Ireland as an International Fund Domicile

Law Firm of the Year: Republic of Ireland, European Awards 2011, The Lawyer

One of the most innovative law firms in Europe and the only Irish law firm to be commended for corporate strategy, Financial Times Innovative Lawyers Report 2012

Client Choice 2012 award, International Law Office
This brochure outlines the advantages of Ireland as a domicile for international investment funds. It describes the regulatory framework in Ireland and the different types of fund vehicle available. The process of applying for fund authorisation to the Central Bank of Ireland, and the procedure for listing funds on the Irish Stock Exchange, are set out in brief, together with a synopsis of the taxation of Irish domiciled funds.

Matheson

Our primary focus is serving the Irish legal needs of international companies and financial institutions doing business in and through Ireland. We regard efficiency, responsiveness and a practical and commercial approach to problem-solving as vital to the provision of first class legal advice to our clients, which include over half of the Fortune 100 companies, 27 of the world’s largest banks, as well as some of the largest public, private and State owned companies and institutions in Ireland. Our firm is headquartered in Dublin, with offices in London, New York and Palo Alto. With over 350 legal and tax professionals, more than 600 people work across our four locations.

Matheson is consistently recognised for its excellence and in 2012 was awarded, for the sixth time, the International Law Office Client Choice Award for Ireland. In 2011, Matheson was named the Irish Law Firm of the Year at The Lawyer European Awards for the second consecutive year.

The Asset Management and Investment Funds Group

Headed by a former chairman of the Irish Funds Industry Association and with eight partners and 40 fund professionals in total, including a full offering from our New York office, Matheson’s Asset Management and Investment Funds Group is the leading UCITS and alternative investment fund practice in the Irish market. It is ranked a tier one practice group by Chambers Europe, the European Legal 500 and PLC. In recognition of its expertise in alternative investments, Matheson was the first Irish law firm to be named European Law Firm of the Year by The Hedge Fund Journal and in 2011 the group was named European Adviser of the Year by Funds Europe.

The Asset Management and Investment Funds Group offers a comprehensive and innovative advisory service to clients. In addition to asset management advice (including tax advice) on the structuring and establishment of all types of investment funds, the group can draw on the resources of:

- a regulatory risk management and compliance unit;
- a specialist outsourcing group and company secretarial unit;
- a financial institutions group advising on the corporate, regulatory and M&A aspects of our clients’ businesses in Ireland; and
- a dedicated derivatives team.

This results in our having an unrivalled capacity to provide combined asset management, tax, regulatory, corporate and derivatives advice to clients.
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1 Ireland as an International Fund Domicile
1.1 Introduction and Background

Ireland is universally recognised as one of the world’s most advantageous jurisdictions in which to establish international investment funds. Tax-exempt fund vehicles with many different characteristics can be established in Ireland as investment companies, unit trusts, common contractual funds or investment limited partnerships.

The Central Bank is the regulatory authority responsible for the authorisation and supervision of Irish fund vehicles. The Central Bank applies different levels of regulation to retail, professional and qualifying investor funds. The Central Bank has worked closely with the mutual fund industry to tailor its regulations to accommodate a range of investment products with different structural features and the Central Bank’s due consideration of developing industry practice, whilst having regard to its duties to protect shareholders, has been characteristic of the robust and energetic regulatory environment for financial services in Ireland.

The emergence of Ireland as an international fund domicile of choice can be linked with the successful development of the International Financial Services Centre in Dublin. The IFSC was established in 1987 as a special tax zone to foster the development of a broad based international financial services industry. A tax advantageous and comparatively benign regulatory framework is supported by an enduring political commitment to facilitate the development of Ireland as a foremost centre for international financial services, including investment fund management and administration activities. Changes to Ireland’s domestic tax legislation have now made it possible to conduct these activities anywhere in Ireland and many of the world’s most prominent service providers have established substantial operations in locations outside Dublin. Continued Government impetus to build on the outstanding success of financial services in Ireland to date has sustained the focus on innovation in the international financial services sector, backed by sound and flexible regulation.

1.2 Advantages of Ireland as a Fund Domicile

The advantages of Ireland as a fund domicile include the following:

• Ireland is a Member State of the EU and benefits from the harmonisation of EU financial services regulation. It therefore qualifies as a UCITS domicile and as a “home” or “host” State for the provision of EU investment services under MiFID. Ireland is a participating member of the Economic and Monetary Union and has the euro as its currency;

• Ireland is an OECD Member State;

• Ireland offers a range of tax-exempt fund vehicles (including investment companies, unit trusts, investment limited partnerships and common contractual funds) which can be tailored to suit investor requirements;

• With a continuously expanding tax treaty network including over 60 countries, Ireland has one of the most developed and favourable tax treaty networks in the world;

• Irish funds can use structured fund vehicles which can access Ireland’s network of double tax treaties;

• The Irish Stock Exchange is an internationally recognised, regulated exchange for the listing of Irish and non-Irish domiciled investment funds and it is widely regarded as one of the leading exchanges in the world for the listing of investment funds;

