companies should also consider which Designated Person should be responsible for monitoring and overseeing compliance with those obligations.

Obligations highlighted in **green** apply to each UCITS under management. Obligations highlighted in **blue** will only apply if the UCITS management company or the UCITS under management engage in certain activities (e.g. if they are undertaking a merger with another UCITS).

DRAFT

## Capital and Financial Management

Legislative Provision	Managerial obligation
Regulation 17(1), (4), (5)	A UCITS management company must have initial capital of at least €125,000. It must also have own funds where a threshold of €250 million in assets under management is exceeded.
Schedule 5, paragraph 3	A UCITS management company shall ensure that fair, correct and transparent pricing models and valuation systems are used for UCITS under management. It must be able to demonstrate that the UCITS portfolios have been accurately valued.
Schedule 5, paragraph 34	A UCITS management company shall make appropriate arrangements for suitable electronic systems for the timely and proper recording of each portfolio transaction and subscriptions and redemptions.
Schedule 5, paragraph 35	A UCITS management company shall ensure a high standard of security during the electronic data processing and integrity and confidentiality of recorded information.
Schedule 5, paragraph 36(1)	A UCITS management company shall ensure the employment of accounting policies and procedures as referred to in Regulation 22 so as to ensure the protection of unit-holders.
Schedule 5, paragraph 36(2)	UCITS accounting shall be maintained in such a way that all assets and liabilities of the UCITS can be directly identified at all times.
Schedule 5, paragraph 36(3)	Where a UCITS has different sub-funds, separate accounts shall be maintained for each sub-fund.
Schedule 5, paragraph 37	A UCITS management company shall have accounting policies and procedures which ensure that the accurate calculation of the net asset value of each UCITS to facilitate subscription and redemption orders being properly executed at net asset value.

Schedule 5, paragraph 38	A UCITS management company shall establish appropriate procedures to ensure the proper and accurate valuation of the assets and liabilities of the UCITS.
Schedule 5, paragraph 58	A UCITS management company shall ensure that a record of information which is sufficient to reconstruct the details of an order and executed transaction is made without delay.
Schedule 5, paragraph 60	A UCITS management company shall take all reasonable steps to ensure that the received UCITS subscription and redemption orders are centralised and recorded immediately after receipt.
Schedule 5, paragraph 62(1), (2)	Subject to the Central Bank's requirements for longer periods of retention, a UCITS management company shall retain records referred to in paragraphs 58 to 61 of Schedule 5 for a period of at least 5 years.
Schedule 5, paragraph 63(1)	Following termination of a UCITS management company's authorisation the management company shall retain relevant records for the outstanding term of the 5-year period.
Schedule 5, paragraph 63(2)	Where a UCITS management company transfers its responsibilities to a UCITS to another management company, it shall ensure records for the previous 5 years are accessible to that successor management company.
Regulation 88(1)	A UCITS management company shall publish an annual report for each financial year and a half-yearly report covering the first six months of the financial year for each common contractual funds and unit trust it manages. A UCITS investment company shall publish an annual report for each financial year and a half-yearly report covering the first six months of the financial year. ,
Regulation 89(3)	The annual report shall include information specified by this Regulation, additional information set out in Schedule 12 together with any significant information as would enable investor to make an informed judgement on the development of the activities of the UCITS and its results.

Regulation 89(5)	The half-yearly report shall include at least the information provided for in paragraphs 1 to 4 of Schedule 12. After tax figures shall also be included where a UCITS has paid or proposes to pay an interim dividend.
Regulation 93	he accounting information given in the annual report is audited by one or more persons empowered by law to audit accounts in accordance with the Companies Act. The annual report shall include the auditor's report (and any qualification thereto).
Regulation 95(1)	The latest published annual and half-yearly reports shall be provided to investors on request and free of charge.
Regulation 95(3)	The annual and half-yearly reports shall be available to investors in the manner specified in the prospectus and in the key investor information. A paper copy of the annual and half-yearly reports shall be delivered to investors on request and free of charge.
Regulation 96(1)	Unless otherwise agreed with the Central Bank, a UCITS shall publish in an appropriate manner (and at least twice a month) the issue, sale, repurchase or redemption price of its units each time it issues, sells, repurchases or redeems them.
Regulation 108(1)	Unless otherwise provided for in the UCITS constitutive documents, the value of a UCITS' listed or traded assets shall typically be the last known stock exchange or market quotation. . Unlisted assets and assets for which the latest exchange or market quotation is not representative shall be valued on the probable realisation value estimated with care and in good faith.
Regulation 108(3)	The UCITS constitutive documents shall determine the frequency of the calculation of the issue and repurchase price of units.
Regulation 109	The UCITS constitutive documents shall lay down the conditions and manner of application of a UCITS' income.
Regulation 110(1)	A UCITS' units shall be issued or sold at a price (which may be increased by duties and charges) which is arrived at by dividing the net asset value of the UCITS by the number of units outstanding.

Regulation 110(2)	A UCITS' units shall not be issued unless the equivalent of the net issue price is paid to the UCITS within usual time limits.
Regulation 110(3)	A UCITS' units shall be redeemed or repurchased at a price (which may be decreased by duties and charges) which is arrived at by dividing the net asset value of the UCITS by the number of units outstanding.

DRAFT



**Fund Risk Management**

<b>Legislative Provision</b>	<b>Managerial obligation</b>
Regulation 69 (1)(a), Schedule 9, paragraph 1(a)	A UCITS management company shall have a risk management policy (“RMP”) which identifies risks to which a UCITS may be exposed and which those risks to be monitored and measured vis-à-vis the UCITS positions and their contribution to the overall risk profile of the UCITS.
Schedule 9, paragraph 1(c)(i)	A UCITS management company shall, in its RMP, address the techniques, tools and arrangements that enables them to comply with the obligations of Schedule 9, Parts 7 to 10
Schedule 9, paragraph 1(c)(ii)	A UCITS management company shall, in its RMP, address the allocation of responsibilities within the management company relating to risk management
Schedule 9, paragraph 2	A UCITS management company shall, in its RMP, state the terms, contents and frequency of reporting to the board of directors, senior management and, where appropriate, to the supervisory function.
Schedule 9, paragraph 3	A UCITS management company shall, in its RMP, take into account the nature, scale and complexity of its business and of the UCITS under management.
Schedule 9, paragraph 4(a)	A UCITS management company shall, assess, monitor and periodically review the adequacy and effectiveness of the RMP and of the arrangements, processes and techniques referred to in paragraphs 7 to 14 of Schedule 9.
Schedule 9, paragraph 4(b)	A UCITS management company shall assess, monitor and periodically review the level of compliance with the RMP and with the arrangements, processes and techniques put in place pursuant thereto.
Schedule 9, paragraph 4 c)	A UCITS management company shall assess, monitor and periodically review the adequacy and effectiveness of measures taken to address deficiencies in the performance of the RMP.

Schedule 9, paragraph 7(1)(a)	A UCITS management company shall have adequate and effective arrangements, processes and techniques to measure and manage at any time the risks which the UCITS under management are or might be exposed to.
Schedule 9, paragraph 7(1)(b)	A UCITS management company shall have adequate and effective arrangements, processes and techniques to comply with global exposure limits and counterparty risk in accordance with paragraphs 11 to 14 and 20 to 25 of Schedule 9.
Schedule 9, paragraph 8(a)	A UCITS management company shall have necessary risk measurement arrangements in place to ensure that the risks of positions taken are accurately measured.
Schedule 9, paragraph 8(b)	A UCITS management company shall conduct periodic back tests.
Schedule 9, paragraph 8(c)	A UCITS management company shall conduct periodic stress tests.
Schedule 9, paragraph 8(d)	A UCITS management company shall have a system of internal limits concerning the measures used to manage and control each UCITS' risks.
Schedule 9, paragraph 8(e)	A UCITS management company shall ensure that UCITS' risk and the risk limit system in place are consistent.
Schedule 9, paragraph 8(f)	A UCITS management company shall have procedures for the timely remediation of actual or anticipated breaches to the risk limit system occur.
Schedule 9, paragraph 9 (1)	A UCITS management company shall have an appropriate liquidity RMP in place.
Schedule 9, paragraph 9(2)	A UCITS management company shall conduct stress tests to enable assessment of the liquidity risk .
Schedule 9, paragraph 10	A UCITS management company shall ensure that the liquidity profile of each UCITS investments is appropriate for the UCITS redemption policy.
Schedule 9, paragraph 11	A UCITS management company shall calculate global exposure of UCITS under management on a daily basis.
Schedule 9, paragraph 12(2)	A UCITS management company shall that the risk measurement methodology used for a UCITS is appropriate.

Schedule 9, paragraph 19	A UCITS management company shall ensure that counterparty risk arising from OTC FDIs does not exceed Regulation 70 limits
Schedule 9, paragraph 26	A UCITS management company shall have accurate and independent procedures for valuing OTC derivatives. This shall ensure that the fair value of OTC FDIs is subject to adequate, accurate and independent assessment.
Schedule 9, paragraph 28	The valuation arrangements and procedures shall be adequately documented.
Regulation 69(1)(a)	A UCITS management company shall employ an RMP which enables it to monitor and measure at any time the risk of the UCITS positions and their contribution to the overall risk profile of the portfolio of assets of the UCITS.
Regulation 69 (1)(b)	A UCITS management company shall employ a process for accurate and independent assessment of the value of OTC Derivatives.
Regulation 69(1)(c)	A UCITS management company shall, in accordance with the requirements of the Central Bank, communicate to the Central Bank the types of FDIs, underlying risks, quantitative limits and the methods which are chosen in order to manage FDI-related risk
Schedule 5, paragraph 8(1)	A UCITS management company shall, in advance of making an investment, analyse the investment's contribution to the UCITS portfolio composition, liquidity and risk and reward profile.
Schedule 5, paragraph 9(1)	A UCITS management company shall notify a unit-holder (in a durable medium) details of the subscription or redemption order in specified timeframes.
Schedule 5, paragraph 11	A UCITS management company shall comply with the requirements of paragraphs 9 and 10 of Schedule 5 in relation to relevant transactions at least once every 6 months.
Schedule 5, paragraph 12	A UCITS management company shall supply the unit-holder, upon request, with information about the status of an order.