• Ireland has a pragmatic regulatory environment governed by an approachable Central Bank willing to discuss and if possible work through any issues;

• Irish investment funds, fund managers, administrators and custodians enjoy prudent but practical regulation, with regulatory sensitivity to the needs of international fund managers and service providers;

• Ireland was the first regulated jurisdiction to provide a regulatory framework specifically for the alternative investment fund industry and is at the forefront of product innovation, providing opportunities and solutions for this sector;

• Ireland does not operate banking secrecy and was the only international funds centre to appear on the original OECD white list of countries that are in compliance with internationally agreed tax standards;

• Ireland has signed bilateral Memoranda of Understanding with 19 jurisdictions including China, Dubai, Hong Kong, Isle of Man, Jersey, South Africa, Switzerland, Taiwan, UAE and USA and cooperates with all EU Member States through the EU legislative framework;

• Ireland has a well developed infrastructure with sophisticated telecommunications networks and local availability of highly educated labour;

• Ireland’s professional services infrastructure is well developed and experienced, with specialist legal, tax and accounting skills; A wide range of languages is supported in the Irish funds industry and with 10% of Ireland’s resident population coming from abroad, the Irish funds industry has access to a workforce which includes many native speakers of European and Asian languages;

• Ireland has direct daily flights from the US and from all of Europe’s major financial centres and transport hubs.

• Ireland is in the same time zone as London and business can be conducted with Japan, Hong Kong and Australia in the morning and North and South America in the afternoon.

– Ireland is internationally recognised as a leading fund domicile of choice:
— Ireland services alternative investment assets representing approximately 43% of global and 63% of European hedge fund assets and is the largest hedge fund administration centre in the world;

— Irish domiciled ETFs represent approximately 32% of the total European ETF market;

— Irish domiciled money market funds represent approximately 30% of the total European money market fund market;

— Ireland is the European domicile of choice for cross-border fund distribution, accounting for approximately 30% of European cross-border fund market; and

— Ireland has the largest number of stock exchange listed investment funds, with over 3,000 funds and sub-funds listed.
2 Regulatory Framework and Fund Vehicles
2.1 Regulatory Framework

A broad variety of public tax-exempt investment fund vehicles can be established in Ireland. They are regulated by, and require the authorisation of, the Central Bank. The regulatory framework is divided between UCITS and non-UCITS investment funds.

**UCITS**

The UCITS regulatory regime relates to open ended retail investment vehicles investing in transferable securities and other liquid financial assets. There are restrictions on the investment and borrowing policies of UCITS and on the use by UCITS of leverage and financial derivative instruments. The advantage of establishing a fund as a UCITS is that it can generally be sold without any material restriction to any category or number of investors in any EU Member State, subject to the filing of appropriate documentation with the relevant regulatory authority in the EU Member State(s) where it is to be sold.

A UCITS may be established through any one of the following vehicles:

- an investment company;
- a unit trust; and
- a common contractual fund.

**Non-UCITS**

Although the non-UCITS regulatory regime does not permit the same EU cross-border marketing benefits as UCITS, non-UCITS investment funds offer greater flexibility with respect to investment styles and restrictions. Non-UCITS are sub-divided between retail funds, professional investor funds (PIFs) and qualifying investor funds (QIFs). The Central Bank has introduced general investment diversification and borrowing restrictions for all non-UCITS funds. However, these general restrictions are modified, superseded or disapplied by specific regulations for particular types of funds such as venture capital funds, property funds, futures and options funds, feeder funds and funds of funds. These investment and borrowing restrictions may also be disapplied on a case-by-case basis for PIFs and they do not apply to QIFs. Non-UCITS may be structured as open ended or closed ended funds. Since July 2005, a closed ended fund can avail of an EU passport to offer its shares or units in other EU jurisdictions provided that its prospectus complies with the requirements of the Prospectus Directive.

A non-UCITS may be established through any one of the following vehicles:

- an investment company;
- a unit trust;
- a common contractual fund; and
- an investment limited partnership.

The principal features of UCITS and non-UCITS investment funds are highlighted in section three of this brochure. An overview of some of the factors and strategy considerations which may be applied when selecting a regulatory framework and appropriate fund structure are discussed in section five of this brochure.
2.2 Investment Fund Vehicles

The choice of an appropriate vehicle through which an investment fund will be constituted will depend on a number of factors. As indicated above, there are several legal forms available for the establishment of an investment fund in Ireland and a summary of the key features of these legal forms is set out below.

**Investment Company**

An investment company is an entity with distinct legal personality which is managed and controlled by its board of directors and can enter into contracts in its own name. The assets are the property of the company, and each investor holds shares in the company. A custodian is appointed to safe-keep the assets on behalf of the company. An investment fund established as a company may be self-managed, or appoint a management company. It must have as its aim the spread of investment risk.

The paid up share capital of the company must at all times equal the net asset value of the company, the shares of which have no par value. An investment company may be structured as a stand-alone fund or an umbrella fund. An open ended investment company with variable capital may be regarded as similar to a “SICAV” or an “OEIC”.