<p>Schedule 5, paragraph 40(d)</p>	<p>A UCITS management company shall ensure that its senior management ensures and verifies that the investment policy, investment strategies and risk limits of each UCITS under management are implemented and complied with.</p>
<p>Schedule 5, paragraph 40(f)</p>	<p>A UCITS management company shall ensure that its senior management approves and reviews the RMP and arrangements referred to in the RMP.</p>
<p>Regulation 90(4)</p>	<p>A UCITS management company shall supply supplementary information in relation to quantitative risk management limits, risk management methods used , and the evolution of risks and yields for the main instrument categories with which the UCITS is involved to a unitholder, on request</p>

DRAFT

**Operational Risk Management**

<b>Legislative Provision</b>	<b>Managerial obligation</b>
Schedule 9, paragraph 27	The risk management function shall have specific duties and responsibilities in the context of functions relating to global exposure calculations (by reference to Schedule 9, paragraphs 16 and 17).
Schedule 5, paragraph 50	A UCITS management company shall establish and maintain a permanent risk management function.
Schedule 5, paragraph 53	The permanent risk management function shall have necessary authority and access to information.
Schedule 9, paragraph 52(a)	The permanent risk management function shall implement the risk management policy and procedures.
Schedule 9, paragraph 52(b)	The permanent risk management function shall ensure compliance with the UCITS risk limit system, global exposure and counterparty risk limits.
Schedule 9, paragraph 52(c)	The permanent risk management function shall provide advice to the board of directors as regards the identification of the risk profile of each managed UCITS.
Schedule 9, paragraph 52(d)	The permanent risk management function shall provide regular reports to the board of directors and, where it exists, the supervisory function, on the consistency between and compliance with risk levels and risk profile and the adequacy and effectiveness of the RMP.
Schedule 9, paragraph 52(e)	The permanent risk management function shall provide regular reports to the senior management outlining risk levels and any actual or foreseeable breaches to their limits.
Schedule 9, paragraph 52(f)	The permanent risk management function shall review and support procedures for valuation of OTC derivatives.
Schedule 4, paragraph 1(e)	A UCITS management company shall maintain adequate and orderly records of its business and internal organisation.

Schedule 4, paragraph 3	A UCITS management company shall have procedures adequate to safeguard the security, integrity, and confidentiality of information, taking into account the nature of the information concerned.
Schedule 4, paragraph 4	A UCITS management company shall have a Business Continuity Policy in case of an interruption to their systems and procedures.
Schedule 5, paragraph 2	A UCITS management company shall have policies and procedures for preventing malpractices which might affect the stability and integrity of the market.
Schedule 5, paragraph 8(2)	A UCITS management company shall exercise due skill, care and diligence when entering into, managing or terminating any arrangements with third parties in relation to the performance of risk management activities.
Schedule 5, paragraph 31	A UCITS management company shall have necessary resources and expertise to effectively monitor the activities of third parties especially with regard to the management of the risk associated with those arrangements.

## Investment Management

Legislative Provision	Managerial obligation
Schedule 5, paragraph 4	A UCITS management company shall prevent undue costs being charged to the UCITS and its unit-holders.
Schedule 5, paragraph 5	A UCITS management company shall ensure a high level of diligence in the selection and ongoing monitoring of investments, in the best interests of UCITS and the integrity of the market.
Schedule 5, paragraph 6	A UCITS management company shall ensure it has adequate knowledge and understanding of the assets in which the UCITS are invested.
Schedule 5, paragraph 7	A UCITS management company shall establish policies and procedures for ensuring that investment decisions are carried out in compliance with the objectives, investment strategy and risk limits of the UCITS.
Schedule 5, paragraph 13	A UCITS management company shall act in the best interests of the UCITS (in the context of the management of the UCITS' portfolios) when executing decisions to deal .
Schedule 5, paragraph 14	A UCITS management company shall take all reasonable steps to obtain best execution for the UCITS.
Schedule 5, paragraph 18	A UCITS management company shall act in the best interests of UCITS under management when placing orders to deal with other entities for execution.
Schedule 5, paragraph 19(1)	A UCITS management company shall take all reasonable steps to obtain best execution.
Schedule 5, paragraph 19(2)	A UCITS management company shall establish and implement a policy to enable compliance with best execution principles. This information (and any change to it) shall be available to unit-holders on request.
Schedule 5, paragraph 22(1)	A UCITS management company shall have procedures for the execution of portfolio transactions on behalf of the UCITS.

Schedule 5, paragraph 22(3)	Financial instruments or sums of money shall be promptly delivered to the UCITS.
Schedule 5, paragraph 23	A UCITS management company shall not misuse and shall take steps to prevent misuse of information by any of its relevant persons.
Schedule 5, paragraph 24	A UCITS management company may only aggregate orders of different UCITS under management or with orders of other clients under certain conditions.
Schedule 5, paragraph 25	A UCITS management company which aggregates orders shall allocate the related trades in accordance with its order allocation policy.
Schedule 5, paragraph 26	A UCITS management company which has aggregated transactions for own account with one or more UCITS or other clients' orders shall not allocate the related trades in a way that is detrimental to the UCITS or another client.
Schedule 5, paragraph 27 (1)	A UCITS management company which aggregates orders of a UCITS or another client with a transaction for own account and the aggregated order is partially executed, shall allocate the related trades to the UCITS or other client in priority over those for own account.
Schedule 5, paragraph 40(b)	A UCITS management company shall ensure its senior management oversees the approval of investment strategies for each UCITS
Schedule 5, paragraph 40(e)	A UCITS management company shall ensure its senior management approves and reviews internal procedures for decisions to invest a UCITS assets to ensure the decisions consistent with approved investment strategies.
Schedule 5, paragraph 43	A UCITS management company shall ensure that its senior management receives reports on the implementation of investment strategies and on the internal procedures for taking investment decisions.
Schedule 5, paragraph 74, paragraph 75	A UCITS management company shall have strategies in relation to the exercise of voting rights. The strategies shall meet the criteria of Schedule 5, paragraph 75.



**Distribution**

<b>Legislative Provision</b>	<b>Managerial obligation</b>
Regulation 25(1)(a), (3)	A UCITS management company shall have transparent procedures to ensure investor complaints are properly and promptly dealt with. These procedures shall be available free of charge.
Regulation 25(1)(a)	A UCITS management company shall to make information available to the public or the Central Bank.
Regulation 25(2)	A UCITS management company shall ensure that each complaint and the measures taken for its resolution are recorded.
Regulation 25(3)	A UCITS management company shall ensure that investors shall be able to file complaints free of charge.
Regulation 116	A UCITS which markets its units in Ireland shall satisfy the Central Bank that there are facilities in Ireland for redeeming unitholders and for the making available of required information.
Regulation 117(1)	A UCITS authorised by the Central Bank which proposes to market its units in a Member State shall submit a notification letter to the Central Bank containing specific information.
Regulation 117(2)	A UCITS shall enclose certain specified documentation with the relevant notification.
Regulation 117(7)	The UCITS shall notify any amendments to relevant documents to the competent authority of the UCITS host Member State and shall indicate where those documents can be obtained electronically.
Regulation 117(8)	The UCITS shall notify the UCITS host Member State of any change in marketing or share classes as outlined in the notification letter.
Regulation 118(1)(a),(b)	A UCITS which is authorised by the Central Bank and which markets its units in a host Member State shall provide certain specified information to investors within the territory of such Member State. This information shall comply with host Member State requirements. Any documents produced in different languages shall be translated in accordance with Regulation 118(1)(b).

Regulation 27(1)	A UCITS management company which wishes to establish a branch in another Member State shall be required to provide certain specified information to the Central Bank.
Regulation 27(4)	A UCITS management company, authorised by the Central Bank and which has a branch in a host Member State shall comply with relevant rules of the host Member State.
Regulation 27(8)	A UCITS management company shall advise the Central Bank and the competent authority of the host Member State in the event of a change in specified information previously provided to the Central Bank and to the competent authority of the host Member State.
Regulation 28(1)	A UCITS management company authorised by the Central Bank which wishes to passport its activities into the territory of another Member State for the first time shall notify the Central Bank and provide it with specified information.
Regulation 28(3)	A UCITS management company authorised by the Central Bank which wishes to passport its activities into the territory of another Member State shall comply with the requirements of the Central Bank.
Regulation 28(4)	Where information communicated in accordance with Regulation 28(1) is amended, the management company shall give notice in writing to the Central Bank and to host Member State before implementing the change.
Regulation 30(1)(a)	A UCITS management company which applies to manage a UCITS established in another Member State shall provide certain specified documentation to the competent authority of the UCITS home Member State.
Regulation 30(3)	A UCITS management company shall advise the competent authority of the host Member State in the event of any material change in specified information previously provided to the competent authority of the host Member State.
Schedule 14, paragraph 1	Documentation referred to in Regulation 117(2) shall be made available on the website designated by the UCITS in the notification letter submitted in accordance with Regulation 117(1).