In terms of applicable Irish company law, non-UCITS investment funds which are established as investment companies are governed by Part XIII of the Companies Act 1990. For UCITS established as investment companies, the provisions of the Companies Acts apply, save to the extent that these are amended by the UCITS Regulations. Both non-UCITS and UCITS are also governed by the relevant Notices issued by the Central Bank.

The constitutional document of an investment company is the memorandum and articles of association. Liability of shareholders in a UCITS or non-UCITS fund established as an investment company is limited.

A typical investment fund company structure is illustrated below.
**Unit Trust**

A unit trust is created by a trust deed entered into by the trustee and the manager of the fund and the use of a management company in this structure is a necessity. It is a contractual arrangement and is not a separate legal entity, with the result that a unit trust does not have power to enter into contracts in its own name. In general, the manager or trustee enters into contracts for the account of a unit trust. The trustee is registered as the legal owner of the assets on behalf of the investors, who receive units, each of which represents a beneficial interest in the assets of the unit trust.

As distinct from a non-UCITS investment fund formed as a company, there is no requirement for a non-UCITS unit trust to operate on the principle of risk spreading. A UCITS unit trust is governed by the UCITS Regulations and a non-UCITS unit trust is governed by the Unit Trusts Act 1990, and each is governed by the relevant Notices issued by the Central Bank.

A typical unit trust structure is illustrated below.
Common Contractual Fund

The CCF has a similar structure to FCPs (Fonds Commun de Placement) established in Luxembourg. A CCF is an unincorporated body established by a manager pursuant to which the investors, through contractual arrangements, participate and share in the property of the fund as co-owners of the assets of the fund. As a co-owner, each investor will hold an undivided co-ownership interest as a tenant in common with the other investors.

The CCF is constituted under contract law (and not company law or trust law) by way of deed of constitution executed under seal between the manager and the custodian and does not therefore have a distinct legal personality. Accordingly, the CCF cannot assume liabilities and, in the same way as for a unit trust, the manager and the custodian enter the various agreements for and on behalf of the CCF. The assets of the CCF are entrusted to a custodian for safe-keeping. A CCF may be structured as a stand-alone fund or an umbrella fund. There is no requirement for a non-UCITS CCF to operate on the principle of risk spreading.

The main feature which differentiates CCFs from other investment funds is that a CCF is totally tax-transparent. This means that investors in a CCF are treated as if they directly own a proportionate share of the underlying investments of the CCF rather than shares or units in an entity which itself owns the underlying investments.

UCITS established as CCFs are governed by the UCITS Regulations, and non-UCITS CCFs are governed by the Investment Funds Act 2005, and each is governed by the relevant rules issued by the Central Bank.

A typical CCF structure is illustrated below.
**Investment Limited Partnerships**

In addition to the structures outlined above, a non-UCITS can be established as an ILP. UCITS funds cannot be structured as ILPs.

ILPs can be established under the ILP Act for investment in property or securities of any kind with the authorisation of the Central Bank. An ILP is created by contract between the general partner(s) and one or more investors who participate as limited partner(s), and will be subject to the Central Bank’s Notices.

The ILP is not incorporated and is not a separate legal entity. An ILP does not therefore have power to enter contracts in its own name. The general partner usually enters into contracts for the account of the ILP. As with each of the structures referred to above, the custodian is required to safe-keep the assets.

There is no requirement under the ILP Act for an ILP to operate on the principle of risk spreading. ILPs can be dedicated investment vehicles or offered on a private placement or public basis. There is no limit on the number of limited partners permitted for an ILP.

The general partners of an ILP are responsible for the management of its business and are liable for the debts and obligations of the ILP. In general, a limited partner’s liability will not exceed the amount of its capital contribution or commitment to the ILP. However, a limited partner who participates in the conduct of the business of an ILP in its dealings with third parties may be liable on the insolvency of the ILP for debts incurred by the ILP in the period during which it participated in the conduct of its business, as if such limited partner had been a general partner during this period. A limited partner’s liability in this regard is limited to debts or obligations incurred by the ILP in favour of a third party who, at the time that the debt or obligation was incurred, reasonably believed, based upon the conduct of the limited partner, that the limited partner was a general partner. The ILP Act specifies certain activities which will not be deemed to constitute participation by a limited partner in the business of an ILP.

In practice, given the availability of establishing a non-UCITS investment fund through an investment company, unit trust or CCF, the use of an ILP as a fund vehicle has been limited.

A typical ILP structure is illustrated below.
3 Appropriate Regulatory Status – UCITS and Non-UCITS
The specific regulations applied by the Central Bank to an investment fund will depend on the nature of the investors to whom the fund is to be sold and the specific investment policies of the fund. As mentioned above, the regulatory framework in Ireland is divided between UCITS and non-UCITS investment funds. The primary difference in the regulation of each relates to the nature of investments which they are permitted to make, and to the particular investment rules and borrowing restrictions imposed by the Central Bank under the applicable Irish legislation.

3.1 UCITS

UCITS are diversified, limited leverage, open ended investment funds whose object must be to invest capital raised from the public in transferable securities. UCITS are open ended insofar as investors must generally be entitled to redeem their shares or units on request at least twice per month at regular intervals.

Eligible Investments

The successful implementation in Ireland of UCITS III, the Product Directive and the Eligible Assets Directive resulted in a significant increase in the range and diversity of UCITS funds being authorised. These developments culminated in the present approach whereby instead of simply establishing a list of specific financial instruments and transactions which are permitted investments, a set of criteria exists according to which a class of financial instrument can be assessed as falling within or outside the UCITS framework.

A summary of these criteria is set out at Appendix I (A) to this brochure. In summary, a UCITS must invest at least 90% of its assets in transferable securities or liquid financial assets listed or traded on recognised exchanges or markets. These include shares in companies (and other securities equivalent to shares), bonds and other forms of securitised debt, and other negotiable securities which carry the right to acquire any such transferable securities. They also include money market instruments, deposits, units in other collective investment funds and exchange traded or OTC financial derivative instruments. A UCITS can use these derivative instruments for investment purposes as well as for efficient portfolio management purposes.

This broad range of eligible investments permits UCITS to adopt a diverse variety of investment strategies. In particular, subject to protections in respect of risk management and global exposure, a UCITS can engage in certain strategies which would traditionally have been regarded as alternative investment strategies, for example certain long/short strategies or structured product strategies (including funds whose strategies are linked to eligible indices, funds which use systematic trading models and/or funds that have capital protection features).

Investment and Borrowing Restrictions

A UCITS must invest in accordance with the investment and borrowing restrictions which derive from the UCITS Directive. A summary of the principal investment restrictions is set out in Appendix I (B). Conditions are also imposed on the use of various instruments and techniques for efficient portfolio management.

The Central Bank may grant a derogation from certain fund investment limitations for up to six months following authorisation, provided that the UCITS continues to observe the principle of risk spreading. Otherwise, if investment limitations are exceeded for reasons beyond the control of a UCITS, or as a result of the exercise of subscription rights, the UCITS must take steps to remedy the situation taking due account of its investors’ interests.

A UCITS may borrow up to 10% of the net asset value of the fund, provided that the borrowing is on a temporary basis.

EU Passport

One of the primary objectives of the UCITS Directive is to facilitate the harmonisation of financial services across EU Member States by introducing an investment vehicle which could be established and regulated in one EU Member State and which would have an “EU passport” enabling its units or shares to be marketed and sold in all other EU Member States. At present, this is the significant advantage in selecting the UCITS regulatory framework over a non-UCITS vehicle for an Irish domiciled investment fund, although an EU passport for certain non-UCITS funds will be available in the future (see the section on the AIFMD below).

In principle, by authorising funds as UCITS, all EU Member States must operate in accordance with the same conditions derived from the UCITS Directive. In practice, however, there has been divergence between different EU Member States in their interpretation of the UCITS Directive. The track record of the Central Bank, as the competent authority in Ireland, has been to apply a sophisticated and enlightened approach in its interpretation of the UCITS Directive.

In terms of the procedure for activating permitted cross-border sales and marketing, a UCITS authorised in one EU Member State cannot be prohibited from selling or promoting the sale of its shares or units to the public in any other EU Member State, provided that the competent regulatory authorities in that other EU Member State have been notified of its intended activities. The UCITS must, however, comply with local marketing and advertising requirements and appoint a local facilities agent.
Risk Management Process
Where financial derivative instruments are utilised by a UCITS, whether for investment purposes or efficient portfolio management, the Central Bank requires a risk management process with respect to the engagement and ongoing use of financial derivative instruments. This means that a UCITS must establish an extensive system of risk limitation in order to ensure that the risks involved in using financial derivative instruments are properly managed, measured and monitored on an ongoing basis. This involves designing, implementing and documenting a risk management process in order to meet key requirements of investor protection.

A UCITS must provide the Central Bank with details of its proposed financial derivative instruments activity and risk assessment methodology, including information in relation to:

- permitted types of financial derivative instruments, including embedded derivatives in transferable securities and money market instruments;
- the underlying risks;
- relevant quantitative limits and how these will be monitored and enforced; and
- methods for estimating risks.

A UCITS is required to submit a report to the Central Bank on its financial derivative instrument positions on an annual basis. The report, which must include information under the different categories identified above, must be submitted with the annual report of the UCITS.

Measurement of Risk
In terms of measurement of risk, exposure through the use of financial derivative instruments can be calculated through a commitment, absolute VaR (value at risk) or relative VaR approach. It is the responsibility of the UCITS to select an appropriate methodology to calculate global exposure, although in certain circumstances (including, for example, a UCITS using significant or complicated financial derivative instruments strategies), a UCITS must use a VaR approach. A UCITS using the commitment approach must ensure that its global exposure does not exceed its total net asset value (i.e. it may not be leveraged in excess of 100% of net asset value). In the case of a UCITS using the relative VaR approach, the VaR of the UCITS portfolio may not be greater than twice the VaR of the reference portfolio; the VaR of a UCITS using the absolute VaR approach cannot exceed 20% of its net asset value.