Schedule 14, paragraph 2	UCITS shall ensure that the UCITS host Member State has access to the website referred to in Schedule 14, paragraph (1).
--------------------------	--

DRAFT

## Regulatory Compliance

Legislative Provision	Managerial obligation
Regulation 16(4)	A UCITS management company which provides individual portfolio management services shall comply with the client asset requirements issued by the Central Bank under the MiFID Regulations.
Regulation 16(5)	A UCITS management company which maintains client asset accounts for processing subscription and salespersons moneys shall comply with the requirements of the Central Bank under Regulation 123 as well as with client asset requirements issued by the Central Bank under the MIFID Regulations.
Regulation 17(3)(9)	The conduct of a UCITS management company's business shall be decided by at least 2 persons who are of sufficiently good repute and are sufficiently experienced in relation to the type of UCITS to be managed by the management company. The UCITS management company shall communicate the names of these persons (and the names of any persons succeeding them in office) to the Central Bank.
Regulation 17(6)	The own funds of a UCITS management company shall never be less than the amount prescribed by the Central Bank in accordance with the terms of Directive 2006/49/EC.
Regulation 22(3)(a)	A UCITS management company which is authorised to engage in discretionary portfolio management services shall not make investments in collective investment schemes managed by it unless the client's prior approval has been received for such investment.
Regulation 22(3)(b)	A UCITS management company which is authorised to engage in discretionary portfolio management services shall comply with the Investor Compensation Act 1998.
Schedule 4, paragraph 5	A UCITS management company shall have accounting policies and procedures that enables them to submit financial reports, where required, to the Central Bank.
Schedule 4, paragraph 1(a)	A UCITS management company shall have decision-making procedures and an organisational structure which specifies reporting lines and allocates functions and responsibilities.
Schedule 4, paragraph 1(b)	A UCITS management company shall ensure relevant persons are aware of the procedures which must be followed for the proper discharge of their responsibilities/

Schedule 4, paragraph 1(c)	A UCITS management company shall have internal control mechanisms to secure compliance with decisions and procedures at all levels of the management company.
Schedule 4, paragraph 1(d)	A UCITS management company shall have effective internal reporting and communication of information at all levels of the company as well as with relevant third parties.
Schedule 4, paragraph 6	A UCITS management company shall monitor and evaluate, on a regular basis their internal control mechanisms and take appropriate measures to address any deficiencies.
Schedule 5, paragraph 39	A UCITS management company shall ensure that senior management and, where appropriate, the supervisory function, are responsible for the management company's compliance with its obligations under these Regulations.
Schedule 5, paragraph 46	A UCITS management company shall establish and maintain a permanent and effective compliance function.
Schedule 5, paragraph 47(1)(a)	A UCITS management company shall ensure that(a) the compliance function must have the necessary authority, resources, expertise and access to all relevant information.
Schedule 5, paragraph 47(1)(b)	A UCITS management company shall ensure that a compliance officer who is responsible for the compliance function and for any reporting on a frequent basis, and who must, at least annually report to the senior management on matters of compliance is appointed.
Schedule 5, paragraph 47(1)(c)	A UCITS management company shall ensure that persons involved in the compliance function must not be involved in the performance of services or activities they monitor.
Schedule 5, paragraph 47(1)(d)	A UCITS management company shall ensure that the method of determining the remuneration of the relevant persons involved in the compliance function must not compromise their objectivity and must not be likely to do so.
Regulation 40(a)	A UCITS management company shall ensure that its senior management is responsible for the implementation of the general investment policy for each managed UCITS, as set out in the prospectus or constitutive documentation.
Schedule 5, paragraph 40(c)	A UCITS management company shall ensure that its senior management is responsible for ensuring that the management company has a permanent

	and effective compliance function.
Schedule 5, paragraph 42	A UCITS management company shall ensure that its senior management receives frequent written reports on matters of compliance, internal audit and risk management.
Schedule 5, paragraph 44	A UCITS management company shall ensure that the supervisory function, if any, receives regular written reports on the matters referred to in paragraph 43 of Schedule 5.
Schedule 5, paragraph 46(a)	A UCITS management company shall have an independent, permanent and effective compliance which is responsible for monitoring and assessing the adequacy and effectiveness of risk-related measures, policies and procedures put in place.
Schedule 5, paragraph 46(b)	A UCITS management company shall have an independent, permanent and effective compliance which advises and assists persons responsible for carrying out services and activities to achieve compliance with relevant obligations.
Schedule 5, paragraph 47(1)(a)	A UCITS management company shall ensure that the compliance function has the necessary authority, resources and expertise.
Regulation 66(4)(a)	A UCITS management company of a receiving UCITS shall confirm to the trustee of the receiving UCITS that transfer of assets and where applicable, liabilities, is complete.
Schedule 9, paragraph 5	A UCITS management company shall notify the Central Bank of any material changes to the RMP.
Schedule 9, paragraph 26	A UCITS management company shall have accurate and independent procedures for valuing OTC derivatives. This shall ensure that the fair value of OTC FDIs is subject to adequate, accurate and independent assessment.
Schedule 9, paragraph 29	A UCITS management company shall, on an annual basis, deliver a report the Central Bank containing information on the types of FDIs used for each UCITS, along with the underlying risks, quantitative limits and methods chosen to estimate risk to the Central Bank.

Regulation 57(1)	The information provided to the Central Bank by a merging UCITS authorised by the Central Bank shall include certain specified information.
Regulation 61(1)(a)	A merging UCITS and a receiving UCITS shall provide appropriate and accurate information on the proposed merger to their respective unit-holders to enable them to make an informed judgement of the impact of the proposal.
Regulation 61(4)	Where the merging UCITS or the receiving UCITS has been the subject of a Regulation 117 notification, the relevant information shall be provided to unit holders in one of the State's languages. Where the subject of a Regulation 115 notification, relevant information shall be provided in the official language of the host Member State or in one of the official languages of the host Member State.
Regulation 65(2)	The entry into effect of the merger shall be made public as prescribed by the laws of the receiving UCITS home Member State, and shall be notified to the competent authorities of the home Member States of the merging UCITS and the receiving UCITS.
Regulation 74(1)	A UCITS management company may not, on behalf of collective investment schemes managed by it, acquire any shares carrying voting rights which would enable it to exercise significant influence over the management of an issuing body.
Regulation 77	Where investment restrictions are exceeded for reasons beyond the control of a UCITS or as a result of the exercise of subscription rights, the UCITS shall adopt as a priority objective for its sales transactions the remedying of that situation, taking due account of the interests of its unit-holders.
Regulation 80(1)	A master UCITS authorised by the Central Bank shall enter into an agreement with a feeder UCITS in order that the feeder UCITS is provided with all the documents and information necessary for the feeder UCITS to meet relevant UCITS requirements. the Central Bank. Where the master UCITS and feeder UCITS are managed by the same UCITS management company the agreement may be replaced by internal conduct of business rules.

Regulation 81(1)(d)	A feeder UCITS authorised by the Central Bank shall communicate to its trustee any information about the master UCITS which is required for the completion of the duties of the trustee.
Regulation 83(3)	A feeder UCITS shall send the prospectus, the key investor information and as the annual and half yearly reports of the master UCITS, to the Central Bank.
Regulation 84(1)(a)	(A feeder UCITS authorised by the Central Bank which already pursues activities as a UCITS, including those of a feeder UCITS of a different master UCITS, shall provide certain specified information to its unitholders.
Regulation 84(2)	A feeder UCITS authorised by the Central Bank which has notified the Central Bank of its intention to market its units in a host Member State shall provide relevant, faithfully translated information in an a relevant language.
Regulation 85(1)	A feeder UCITS authorised by the Central Bank shall effectively monitor the activity of its master UCITS.
Regulation 85(2)	Where a fee or other monetary benefit is received by a feeder UCITS, its management company (or any other person acting on behalf of them) in connection with an investment in the units of the master UCITS, the fee or other monetary benefit shall be paid into the assets of the feeder UCITS.
Regulation 86(1)	A master UCITS authorised by the Central Bank shall immediately inform the Central Bank of the identity of each feeder UCITS which invests in its units.
Regulation 86(2)	The master UCITS shall not charge subscription or redemption fees for the investment of the feeder UCITS into its units or the divestment thereof.
Regulation 86(3)	The master UCITS shall ensure the timely availability of all information that is required in accordance with relevant law to the competent authority, the trustee and the auditor of the feeder UCITS.
Regulation 88(1)	A UCITS management company (in respect of UCITS under management) and an investment company shall publish a prospectus.



Regulation 89(1)(a)	A prospectus shall include information necessary for investors to be able to make an informed judgement of the investment proposed and of the risks attached thereto.
Regulation 89(1)(b)	The prospectus shall include, , a clear and easily understandable explanation of the fund’s risk profile.
Regulation 89(2)	The prospectus shall contain the information provided for in Schedule 11 (except to the extent that it is not already in the constitutive documentation).
Regulation 90(1)	The prospectus shall disclose the categories of assets in which the UCITS is authorised to invest. Where a UCITS is authorised to use financial derivative instruments it shall include a prominent statement which indicates the purpose for their use and the effect of their use.
Regulation 90(2)	The prospectus shall include a prominent statement drawing attention to its investment policy in its prospectus and, where necessary, any other marketing communications where it invests principally in deposits, UCITS or other collective investment undertakings or both, or financial derivative instruments, or if it aims to replicate a stock or debt securities index. .
Regulation 90(3)	The prospectus (and where necessary other marketing communications) shall include a prominent statement highlighting the fact that a UCITS is likely to have a high volatility due to its portfolio composition or the portfolio management techniques where this is the case.
Regulation 91(3)(a)	A preliminary prospectus or similar documentation published by an investment company shall contain appropriate and relevant disclaimers.
Regulation 91(3)(b)	The prospectus of an umbrella fund shall clearly state the charges applicable to switching between sub-funds.
Regulation 92	The essential elements of the prospectus shall be kept up to date.
Regulation 95(1)	The prospectus shall be provided to investors on request and free of charge.

Regulation 97	All marketing communications to investors shall be clearly identifiable as such. They shall be fair, clear and not misleading and should not contradict or diminish the information in a prospectus or key investor information. Communications must contain specified information.
Regulation 98(1)	A UCITS management company (in respect of UCITS under management) and an investment company shall draw up a key investor information document.
Regulation 98(2)	Key investor information shall include appropriate information to enable investors understand the nature and the risks of the investment product.
Regulation 98(3)(a)	Key investor information shall provide specified information.
Regulation 98(3)(b)	Those essential elements shall be comprehensible to the investor without any reference to other documents.
Regulation 98(4)	Key investor information shall clearly specify where, how and in what language additional information and documentation relating to the proposed investment can be obtained.
Regulation 98(5)	Key investor information shall be concise and in nontechnical language. It shall be in a specified format.
Regulation 99(1)	Key investor information shall constitute pre-contractual information.
Regulation 99(2)	Key investor information shall contain a clear liability statement.
Regulation 100(1)	A UCITS management company (in respect of UCITS under management) and an investment company shall provide investors with key investor information in good time before their proposed subscription in such UCITS.
Regulation 100(2)	A UCITS management company (in respect of UCITS under management) and an investment company shall provide key investor information to product manufacturers and intermediaries selling or advising investors on potential investments in such UCITS or in products offering exposure to such UCITS upon their request.