Cross-Border Mergers of UCITS
Having identified a trend of comparatively smaller sized funds in terms of assets under management within the European funds landscape, in July 2011 the European Commission introduced a common procedure for facilitating European fund mergers in order to support fund rationalisation and to make it easier for the fund management industry to exploit business opportunities across the EU through the efficient restructuring of funds. The EU framework for UCITS mergers applies harmonisation of UCITS merger authorisation and investor information requirements. It is intended that these measures will facilitate greater economies of scale, associated cost savings and will assist with the appropriate consolidation of funds within the EU whilst at the same time ensuring investor protection.

3.2 Non-UCITS Funds
To facilitate fund sponsors who wish to establish funds with features that do not adhere to the restrictions imposed by the UCITS Directive, there is also a range of non-UCITS fund vehicles in Ireland which can be used to structure products for the retail or professional investor market.

Non-UCITS investment funds are governed solely by Irish as opposed to EU law. Although they therefore do not have the benefit of the EU passporting provisions, non-UCITS investment funds facilitate a broader investment style and range of potential investments. Such funds are often established for sale to institutional investors and high net worth individuals.

General investment diversification and borrowing restrictions for all non-UCITS funds are applied by the Central Bank. However, these general restrictions are modified, superseded or disapplied by specific regulations issued by the Central Bank for particular types of funds such as venture capital funds, property funds, futures and options funds, feeder funds and funds of funds. They may also be disapplied on a case-by-case basis for PIFs and they do not apply to QIFs.

Non-UCITS investment funds domiciled in Ireland may be structured as retail funds, PIFs or QIFs, and the guide below summarises the key features of each.

Retail Funds
Retail funds are, as the name suggests, available to the widest pool of investors. They can be effectively classed as funds which have no regulatory minimum subscription. The Central Bank has set out general investment and borrowing restrictions for all retail non-UCITS funds, a summary of which is set out at Appendix II of this brochure. In practice, because of the similarities between the investment limitations imposed on non-UCITS retail funds and UCITS, the majority of fund sponsors seeking to establish open ended retail funds in Ireland elect for UCITS status in order to benefit from the cross-border marketing advantages of a UCITS. In terms of non-UCITS retail funds of hedge funds, details regarding these structures are contained in section 4 of this brochure under the heading Fund of Funds.

PIFs
The Central Bank may, on request, disapply the general non-UCITS fund investment and borrowing restrictions described above in the case of non-UCITS funds which qualify as PIFs and, as a rule of thumb, the Central Bank is generally willing to double each of the retail investment restrictions
for a PIF. The Central Bank also generally allows a PIF to engage in leverage and the limit for same can be agreed with the Central Bank on a case by case basis.

To qualify as a PIF, a fund must have a minimum initial subscription requirement of €100,000. In the case of an umbrella fund, this minimum initial subscription requirement will be satisfied where the aggregate of the investments of an investor in any of the sub-funds of the umbrella fund is equal to, or exceeds €100,000. Institutions which have discretionary mandates over individual accounts may group amounts of less than €100,000 on behalf of their clients to satisfy this requirement.

In practice, the Central Bank will impose certain concentration and leverage limits on PIFs, but the ability to seek derogations from certain of the concentration requirements makes PIFs suitable vehicles for funds wishing to adopt more sophisticated investment strategies than those which are permissible for retail funds.

QIFs

The Central Bank automatically disapplies all of the general non-UCITS fund investment and borrowing restrictions in the case of non-UCITS funds which qualify as QIFs. Accordingly, the Central Bank does not impose any investment concentration or leverage restrictions of any nature on QIFs, save that in the case of investment companies, they must observe the general principle of risk-spreading. This risk-spreading requirement derives from the Companies Act 1990 and so does not apply to unit trusts, CCFs or ILPs. If a fund intends to engage in OTC trades whereby assets of the fund are passed outside of the control of the custodian such that the OTC counterparty may pledge, lend, rehypothecate or otherwise utilise the assets for its own purposes, the Central Bank will expect the fund to limit its exposure to each OTC counterparty to 40% of net assets (unless the fund intends to appoint a prime broker, in which case it may have unlimited exposure to such prime broker).

To qualify as a QIF, a fund must:

• have a minimum initial subscription requirement of €100,000. The aggregate of an investor’s investments in the sub-funds of an umbrella fund can be taken into account for the purposes of meeting this requirement;

• sell its shares or units to qualifying investors. Qualifying investors are defined to include: (1) an investor who is a professional client under MiFID; or (2) an investor who receives an appraisal from an EU credit institution, a MiFID firm or a UCITS management company that the investor has the appropriate expertise, experience and knowledge to adequately understand the investment in the scheme; or (3) an investor who certifies that they are an informed investor by confirming that (a) they have such knowledge of and experience in financial and business matters as would enable the investor to properly evaluate the merits and risks of the prospective investment; or (b) that the investor’s business involves, whether for its own account or the account of others, the management, acquisition or disposal of property of the same kind as the property of the QIF; and

• qualifying investors must certify that they meet the definition of qualifying investor set out above and that they are aware of the risks involved in the proposed investment and of the fact that inherent in such investment is the potential to lose all of the sum invested.

Exemptions from the minimum subscription and qualifying investor criteria may be provided under certain conditions to the management company, the promoter or an affiliate, the investment manager, a director of any of those entities or, subject to certain further conditions, an employee of any of those entities.

The absence of Central Bank-imposed investment restrictions has resulted in QIFs becoming attractive vehicles for the establishment of highly leveraged funds, funds pursuing investment policies which involve high concentrations of investments in individual issuers, private equity or venture capital funds, property funds and emerging market funds.

One day authorisation for QIFs

A QIF can be authorised by the Central Bank within 24 hours of a single filing of documents.

Authorisation can be granted on the day following the date of filing of appropriate QIF documentation provided that (i) the Central Bank receives a completed application by 3.00 pm on the filing date; (ii) all relevant parties to the QIF (eg the promoter, directors and service providers) have been approved in advance of the application; and (iii) the fund certifies that it complies with certain agreed parameters codified in the Central Bank’s QIF application form.

This fast-track procedure has been in operation since February 2007 and is a significant development in expediting the speed to market and attractiveness of QIFs.
4  Fund Structures and Special Features
As described above, an Irish domiciled fund may be regulated as a UCITS or non-UCITS investment fund and promoters have a choice of a wide range of fund structures including investment companies, unit trusts, ILPs and CCFs. Each of the above structures may be subject to further variations which best suit the investment policy or distribution intentions of a fund promoter or investment manager. For example, a fund may be structured as a separate stand-alone fund or as an umbrella fund with multiple sub-funds. All funds can be structured to have different share classes to accommodate different currency denominations, distribution policies, charging structures or uses of financial derivative instruments. Funds can also be established as feeder funds or, in the case of non-UCITS, hybrid asset allocation vehicles.

A review of some of the various structures and special features or strategies which may be availed of are described below.

4.1 Umbrella Funds

It is possible to constitute both UCITS and non-UCITS funds as umbrella funds comprising a number of separate sub-funds with different investment policies. Each sub-fund of an umbrella fund must be approved by the Central Bank. In the case of a UCITS umbrella fund, each sub-fund must comply with the requirements of the UCITS Regulations. The exchange of shares or units between sub-funds of an umbrella fund does not incur any Irish tax liability.

A typical umbrella fund structure for an investment company is illustrated below.

Each sub-fund within an investment company is represented by a different series of shares. The fund vehicle may be structured so that one sub-fund of the umbrella can invest in another sub-fund of the same umbrella, which greatly facilitates fund promoters seeking to avail of economies of scale within their own investment fund complexes, and to rationalise fund offerings.

Segregated Liability between Sub-Funds

The Investment Funds Act 2005 enables complete segregation of liability for sub-funds of an umbrella fund which is structured as an investment company and the liabilities of a sub-fund are discharged solely from the assets of that sub-fund. For investment fund companies that avail of this provision, there will be implied into every contract, agreement, arrangement or transaction entered into by an umbrella fund availing of segregated liability, a term that any parties contracting with the umbrella fund shall not seek to have recourse to any assets of any sub-fund in discharge of any liability which was not incurred on behalf of that sub-fund. The sub-fund of an umbrella fund will not be a separate legal person but the fund may sue and be sued in respect of a particular sub-fund, and may exercise the same rights of set-off between sub-funds as apply at law in respect of companies.

Unit trusts and CCFs are normally structured to provide for segregated liability between sub-funds.
4.2 Multi-Class Funds

It is possible to establish UCITS and non-UCITS investment funds in which there are multiple classes of shares or units. In the case of an umbrella fund, these multiple classes of shares and units can be established within each sub-fund of the umbrella fund. These share or unit classes may be differentiated on the basis of currency, distribution policies or charging structures. They may also be used for the purpose of hedging currency or interest rate risk (including through the use of derivative instruments). The use of derivative instruments at share or unit class level is also permitted to provide a different level of capital protection or participation in the performance of an underlying portfolio or index. For PIFs or QIFs, the Central Bank will consider, on a case-by-case basis, proposals to use derivative instruments at share or unit class level for other reasons, for example to generate a leveraged return at share or unit class level or to provide an additional add-on exposure to that generated from the underlying portfolio.

A typical multi-class structure is illustrated below.
4.3 Master-Feeder Funds

A UCITS fund can be established as a feeder fund if it invests at least 85% of its assets in units of another UCITS and the remaining 15% of its assets are invested subject to certain restrictions in addition to the usual UCITS investment restrictions. In addition, the master UCITS may not itself be a feeder fund and may not invest in feeder funds and there must be a written agreement between the feeder UCITS and the master UCITS setting out matters such as dealing arrangements and access to information. Where the master UCITS and the feeder UCITS are managed by the same management company, this agreement may be replaced with internal conduct of business rules.