Regulation 101(1)	A UCITS management company (in respect of UCITS under management) and an investment company shall provide key investor information in paper copy request and free of charge.
Regulation 101(2)	An up-to-date version of the key investor information shall be made available on the website of the investment company or UCITS management company.
Regulation 102(2)	The essential elements of key investor information shall be kept up to date.
Regulation 114(1)	The constitutive documentation of a unit trust and common contractual fund shall prescribe the remuneration (including its method of calculation) and the expenditure which the management company is empowered to charge.
Regulation 114(2)	The constitutive documentation of an investment company shall prescribe the nature of the costs to be borne by the investment company.
Regulation 94	A UCITS authorised by the Central Bank shall send its prospectus or any amendments thereto, as well as its annual and half-yearly reports, to the Central Bank. A UCITS shall provide that documentation to the competent authority of its management company's home Member State on request.
Regulation 102(1)	A UCITS shall send its key investor information and any amendments thereto to the Central Bank.
Regulation 104(2)(c)	A UCITS which temporarily suspends the repurchase or redemption of units shall communicate its decision to the Central Bank and to the competent authorities of the Member States in which it markets its units without delay.
Regulation 113	Where a UCITS is constituted as an umbrella fund, each sub-fund of the UCITS shall comply with the regulations and conditions governing UCITS.
Regulation 116	A UCITS which markets its units in Ireland shall satisfy the Central Bank that there are facilities in Ireland for redeeming unitholders and for the making available of required information.

Regulation 117(1)(a)(b)	A UCITS authorised by the Central Bank which proposes to market its units in a Member State shall submit a notification letter to the Central Bank containing specific information.
Regulation 117(2)(a)	A UCITS shall enclose certain specified documentation with the relevant notification.
Regulation 117(8)	The UCITS shall notify the UCITS host Member State of any change in marketing or share classes as outlined in the notification letter.
Regulation 118(1)(a),(b) Regulation 118(2)	A UCITS which is authorised by the Central Bank and which markets its units in a host Member State shall provide certain specified information to investors within the territory of such Member State. This information shall comply with host Member State requirements. Any documents produced in different languages shall be translated in accordance with Regulation 118(1)(b). This also applies to any changes to such information.
Regulation 118(3)	The frequency of the publication of the issue, sale, repurchase or redemption price of units of UCITS authorised by the Central Bank according to Regulation 96 shall be subject to Irish laws, regulations and administrative provisions.
Regulation 123(6)	A UCITS shall comply with any requirements or conditions relating to its authorisation or business imposed by the Central Bank.
Regulation 125(1)	A UCITS management company, investment company or trustee of a UCITS shall keep at an office or offices within the State books and records as may be specified from time to time and shall notify the Central Bank of the relevant addresses.
Regulation 126(1)(a)	A UCITS management company, investment company trustee shall each furnish the Central Bank such information as required by the Central Bank from time to time.
Regulation 128(2)	Where the Central Bank replaces a UCITS management company or trustee, the previous management company or trustee shall cease to act for the UCITS, and relevant powers and duties shall vest in the new UCITS management company or trustee (as relevant).

Regulation 131(2)	Where the Central Bank issues a direction to a UCITS management company, investment company or trustee under Regulation 131(1) the UCITS shall immediately notify its unit-holders.
Regulation 138(2)	A UCITS shall comply with all obligations in relation to key investor information.

DRAFT

**Organisational Effectiveness**

Schedule 5, paragraph 30	A UCITS management company shall employ personnel appropriate skills, knowledge and expertise.
Schedule 5, paragraph 32	A UCITS management company shall ensure that the performance of multiple functions by relevant persons will not prevent relevant persons from appropriately discharging any particular function.
Schedule 5, paragraph 48	A UCITS management company where appropriate and proportionate, shall establish and maintain an independent, separate, internal audit function.
Schedule 5, paragraph 51(3)	A UCITS management company shall be able to demonstrate that appropriate safeguards against conflicts of interest are in place and that its risk management process satisfies relevant requirements.
Schedule 5, paragraph 54	A UCITS management company shall establish, implement and maintain arrangements aimed at preventing behaviour which relates to market abuse, market manipulation, insider dealing etc.
Schedule 5, paragraph 55	A UCITS management company shall ensure that arrangements put in place under paragraph 54 shall ensure that relevant persons are aware of their obligations, that management is promptly informed of relevant transactions and that appropriate records are kept.
Schedule 5, paragraph 65	A UCITS management company shall, for the purposes of identifying relevant types of conflict of interest shall take certain minimum criteria into consideration.
Schedule 5, paragraph 66	A UCITS management company shall, take specified interests into account when identifying the types of conflict of interests that may arise.
Schedule 5, paragraph 67	A UCITS management company shall have an effective conflicts of interest policy.

Schedule 5, paragraph 70	A UCITS management company shall adopt alternative measures and procedures which are considered necessary and appropriate by the Central Bank when adopting alternative or additional measures designed to manage conflicts of interest.
Schedule 5, paragraph 71	A UCITS management company shall have records of the types of collective portfolio management activities undertaken by or on behalf of the management company in which a conflict of interest has arisen or, where it may arise.
Schedule 5, paragraph 72	A UCITS management company's senior management shall be promptly informed in order for necessary action to be taken where conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of UCITS or of its unit-holders will be prevented.
Schedule 5, paragraph 73	A UCITS management company shall report situations referred to in paragraph 72 to investors.
Schedule 5, paragraph 76	A summary description of the strategies referred to in paragraph 74 shall be made available to investors.

## PART V

### Operational Issues

#### **Record retention, archiving and retrievability**

##### Introduction

1. Regulation 123 of the UCITS Regulations 2011 provides the Central Bank with broad powers to request information from inter alia fund management companies. Regulation 125 of the Central Bank UCITS Regulations 2015 provides that fund management companies are required to keep all of their records in a way that makes them immediately retrievable in or from Ireland. Further, it also provides that when the Central Bank meets representatives of a fund management company in Ireland and asks them to produce a record of the fund management company (such as board minutes, policies and procedures, letters of engagement, contracts with delegates, reports to Designated Persons), they should be able to produce this record immediately. Similar rules apply to AIFMs.
2. The purpose of the record retention, archiving and retrievability guidance is to provide fund management companies with the Central Bank of Ireland's (the "Central Bank") minimum expectations with respect to the retention, maintenance, security, privacy, preservation and accessibility (collectively, "Document Management") of all relevant documentation and records.
3. Document management is particularly important for fund management companies because engagement with the Central Bank is substantially based on such documentation and records. Furthermore, document management, and the content of documentation and records will be a principal means by which the Central Bank can assess, evidence and establish:
  - (i) the control and resources of a fund management company;
  - (ii) compliance with relevant laws, regulations, conditions and rules;
  - (iii) the quality of oversight, governance and control provided by the directors and Designated Persons; and



(iv) the fitness and probity of directors and Designated Persons.

Relevant Documents

4. By documentation and records, the Central Bank is referring to both:
- (i) documentation and records pertaining to the fund management company including those demonstrating the governance of the fund management company; and
  - (ii) documentation and records pertaining to all investment funds under the management
- (collectively, “Relevant Documents”).
5. While not a definitive or exhaustive list, and solely for illustrative purposes, Relevant Documents may include many of the documents listed below :

<b>Relevant Documents fund management company</b>	<b>Relevant Documents investment fund</b>
Constitution	Constitutional Document
Business Plan / Programme of Activity	Prospectus / Supplement(s)
Annual / Interim Audited Financial Statements	Key Investor Information Document
Minimum Capital Requirements Data	Risk Management Process / Risk Mitigation Plans
Internal Audit Reports / Auditors Findings	Annual / Interim Audited Financial Statements
Director – Letter of Appointment	Administration Agreement
Designated Person – Letter of Appointment	Investment Manager Agreement
Relevant Contracts – Legal Agreements	Depository Agreement
Business Continuity Plan	Management Agreement
Board Pack / Board Reports / Board Minutes	Prime Broker Agreements
Management Accounts	Statutory Filings
Statutory Filings	Investment Performance / Risk Management Reporting
Anti-Money Laundering Reporting	Board Pack / Board Reports / Board Minutes
Records / Engagements around Breaches / Errors	Auditor’s Report
Detailed Firm Procedures and Processes	Statutory Filings
Reports to Designated Persons	Administrator / Depository (Custody) Records
Documentation Evidencing Designated Persons Performing their Designated Roles	Central Bank Regulatory Correspondence

Reports to Directors	
Central Bank Regulatory Correspondence	

Responsibility for record management policies and procedures

6. It is the individual responsibility of each fund management company to independently determine its own record management policy and procedures, including what documents are relevant to its particular circumstances and operation. The record retention policy should:
  - (i) be approved by the directors of the fund management company and reviewed on an annual basis;
  - (ii) be actively enforced and audited;
  - (iii) be appropriate for the fund management company’s nature, scale and complexity; and
  - (iv) take into consideration not only business and operation requirements, but also the requirements of all applicable laws, regulations, conditions and rules respecting the fund management company and its investment funds under management.