A non-UCITS fund can be established as a feeder fund if the sole object of the fund is investment in a master fund or as a hybrid feeder fund investing substantially all of its assets in a master fund but investing certain assets directly or hedging currency risks at the feeder fund level.

In the case of a non-UCITS feeder fund, the master fund must be authorised by the Central Bank or by a supervisory authority responsible for investor protection in the jurisdiction where the master fund is domiciled and providing, in the Central Bank’s opinion, equivalent investor protection to that provided in Ireland for similar funds. The Central Bank may provide derogations for QIFs in certain circumstances.

A typical master-feeder fund structure is illustrated below.
4.4 Fund of Funds

Both UCITS and non-UCITS retail funds may be established as a fund of funds investing in shares or units of other investment funds, referred to as underlying funds.

**UCITS Fund of Funds**

UCITS are permitted to invest in units of other UCITS. Not more than 20% of the net assets of a UCITS may be invested in any one underlying fund (each sub-fund of an umbrella fund may be regarded as a separate scheme for the purpose of applying this limit). To prevent layering of structures, any fund in which a UCITS invests must not be permitted to invest more than 10% of its net assets, in aggregate, in other funds. Where the underlying fund is managed by the same manager, or an affiliated manager, as the UCITS fund of funds, subscription or redemption fees must be waived by the underlying fund.

UCITS are also permitted to invest up to 30% in aggregate of the net assets in shares or units of non-UCITS funds, subject to the requirements that:

a) the underlying fund must be authorised under laws which provide for supervision considered equivalent to that provided under EU law and co-operation between the supervisory authorities must be ensured;

b) the relevant regulations to which the underlying fund is subject must provide for an equivalent level of shareholder protection to that provided under the UCITS Directive (in particular, segregation of assets, borrowing, diversification requirements and uncovered sales); and

c) the underlying fund must produce half yearly and annual reports.

**Non-UCITS Fund of Funds**

Non-UCITS funds can be established as a fund of regulated or unregulated funds.

A non-UCITS retail fund of regulated funds may not invest more than 20% of its net assets in any single underlying fund except that it may raise this limit to 30% of its assets in respect of one of the underlying funds in which it invests. A non-UCITS fund of funds which invests more than 10% of net assets in unregulated underlying funds, including hedge funds and other alternative investment funds, must include additional disclosures in its documentation, and there are certain requirements which dictate the eligibility of underlying funds for investment.

Where the underlying fund is managed by the same manager, or an affiliated manager, as the non-UCITS fund of funds, subscription or redemption fees must be waived by the underlying fund.

PIFs or QIFs may invest without limit in unregulated funds, however any investment in an underlying fund greater than 40% for a PIF or 50% for a QIF will be regarded as a feeder-type investment.

An indicative retail fund of funds structure is illustrated below
4.5 Closed Ended Funds

Where a fund does not provide any facilities whatsoever for the redemption of units at the holder’s request, it will be regarded as a closed ended fund. In 2005, the Prospectus Directive was implemented into Irish law and radically overhauled the law in Ireland in relation to the public offer of securities and their admission to trading on regulated markets.

The Prospectus Directive requires that a prospectus must be published if an issuer is seeking to list its securities on a regulated market (such as the ISE) or if it wishes to offer its securities to the public. The prospectus must be approved by a “competent authority”, which for Irish purposes is the Central Bank. Once approved in one Member State, the prospectus can be used to passport throughout the EU. The Prospectus Directive also establishes rules in relation to the content and form of prospectuses.

In the context of Irish investment funds, the Prospectus Directive applies only to closed ended investment funds, and accordingly, open ended funds are excluded from its ambit.

4.6 Property Funds

The Central Bank has established rules for the authorisation of property funds, and the Asset Management and Investment Funds Group has acted for a number of fund promoters in setting up investment funds structured as regulated property funds. Further to recent dialogue and consultation between the Irish Funds Industry Association and the Central Bank, current rules on property funds are being reviewed and will be formally updated and published. Pending publication, the Central Bank is applying greater flexibility to property fund applications on a case-by-case basis.

4.7 Hedge Funds

Traditional hedge funds are generally established as non-UCITS funds. The nature of the investment policy followed also means that they are generally established as PIFs or QIFs.

PIFs and QIFs may enter into prime broker relationships in the following circumstances:

- The assets passed to the prime broker which may be pledged, lent, hypothecated or otherwise utilised by the prime broker for its own purposes must not exceed 140% of the hedge funds’ indebtedness to the prime broker in the case of a PIF. In the case of a QIF, there is no limit on the extent to which assets may be passed to the prime broker;
- Arrangements must be put in place to mark positions to market daily;
- The prime broker must agree to return the same or equivalent assets to the fund;
- The prime broker agreement must incorporate a legally enforceable right of set-off for the fund;
- The prime broker must have a minimum credit rating of A-1 or equivalent or be deemed to have an implied rating of A-1 or equivalent by the fund; and
- The prime broker must be regulated as a broker by a recognised regulatory authority and it, or its parent company, must have shareholders’ funds in excess of €200 million.