Minimum Requirements

7. Decisions on whether Relevant Documents should be retained in hard or electronic format, as original or copy documentation, the location(s) where Relevant Documentation are stored, the period of retention, the method for retrieving Relevant Documents, ensuring immediate and unfettered access to Relevant Documents, security, privacy, and the document destruction policy is strictly a matter for the fund management company’s directors to determine, subject to relevant laws, regulations, conditions and rules.
8. When engaging with a fund management company, the Central Bank will expect, at a minimum:
  - a clearly defined and understandable records retention schedule outlining where documents are stored, e.g. 3rd party, within the organisation, the location of the record, the format of storage, the classification of the document being stored, the date stored, the

minimum retention period, the date of destruction, the method of destruction, the document owner, the records manager and any other information deemed relevant by the organisation;

- Relevant Documents should be easily identifiable as pertaining to the fund management company and the investment funds under its management and the governance of both;
- A full audit trail of Relevant Documents should be available. In particular, there should be sufficient procedures and processes in place to provide the Central Bank with reasonable assurances and proof that manipulation of hard copy or electronic (soft-copy) documents has not or cannot occur;
- Relevant Documents should be sufficient to demonstrate both control and compliance with the provisions of relevant laws, regulations, conditions and rules;
- the fund management company should have immediate and unfettered access, from the State, to Relevant Documents;
- 
- immediate and unfettered access to Relevant Documents means equally access to documents held locally (in Ireland) and remotely (in other jurisdictions), including those held within group companies and third party service supplier network;
- immediate and unfettered access to Relevant Documents means that documents are readily accessible, easily retrievable and available on request by the Central Bank without any undue delay;
- For meetings with the Central Bank at the registered offices of the fund management company, the attending directors and Designated Persons should be in a position to produce all Relevant Documents upon request by the Central Bank; and
- the fund management company's directors should ensure, through contractual arrangements or by other means, that they and the Designated Persons have and will retain at all times immediate and unfettered access to all Relevant Documents.

9. A fund management company that fails to provide any Relevant Documents in the timeline and form reasonably required by the Central Bank may be viewed by the Central Bank as not having provided the Relevant Documents in compliance with the regulatory requirements described in paragraph 1.

**Maintenance of designated and monitored email addresses**

10. Section 22 of the Central Bank (Supervision and Enforcement) Act 2013, Regulation 123 of the UCITS Regulations 2011 and Regulation 48 of the AIFM Regulations 2013 each provide the Central Bank with broad powers to require inter alia fund management companies to provide the Central Bank with information within such time as it may specify. To ensure that fund management companies are in a position to comply with those requirements and to facilitate effective and efficient communication between the Central Bank and fund management companies, each fund management company should maintain a designated email address. The purpose of the designated email address is to allow the Central Bank to, among other purposes:
  - (i) send letters, including formal letters, to the fund management company or investment fund;
  - (ii) request meetings;
  - (iii) issue surveys or requests for information;
  - (iv) disseminate industry letters and notes; and
  - (v) more generally act as a portal for other fund management company/supervisory related communication activities, (collectively “Central Bank Communications”).
11. The designated email address should:
  - (i) be approved by the directors of the fund management company as the designated email address;
  - (ii) be continuously monitored. By continuously monitored, the Central Bank means that on at least a daily basis the designated email address should be checked for any communication(s) from the Central Bank. It is a matter for the fund management company to determine the

- processes and procedures by which the designated email address is monitored;
- (iii) have appropriate security, data protection and privacy processes and procedures implemented around the designated email address to ensure compliance with all applicable laws, regulations, conditions and rules; and
  - (iv) have sufficient capacity to accommodate a regular level of communication from the Central Bank.
12. A Fund Management Company may choose to maintain a single email address for the fund management company and all investment funds under management or as separate dedicated email addresses for the fund management company and for each investment fund under management.
13. The person monitoring the designated email address should have the relevant expertise to ensure that Central Bank Communications are correctly considered and, where required, forwarded to the relevant party to address the content of the communication.
14. Central Bank Communications should be addressed within the time frame provided in the communication. Procedures and processes around the ongoing monitoring and onward transmission of Central Bank Communications should factor in such time frames. Adherence to such time frames and the quality of information received will be a principal means by which the Central Bank can assess, evidence and establish:
- (i) the control and resources of a fund management company;
  - (ii) the quality of oversight and governance provided by the directors and Designated Persons; and
  - (iii) the fitness and probity of directors and Designated Persons.
15. Changes to a designated email address must be communicated to the Central Bank via the Online Reporting System as a “Regulatory Report”. Changes to

a fund designated email address should be communicated within five business days to the Central Bank.

16. Communication to the Central Bank will continue by means of normally established channels or as outlined in the Central Bank Communications. The Central Bank may periodically test the effectiveness and efficiency of the designated email address.

DRAFT

## PART VI

### Procedural matters

#### Applications for authorisation

##### Introduction

1. An application for authorisation as a fund management company<sup>5</sup> should be made by submitting:
  - (a) a completed application form signed by two directors of the applicant fund management company;
  - (b) completed individual questionnaires (IQs) in respect of:
    - each director and senior manager; and
    - any natural person with a qualifying holding in the fund management company as defined by the respective regulations.
  - (c) a bespoke and detailed business plan<sup>6</sup> that takes account of the requirements of Regulation 18 of the UCITS Regulations<sup>7</sup> and/or Regulation 8 of the AIFM Regulations<sup>8</sup>. The business plan should accurately reflect current activities and procedures. Generic wording should be avoided.
  - (d) all ancillary documentation requested in the application form, i.e. financial projections, statement of responsibility, etc.
2. Application forms and IQs are available from the Central Bank's website [www.centralbank.ie](http://www.centralbank.ie) under the fund service provider heading. In completing

---

<sup>5</sup> Fund management company means a UCITS fund management company, an authorised AIFM, a UCITS self-managed investment company or an internally managed alternative investment fund.

<sup>6</sup> In this guidance, "business plan" refers to a business plan for a UCITS management company or programme of activity for an AIFM.

<sup>7</sup> European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011

<sup>8</sup> European Union (Alternative Investment Fund Managers) Regulations 2013

an IQ, applicants are directed to the Fit and Proper Requirements which are also available on the website.

3. This note provides guidance on the type of information which should be included in the detailed business plan in support of the application. This guidance is not intended to be exhaustive. Each applicant should bear in mind the nature, size and structure of its proposed business. The Central Bank will advise the applicant of any additional information or clarification required having reviewed the documentation submitted.
4. Regulation 17(11) of the UCITS Regulations and Regulation 9(5) of the AIFM Regulations provide that a proposed fund management company shall be informed whether or not authorisation has been granted within six months or three months respectively of the date of receipt of a complete application. An application is only considered complete when it includes completed application form, all relevant individual questionnaires/declarations and a comprehensive business plan. In the case of applicant fund management companies, full details on qualifying shareholders should be provided in the initial submission. The time scale for considering applications depends greatly upon the quality of the information provided and the fund management company's ability to address the information requested or required under the application form.
5. Regulation 17(14) of the UCITS Regulations and Regulation 12(a) of the AIFM Regulations, which provide that the Central Bank may revoke an authorisation where a fund management company does not make use of its authorisation within 12 months, should be borne in mind when considering whether or not to submit an application for authorisation.
6. An applicant fund management company may only receive an authorisation under the UCITS Regulations or AIFM Regulations where it has revoked all other authorisations except in instances where the entity is seeking dual authorisation as a UCITS management company and AIFM.



Information to be incorporated in a detailed business plan - Incorporation

7. An original or certified copy of the certificate of incorporation or declaration of intention to provide a certificate of incorporation should be submitted. A certified document is one that is stamped, signed and dated as being a true copy of the original at a particular date in time by a party independent of the firm. The certification stamp should be present on the relevant document.

Information to be incorporated in a detailed business plan - Constitution<sup>9</sup>

8. An original or certified copy of the constitution is required. It is the applicant fund management company's responsibility to ensure that the scope of the constitution is sufficiently wide to enable it to operate in accordance with the UCITS Regulations and the Central Bank UCITS Regulations and/or in accordance with the AIFM Regulations and AIF Rulebook, as appropriate.

Information to be incorporated in a detailed business plan – Capital

9. Detailed financial projections covering a period of three years are required. These should include:
  - (a) projected profit and loss accounts;
  - (b) projected balance sheets.
10. The projections should be sufficiently detailed to demonstrate:
  - (a) compliance with initial capital requirements and ability to meet capital requirements on an on-going basis; and
  - (b) that the applicant fund management company has projected adequate resources to cater for projected/pipeline business.
11. Projections should be accompanied by relevant assumptions upon which the data should be based. Applicant fund management companies should

---

<sup>9</sup> In this guidance, “constitution” refers to the constitution of an investment company under Part 24 of the Companies Act 2014 and the instrument of incorporation of an ICAV under the Irish Collective Asset-management Vehicles Act 2015.

endeavour to provide projections, which present the applicant's realistic analysis of their business over the reference period. Applicant fund management companies should refer to the specific provisions of the UCITS Regulations and the Central Bank UCITS Regulations and/or AIFM Regulations and the AIF Rulebook in relation to capital. In particular, AIFMs should refer to Articles 14 and 15 of Commission Delegated Regulation (EU) No 231/2013 in relation to professional liability risk and the capital required to cover such risks.

12. In the case of newly established fund management companies, a certified confirmation of capital by the board of directors is required in advance of authorisation. In providing the required confirmation to the Central Bank, the board should stipulate the form and amount of capital and the name of the subscribers. Confirmation should be accompanied by an original bank statement evidencing compliance. This is required in draft form until such time as the Central Bank confirms the fund management company application is clear of comment.
13. In the case of existing companies who are already subject to our supervision, the Central Bank will rely on financial information presented in the latest audited financial statements as a basis for establishing the financial status of the application. Depending on the time frame since the last audited accounts the Central Bank reserves the right to seek more up to date information including latest management accounts.
14. In the case of existing companies not currently supervised by the Central Bank a copy of the audited accounts covering the previous three years are required.

Information to be incorporated in a detailed business plan - Probity and competence of directors and managers

15. A completed IQ for each proposed appointee should be submitted. In relation to completion of the IQ, it should be noted that:

- (a) all questions should be answered fully and submitted with all the appropriate attachments; and
- (b) if a question does not apply, it should be marked as "not applicable";

Information to be incorporated in a detailed business plan - Suitability of qualifying shareholders

- 16. The Central Bank will look through the proposed direct qualifying shareholder in the applicant, and each indirect qualifying shareholder to identify both the intermediate and ultimate registered and beneficial shareholders including those who are in a position to control or influence the applicant firm.
- 17. Proposed complex structures will only be approved where the Central Bank is satisfied that the ultimate beneficial shareholders have been identified and that the structure does not prevent the effective supervision of the firm.
- 18. To assist in this review, the application should include an ownership chart indicating all direct and indirect shareholdings. The following should be provided for each qualifying shareholder:
  - (a) Where the proposed qualifying shareholder is an individual:
    - i. an IQ in accordance with the guidelines set out at paragraph 15 above;
    - ii. regulatory status, if any;
    - iii. documentation evidencing the fact that the individual is the registered holder of the shares (for example, a certified copy of the share register);
    - iv. confirmation in writing that the individual is the beneficial owner of the shares.
  - (b) Where the proposed qualifying shareholder is a company:
    - i. description of its activities;
    - ii. regulatory status, if any;

- iii. most recent audited accounts;
- iv. details of the proposed interaction with the applicant fund management company;
- v. documentation evidencing the fact that the company is the registered holder of the shares;
- vi. confirmation in writing that the company is the beneficial owner of the shares.

(c) Where the proposed qualifying shareholder is a nominee:

- i. documentation evidencing the fact that the nominee is the registered holder of the shares;
- ii. ownership of the nominee company;
- iii. most recent audited accounts;
- iv. details of the beneficial owners of the shares;
- v. purpose behind the use of a nominee holding;
- vi. appropriate declarations in respect of the nominee holding of the shares in trust for the beneficial owners, including formal confirmation from the nominee itself that the relevant declarations of trust remain valid and in force.

19. The Central Bank may require that all nominee holders (including those which do not have a qualifying holding) be identified to ascertain that those individual holdings when added to other direct or indirect holdings do not amount to a qualifying holding.

(d) Where the proposed qualifying shareholder is a trust:

- i. documentation evidencing the fact that the trust is the registered holder of the shares;
- ii. copies of all trust deeds and any other documentation constituting the trust or relating to the trust in some other way including any supplemental or ancillary deeds, agreements or side letters;
- iii. names and addresses of the settlers of the trust;

- iv. names and addresses of the beneficiaries of the trust (including details of age for minors) and those of all persons who are within the class of prospective beneficiaries;
  - v. financial information in relation to the trust;
  - vi. details relating to the trustees;
  - vii. purpose behind the use of a trust structure.
20. It is the policy of the Central Bank to require legal undertakings from various parties related to the trust with a view to ensuring that the requirements of the UCITS Regulations and/or AIFM Regulations in relation to qualifying shareholders are met on a continuous basis. A legal opinion regarding the validity and efficacy of the undertakings will also be required.
- (e) Where the proposed qualifying shareholder is a partnership:
- i. description of the LLP, including the names of the general and limited partners and details of their respective roles;
  - ii. description of its activities;
  - iii. regulatory status, if any;
  - iv. most recent audited accounts;
  - v. details of the proposed interaction with the applicant fund management company;
  - vi. documentation evidencing the fact that the LLP is the registered holder of the shares;
  - vii. written confirmation that the LLP is the beneficial owner of the shares.

The Central Bank may request a copy of the partnership deed and any relevant agreement between the general and limited partners.

Information to be incorporated in a detailed business plan – Permitted activities

21. A fund management company can provide investment management, fund administration or marketing services to investment funds under delegation arrangements.

22. A fund management company may be authorised to provide collective portfolio management and individual portfolio management services. It may not be authorised solely to provide individual portfolio management services. A fund management company which is authorised to provide individual portfolio management services may also be authorised to provide investment advice and safekeeping and administration in relation to units of investment funds.

Information to be incorporated in a detailed business plan – Organisation structure

23. Requirements in relation to organisation of fund management companies, including the responsibilities of senior management, are set down in the UCITS Regulations and in the Central Bank UCITS Regulations and/or the AIFM Regulations and the AIF Rulebook.
24. Regulation 17(3) of the UCITS Regulations and Regulation 9(1)(a)(iii) of the AIFM Regulations provide that the conduct of a fund management company's business shall be decided by at least 2 persons of sufficiently good repute and are sufficiently experienced in relation to the type of investment funds to be managed<sup>10</sup>. The organisation of a fund management company should be structured such that no one person can decide on the direction of the fund management company without the endorsement of another.
25. In accordance with the UCITS Regulations and/or AIFM Regulations, fund management companies should 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 when applying certain requirements of the UCITS Regulations and/or AIFM Regulations. The business plan submitted by an applicant fund management company in accordance with paragraph 1(c) above should outline at the outset the range of activities to be undertaken together with the number, type and size of the investment funds to which services will be provided. It should indicate how the relevant requirements have been addressed through the employment of appropriate

---

<sup>10</sup> Regulation 42 (4)(a)(iii) of the UCITS Regulations imposes a similar requirement in relation to self-managed investment companies.

resources and taking into account the extent to which the fund management company will delegate activities.

26. In assessing the nature scale and complexity of its business the following should, at least, be taken into account:
- (a) the number of investment funds, including sub-funds of umbrella investment funds, under management;
  - (b) the size of investment funds, including sub-funds of umbrella investment funds, under management;
  - (c) the regulatory status and jurisdiction of the investment funds under management;
  - (d) investment strategies of the investment funds, including the extent to which the investment funds will employ leverage;
  - (e) types of investments and investment location
  - (f) distribution model and investor base.
27. Where the fund management company provides services to third party investment fund where it is not the designated fund management company, these activities should also be considered in accordance with the above criteria when assessing the nature, scale and complexity of the business of the applicant fund management company.
28. The following should be submitted to the Central Bank:
- (a) Proposed organisational chart to include:
    - reporting lines, in particular between directors/senior management and delegates;
    - functions distinguishing between functions retained by the fund management company and those delegated to /third parties; and
    - proposed staffing – key personnel (with titles) should be identified.

The Central Bank will also consider proposals under which individuals, including individuals from Irish service providers to the applicant will, on a secondment basis, carry out some or all of the management functions. These individuals must be located in Ireland and be sufficiently qualified to undertake the relevant functions. Secondees should complete an IQ to enable the Central Bank be satisfied in this regard. Information will be required in relation to the contract of employment between the applicant and the service provider/seconded(s). The contract should identify potential conflicts of interest and how these will be addressed.

- (b) Where a fund management company intends to delegate its functions the business plan should contain the following details in relation to each of the managerial functions identified in Schedule 10 of the Central Bank UCITS Regulations and Chapter 3 of the AIF Rulebook:
- i. identity of the designated director/employee/seconded individual (hereafter “designated person”) responsible for that function to include a description of the role which will be carried out by that designated person and a copy of the existing or proposed procedures that will apply to the function;
  - ii. role of the relevant service providers in relation to that function; and
  - iii. details of the reports that the designated person will receive from the service providers and other parties (see paragraph 30).
- (c) In relation to each of the specific management functions, the Central Bank expects to be provided with the following information:
- i. **Regulatory compliance:** confirmation as to whether the designated person will be advised of all compliance issues or only those that are considered material, indicating what criteria will determine materiality;



1. the Central Bank acknowledges that while the monitoring of compliance with respect to investment restrictions may be carried out by a related third party outside the State, there should be sufficient evidence that this process is controlled by the firm.
2. Monitoring of compliance includes the maintenance of logs in respect of investment breaches, pricing errors, complaints and compensation payments, all of which should be available for inspection by the Central Bank.
3. Compliance procedures should be included within the business plan. A compliance officer should be appointed and should be responsible for the compliance function and for any reporting on a frequent basis, and at least annually, to the senior management on matters of compliance indicating in particular whether the appropriate remedial measures have been taken in the event of any deficiencies.
4. The business plan should include details of the procedures in place to ensure that all complaints other than those related to distribution are escalated to the board of the applicant firm.
5. The Central Bank UCITS Regulations and the AIF Rulebook permit UCITS, Retail Investor AIF and Qualifying Investor AIF to engage in transactions with connected parties, subject to the rules set out therein. The business plan should provide for the procedures that will be applied to:
  - ensure compliance with those requirements when transactions are envisaged; and
  - ensure compliance with the required disclosure and reporting of transactions entered into.

- ii. **Fund risk management:** The UCITS Regulations and the Central Bank UCITS Regulations and AIFM Regulations and AIF Rulebook contain detailed requirements in relation to a risk management function and risk management policy. These requirements should be reflected in the business plan. In addition to the risk management process required by Regulation 69(1) of the UCITS Regulations and the section headed “Risk management process and reporting” in the Retail Investor AIF Requirements chapter of the AIF Rulebook, in the context of the use of financial derivatives instruments by UCITS or Retail Investor AIFs, details should also be provided in relation to more general risks that will be regularly monitored (e.g. static security prices, stock reconciliation, failed trades, etc) and all operational risks pertinent to the applicant firm.

With regard to collateral management, the business plan should, if relevant, provide for the systems, operational capabilities and legal expertise which will be employed to address risks attached to this activity.

Confirmation is required as to whether the designated person will become aware of all risk management issues or only those that are considered material or exceed a certain timeframe/tolerance.

- iii. **Operational risk management:** The business plan should set out what procedures are being designed to ensure that all applicable risks pertaining to the management company will be identified, monitored and managed at all times. It should also describe how the relevant designated person will perform this managerial function, the reporting to be received and the escalation procedures in place.

- iv. **Investment management:** Reports should be sufficient to enable the designated person ensure and verify that the investment strategies and policies of each investment fund under management are complied with and to measure the performance of the investment fund (e.g. total return on monthly, quarterly and year-to-year basis, performance versus benchmark, yield calculations, etc.) “Investment strategies” refer to a set of general indications concerning the strategic asset allocation of the investment fund and the investment techniques which are needed to adequately and effectively implement the investment policy.
- v. **Capital and financial management:** The following information should be provided:
1. procedures for the production, and submission to the Central Bank, of annual and semi-annual financial statements of the applicant firm;
  2. the role of the board of directors in the approval of such accounts;
  3. confirmation as to whether the auditors of the applicant firm will attend the board meetings, at which the annual financial statements are considered, to report on the audit process and to answer any questions which may arise in connection with the audit;
  4. the authorised signatory list of the firm and details of payments process;
  5. a description of the other areas that will be kept under review in relation to the financial control function e.g. preparation of profit and loss account for the applicant firm showing realised and unrealised gains, breakdown of expenses, cash and stock positions, expenses accrued etc;

6. a description of how monitoring compliance with capital requirements will be conducted on an on-going basis and include provision for circumstances where capital falls below the required amount and what action will be taken to restore compliance;
  7. a description of how compliance with accounting requirements in respect of the accounts prepared in respect of the fund management company and all investment funds under management will be monitored. Irish accounting requirements apply to the accounts of the applicant firm. In the case of investment fund accounting policies of the home Member State apply;
  8. the identity of the internal auditor and frequency of internal audit visits should be provided. Depending on circumstances, reliance may be placed on internal audit functions of service providers provided they are of a level which the board of directors can be satisfied will give an appropriate level of assurance relative to the service providers' role and involvement in the operational functions of the fund management company. In this event, the business plan should identify the relevant service providers.
- vi. **Distribution:** The business plan should outline the procedures to ensure and verify that the distribution strategy of each investment fund under management is complied with. It should also describe how the arrangements in place to ensure that complaints from unitholders regarding distribution matters are addressed promptly and effectively.

(d) Decision taking: The following details should be provided:

- i. A distinction between the types of decisions falling within the remit of the designated person and those falling within the remit of the board of the applicant firm. Generally speaking, it is expected that key/strategic decisions relating to the applicant firm should be considered by the board, including, but not limited to:
- creation/termination of new investment funds (including new sub-funds and classes of shares);
  - changes in investment objectives, policies and restrictions;
  - temporary suspension in the calculation of net asset value;
  - approval of dividends, fees and expenses of the applicant firm;
  - approval of financial statements of the applicant firm; and
  - any other decisions of a strategic nature.
- ii. The frequency of board meetings and the identity of parties required to attend such meetings. As a general rule, the board should meet at least quarterly and it would be expected that at least these four meetings be held in the State. Additional board meetings may be held outside the State if circumstances justify.
- (e) Regulation 102(3) of the Central Bank UCITS Regulations and paragraph 5 of the section headed Organisational requirements in the AIFM Requirements chapter of the AIF Rulebook require inter alia that where a fund management company delegates activities the business plan should formally adopt a statement of responsibility in relation to the management functions and the procedures which will apply in each case. A standard statement of responsibility is attached in Annex 1.

- (f) Information provided by the applicant should be sufficient to show that the "mind and management" of the fund management company takes place in Ireland where the management functions can be subject to supervision by the Central Bank.
- (g) An applicant who proposes to engage in individual portfolio management services should also provide the information included in Annex 2.

Information to be incorporated in a detailed business plan – Provision of information on an on-going basis

29. Regulation 18(2) of the UCITS Regulations and Regulation 13(1)(c) of the AIFM Regulations require inter alia that the applicant fund management company will have and will follow established procedures. Applicant fund management companies should provide, where relevant:

- proposed staffing numbers at authorisation stage and projected staff numbers for first three years of operation;
- details of systems being utilised by the firm;
- operating procedures appropriate to the activities being performed including internal controls, business continuity plans, staff training and recruitment procedures;
- compliance procedures including those related to anti-money laundering.

Information to be incorporated in a detailed business plan – Reports

30. Regulation 98(2) of the Central Bank UCITS Regulations and paragraph 6 of the section headed Organisational requirements in the AIFM requirements chapter of the AIF Rulebook require that where a fund management company delegates activities, the business plan should include procedures pursuant to which designated persons will receive and review reports specific to the managerial functions. The following provides additional guidance regarding

the Central Bank's requirements in relation to the reports to be received in the context of each function and the required action in each case.

- (a) ***Types of reports received*** - The information contained in each report should be comprehensive to allow for effective monitoring.
- (b) ***Frequency of the reports*** - Typically reports should be received at least monthly but may be more frequently in some cases (depending on dealing frequency, for example).
- (c) ***Action carried out*** - In the case of each managerial function, the business plan should provide examples of the circumstances where action by the designated person would be required following receipt of the report, for example, a breach by the applicant firm of its capital requirement, investment restrictions or reporting requirements.

***Exceptional Reporting*** – The business plan should also provide for the following:

- delegates are required to submit exceptional reports to the designated person in relation to the activities of the fund management company in accordance with thresholds / trigger events which the board will from time to time determine, details of which are provided to the Central Bank;
- the business plan should set out details of thresholds/trigger events and procedures which should be adopted on receipt of exceptional reports;
- reports should be maintained where they can be subject to inspection by the Central Bank.

Information to be incorporated in a detailed business plan – Organisational requirements

31. Paragraph 1(d) of Schedule 4 of the UCITS Regulations and Article 57(1)(d) of AIFMD Level 2<sup>11</sup> require effective internal reporting and communication of information. The business plan should at a minimum include a description of the applicant fund management company's internal reporting procedures. Where functions are delegated, the business plan should provide that the board will consider the internal processes of delegates and be satisfied with the procedures in place.
32. Paragraph 1(e) of Schedule 4 of the UCITS Regulations and Article 57(1)(e) of AIFMD Level 2 require maintenance of adequate and orderly records. The business plan should include detail of the specific records which will be maintained and where they will be maintained.
33. Paragraph 3 of Schedule 4 of the UCITS Regulations and Article 57(2) of AIFMD Level 2 require maintenance of adequate systems and procedures. The business plan should set out how these systems and procedures will be established and applied and who has responsibility in this regard. Where functions are delegated the systems and procedures include those of the delegate. The business plan should provide that the board will review and be satisfied with the systems and procedures in place.
34. Paragraph 4 of Schedule 4 of the UCITS Regulations and Article 57(3) of AIFMD Level 2 requires maintenance of an adequate business continuity policy. The business plan should set out the procedures which apply in this regard. Where functions are delegated the agreement entered into with the delegate should include requirements in relation to implementing and maintaining an adequate business continuity policy including;
- provision for reporting by delegates on their business continuity policy including an annual presentation from delegates on business continuity procedures;
  - a requirement to maintain a log of business continuity events; and

---

<sup>11</sup> Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012



- a requirement to report material business continuity events to the fund management company as and when they arise.

#### Information to be incorporated in a detailed business plan – Resources

35. Paragraph 31 of Schedule 5 of the UCITS Regulations and Article 75(f) of AIFMD Level 2 requires a fund management company to retain the necessary resources and expertise to effectively monitor the activities of delegates. The provisions in the delegation agreements must not preclude the fund management company from complying with relevant legislation and this must be made clear in the business plan. Furthermore, the business plan should summarise the service level agreements in place, particularly those regarding the delegation of tasks relating to administration and investment management. The investment management service level agreement should document and specify, at least, the information which the fund management company will receive to assist it in fulfilling its responsibility for the implementation of the general investment policy. It should also provide for:

- KPI (Key Performance Indicator) reporting;
- detailed annual review of each delegate;
- reporting of material issues with subsequent review to ensure controls in place prevent reoccurrence; and
- requirements to attend board meetings of the fund management company where material issues arise.

#### Information to be incorporated in a detailed business plan – Accounting procedures

36. Paragraph 38 of Schedule 5 to the UCITS Regulations and Article 67(1) of AIFMD Level 2 require a fund management company to establish appropriate procedures to ensure the proper valuation of the assets and liabilities of an investment fund. Paragraph 3 of Schedule 5 of the UCITS Regulations and Article 67(1) of AIFMD Level 2 require a fund management company to ensure transparent pricing models and valuations processes are used for investment fund under management. Valuation procedures should, in particular, address issues relating to the valuation of instruments valued using

amortised cost, OTC derivatives and unlisted securities. Valuation procedures should be reviewed before a fund management company takes on the management of new investment fund or new sub-funds of umbrella funds to ensure it complies with the regulatory requirements.

Information to be incorporated in a detailed business plan – Conflicts of interest

37. Paragraphs 65 to 73 of Schedule 5 of the UCITS Regulations and Articles 30 to 37 of AIFMD Level 2 set down requirements in relation to conflicts of interest. A conflicts of interest policy which provides for these requirements should be included in the business plan, including the criteria for identifying the types of conflicts of interest which may arise.

Information to be incorporated in a detailed business plan – Strategies for the exercise of voting rights

38. The business plan should include the policy in relation to voting rights. The policy should indicate if voting rights will be exercised or not, or provide for the circumstances where a determination will be made to exercise voting rights. Voting policies devised by a fund management company should be adopted for the exclusive benefit of the investment funds under management.

Information to be incorporated in a detailed business plan – Ability to supervise firm

39. The following information should be provided:
- (a) a complete group structure showing the name of each undertaking within the group, the country in which each such undertaking is incorporated and the country in which its head office is located. (All associated and related undertakings should be identified);
  - (b) a brief description of the activities of all undertakings in the group;
  - (c) details of the extent of any proposed interaction between group companies and the applicant fund management company;

- (d) details of the regulatory status, if any, of undertakings within the group. In this context note that Regulation 18(8) of the UCITS Regulations and Regulation 9(2) of the AIFM Regulations require that the Central Bank shall consult the competent authorities of other Member States in certain cases.
40. Where an applicant fund management company is part of a large international group, the information required above can be limited to direct, significant indirect and ultimate parents.

#### Information to be incorporated in a detailed business plan – Other

41. Having examined the material provided, any additional information required to enable the Central Bank to make a decision under this sub-heading will be notified to the applicant fund management company. In general the business plan should be sufficiently detailed to make it clear that the applicant fund management company has sufficient resources to effectively conduct its business within the requirements of the supervisory regime. Details of any situations or events of which the applicant fund management company is aware which impact, or may potentially impact on the applicant fund management company in any way should be included in the application.

#### Submission of parent company's accounts

42. The Central Bank may request that a fund management company submits the annual audited accounts of the direct parents of the fund management company together with the accounts of any company within the group specified by the Central Bank.

#### Capital requirement

43. The capital requirement of a fund management company is set out in Regulation 17 of the UCITS Regulations and/or Regulation 10 of the AIFM Regulations. However, the Central Bank reserves the right to increase this amount should it be deemed not to reasonably reflect the current position of the fund management company.

Investment companies that have not designated a fund management company (“self-managed investment company”)

44. Regulation 42(4)(a)(i) of the UCITS Regulations and/or Regulation 10(1) of the AIFM Regulations each require a self-managed investment company to have initial capital of €300,000. In the case of newly established investment companies, the board of directors of the investment company should confirm compliance with this requirement and provide an original bank statement to the Central Bank as evidence of such compliance.
45. The initial capital requirement may be provided to an investment company by the promoter/investment manager and may be withdrawn upon receipt of subscriptions into the company to the value of €300,000 provided that the company maintains a minimum of €300,000.
46. With regard to paragraph 15, a director of the promoter may endorse the IQ of a proposed director of the investment company.

**Relationship with the Central Bank**

47. A fund management company should be open and co-operative in its dealings with the Central Bank and with all other relevant supervisory authorities.
48. A fund management company should participate in such meetings as the Central Bank considers necessary to review its operations and its business developments. The fund management company should, for the purposes of such meetings supply any additional material as may be specified by the Central Bank, including internal auditors’ reports, operating procedures and management letters issued by the fund management company’s auditors and/or by the auditors of investment funds under management. In addition, the Central Bank may conduct inspections of the operations of a fund management company if these are deemed necessary or appropriate.

49. A fund management company should respond to correspondence and to any requests for information from the Central Bank in a timely and thorough manner and within any period of time that may be specified by the Central Bank.
50. The Central Bank may request information on investment funds not authorised by the Central Bank in its role as supervisor of Irish authorised fund management companies. Such requests do not imply any regulatory or supervisory role for the Central Bank in respect of such investment funds.

#### **Fund management company passport - General**

51. A fund management company authorised by the Central Bank may carry on activities for which it has been authorised under the UCITS Regulations and/or AIFM Regulations in another Member State either by the establishment of a branch or under the freedom to provide services. This is commonly known as the 'fund management company passport'. Regulations 27 and 28 of the UCITS Regulations and Regulation 34 of the AIFM Regulations set out the procedures which a fund management company authorised by the Central Bank should follow if it wishes to avail of the fund management company passport. The purpose of this part of the guidance is to provide guidance to assist these fund management companies.
52. Fund management companies authorised in other Member States which wish to carry out, within the State, activities for which they have been authorised should refer to Regulations 26, 31 and 32 of the UCITS Regulations. AIFMs authorised in other Member States which manage Irish AIFs should refer to Regulation 34 of the AIFM Regulations.
53. Prior to transmitting the fund management company passport proposal, the Central Bank intends to engage with the competent authority in the fund management company's proposed host Member State. The purpose of this

engagement is to identify whether there are any significant local requirements which:

- are imposed on investment funds established in that jurisdiction;
- the fund management company would be required to discharge; and
- would impact on the complexity of providing services in that specific jurisdiction.

#### Fund management company passport - Managing non-Irish investment funds

54. Generally, the Central Bank would expect a greater level of resources where a fund management company proposes to act as manager to non-Irish investment funds given the additional scale and more complex nature of the business involved. The Central Bank will review each fund management company passport proposal on a case-by-case basis to determine whether the fund management company is sufficiently resourced.

#### *Corporate governance issues*

55. A fund management company managing non-Irish investment funds should have sufficient knowledge of the local regulatory regime in Member States into which it passports. For example, the fund management company would need to know the types of breaches which need to be reported to the investment fund's competent authority and the timeframe for this reporting. The fund management company should also have some appreciation of the marketplace and any particular issues of concern or topical issues in the investment fund's home Member State.

56. Regulation 108(2)(b) of the Central Bank UCITS Regulations provides that a UCITS management company should describe in its programme of operations how it will monitor compliance with regulatory requirements that are applicable in the home state of the relevant investment fund on a day-to-day basis. This may involve creating an additional managerial function. Alternatively, this could fall within the remit of one of the existing managerial

functions (e.g. regulatory compliance) provided the incumbent member of staff/designated person has or can quickly develop the requisite expertise.

57. The fund management company may need to have representatives available to travel to the investment fund's home Member State to attend and report at board meetings of the investment fund where the investment fund is structured as an investment company. This will increase the number of meetings which fund management company representatives should attend – they will attend the quarterly board meetings of the fund management company itself and the board meetings of each of the investment fund under management. The fund management company may also need to have representatives available to travel to deal with service provider issues as and when they arise.
58. Increasing the number of investment funds under management adds to the scale of fund management company supervisory work. Fund management companies applying to manage an investment fund in another Member State on a freedom of services basis must ensure that personnel are able to allocate the necessary time need to carry out the managerial functions, attend board meetings as well as possessing expertise to discharge their duties that relate to the relevant funds under management.
59. Regulation 108(2)(d) of the Central Bank UCITS Regulations requires a UCITS management company to include in its programme of operations an analysis of the impact that managing an investment fund that is authorised in another Member State is likely to have on its minimum capital requirement. This will assist the Central Bank in determining whether it has reason to doubt the financial situation of the fund management company in accordance with Regulation 27(2)(a) of the UCITS Regulations.

*Administrator issues*

60. The administrator will have staff who work on the investment fund on a day-to-day basis and who may have a more intimate knowledge of the day-to-day operation of the investment fund than the non-executive directors of a investment fund management company. Where an Irish administrator is engaged, the Central Bank can have direct access to these staff by virtue of its role as regulator of that entity. However where a non-Irish administrator is appointed, these staff may not be directly available to the Central Bank. Accordingly, Regulation 113(3) of the Central Bank UCITS Regulations requires that the programme of operations addresses how the fund management company will ensure that its staff/designated persons with the requisite detailed knowledge of the day-to-day operation of the investment fund will be available to the Central Bank.

Fund management company passport - Notifications

61. A key component of the notification made by a fund management company pursuant to Regulation 27(1) or 28(1) of the UCITS Regulations or Regulation 34(3) of the AIFM Regulations will be the programme of operations.
62. It is not envisaged that the programme of operations will be the existing business plan of the fund management company. While relevant extracts from the business plan may be appropriate, the Central Bank expects that the programme of operations will be a concise yet comprehensive outline of the fund management company's proposal to passport, setting out all the required elements under the UCITS Regulations or AIFM Regulations and including details of the types of funds to be managed, resources to be applied, delegation arrangements to be put in place and details of how the fund management company proposes to monitor such delegates, including access to records of the delegates as appropriate.
63. The Central Bank considers that a completed notification has been received when all of the information and documentation required by the UCITS



Regulations or AIFM Regulations has been received and all of the queries raised by the Central Bank have been adequately addressed.

DRAFT

**Annex 1****Statement of Responsibility**

The Statement of Responsibility should take the form of a formal letter, addressed to the Central Bank, on the company's headed paper, signed by the Chairman of the company and incorporating the following wording.

*As at .....<sup>12</sup> the Board of Directors of the Company hereby accept collective responsibility for managing the affairs of the Company in accordance with the Company's constitution and [the European Communities (UCITS) Regulations 2011, ("the UCITS Regulations")]/ the European Union (AIFM) Regulations 2013, ("the AIFM Regulations").*

*In accordance with [Regulation 102 of the Central Bank UCITS Regulations]/[paragraph 2 of the section headed "Organisational requirements" in the AIFM Requirements chapter of the AIF Rulebook], the following "designated persons" of the Company accept responsibility for the day-to-day monitoring and control of the management functions (as detailed below) and associated procedures.*

**Management Functions****Director/Designated person**

- *Regulatory Compliance:*
- *Fund Risk Management:*
- *Operational Risk Management:*
- *Investment Management:*
- *Capital and Financial Management:*
- *Distribution:*

---

<sup>12</sup> Initially this date will refer to the date of authorisation of the Company by the Central Bank and thereafter to the date of any changes in the composition of the Board and/or to the allocation of responsibilities of the designated persons.

*It is confirmed that the Company will notify the Central Bank or seek its approval, as appropriate, in respect of any changes to this statement involving, inter alia, the appointment/resignation of Directors and/or reallocation of responsibility of the designated persons.*

*Yours faithfully*

---

*Chairman*

*For on and on behalf of*

*Company Name*

DRAFT

## Annex 2

### **Additional information required in relation to fund management companies that provide individual portfolio management services**

Fund management companies who propose to provide individual portfolio management services should contact the Central Bank in advance of submitting an application for authorisation and should supply the Central Bank with the following additional information as part of the application for authorisation.

1. An additional section to the business plan referred to in paragraph 1 of this guidance to include the following:
  - a. a full description of the services to be provided;
  - b. details of the resources which the fund management company proposes to put in place to support this business, namely:
    - i. staff;
    - ii. systems; and
    - iii. procedures.

The information provided should outline the organisational structure of the fund management company, specifying the reporting lines and functions. It should identify the officers responsible for each of the compliance, financial control, internal audit, risk management and money laundering reporting functions, where relevant, and provide a detailed description of their respective roles within the company. Brief details of the procedures to be adopted by the fund management company are required, together with confirmation that the full procedures are available to the Central Bank upon request;

- c. transaction order flows for the individual portfolio management service showing the relationship between the fund management company, clients, counterparties, clearing agents, custodians, brokers and relevant markets, as appropriate;
- d. any client agreement forms or other client documentation, including risk disclosure statements, discretionary agreements, contract notes and terms of business;
- e. financial projections for the first three years in accordance with paragraph 9 of this guidance;
- f. details of how the fund management company proposes to identify, monitor and manage risks relating to individual portfolio management activities;
- g. procedures in relation to the holding of client assets. The procedures should be accompanied by Appendix 3 to the Central Bank's application form for MiFID firms, duly completed.

T +353 1 224 6000 F +353 1 671 6561 [www.centralbank.ie](http://www.centralbank.ie) [FASDpolicy@centralbank.ie](mailto:FASDpolicy@centralbank.ie)



Banc Ceannais na hÉireann  
Central Bank of Ireland

Eurosystem

**Bosca OP 559, Sráid an Dáma, Baile Átha Cliath 2, Éire  
PO. Box No 559, Dame Street, Dublin 2, Ireland**