Where the prime broker will hold assets of the fund, other than as provided for above, the prime broker must be appointed as sub-custodian to the fund.

The Central Bank does not review prime brokerage documentation, subject to confirmation from the fund’s legal advisors that the documentation is consistent with its rules regarding appointment of prime brokers.

It should be noted that it is possible to appoint a prime broker to a UCITS. However, the range of investment restrictions and limits on leverage and borrowings for UCITS means that many of the functions that would normally be associated with a prime broker may be limited or prohibited.

4.8 Alternative Investment Fund Managers

As part of the EU’s efforts to reform the financial regulatory environment in Europe, a directive on alternative investment fund managers (ie hedge fund managers) (the “AIFMD”) was adopted in November 2010 and is due to be implemented across the EU by July 2013. AIFMD has two main stated aims: (i) to establish a secure and harmonised EU framework for monitoring and supervising the risks that alternative investment fund managers pose to their investors, counterparties, other financial market participants and to financial stability; and (ii) to permit, subject to compliance with strict requirements, alternative investment fund managers to provide services and market their funds across the EU’s internal market (the so-called “passport”). Ireland is well placed in the lead up to the implementation of the AIFMD as the Irish regulatory regime already incorporates many of the provisions set out in the legislation.
4.9 Exchange Traded Funds

Regarding exchange traded funds (ETFs), it is worth noting that these are generally established in Europe as UCITS. The benefit of using UCITS for ETFs is the availability of a passport that enables the ETF to be registered for public distribution throughout the EU, as this greatly simplifies the process of listing the ETF on stock exchanges throughout the EU and marketing the ETF for sale to investors. The use of the UCITS structure also ensures that the fund will be managed in accordance with investment restrictions and operating conditions common to all members of the EU.

4.10 Money Market Funds

Subject to certain conditions, a fund may be categorised as a money market fund, certain of which may value their assets using an amortised cost valuation method. The principal conditions to be met are that the fund’s primary investment objective must be to maintain the principal of the fund while providing a return in line with money market rates. In addition, the fund’s investments must be restricted to high quality money market instruments.

4.11 Subsidiaries

Both UCITS and non-UCITS may set up wholly-owned subsidiaries whose sole object reflects the investment objectives and policies of its parent. Generally a subsidiary is used to reduce withholding tax payments on interest payments under double tax treaties between Ireland and other countries.

A subsidiary is subject to certain conditions laid down by the Central Bank. The principal conditions are that i) the directors of the fund must form a majority of the board of directors and they must maintain full control over the activities of the subsidiary; ii) share of the subsidiary must be held by the fund’s custodian on behalf of the fund; and iii) the fund’s administrator must confirm that it will value the underlying assets of the subsidiary in accordance with the Central Bank’s requirements. In addition, the prospectus or any supplement of the fund must disclose the name of the subsidiary and the fact that the subsidiary is wholly owned by the fund and the subsidiary’s constitutional documents must also include certain required provisions.
5 Selecting the Appropriate Vehicle and Structure
The decision as to which fund vehicle, regulatory framework or structure is most appropriate for any particular sponsor will be dependent upon a variety of considerations, some of which are set out below.

5.1 Investment Strategy

The choice of fund vehicle and structure is generally dictated by (i) the nature of the assets in which the fund intends to invest; (ii) the markets on which they are traded or if not listed or traded, the markets in which the issuers are located and the nature of the securities or instruments; (iii) whether investments will be diversified or highly concentrated; and (iv) whether the fund will engage in shorting or will employ other leverage techniques. For example, highly leveraged funds and funds having an investment strategy which involves the possibility of a high concentration in the securities of a single issuer must be established as non-UCITS funds.

The investment strategy to be pursued may also help to determine whether a fund should be established as an open ended, closed ended, or hybrid vehicle. Many funds investing in emerging market securities require an initial period where there are no redemptions (sometimes for as long as ten years) with a view to allowing the investment manager to concentrate on a long-term strategy for the fund without the fear of large redemptions in turbulent markets.

5.2 Future Product Development Plans

Where a fund sponsor ultimately intends to offer a variety of investment funds, consideration should be given to the establishment of an umbrella fund, even if only one fund will initially be offered to investors. Future sub-funds can be added to an umbrella fund in a short time frame and there may be administrative savings to be made in maintaining an umbrella fund as opposed to a series of stand-alone funds. It is not possible to mix UCITS and non-UCITS sub-funds in the one umbrella fund structure.

An umbrella fund also allows sponsors the ability to offer investors the flexibility of switching easily between sub-funds with different investment objectives and strategies in the event of changing market conditions or as the investor’s risk profile evolves. Many umbrella funds, for example, include liquidity or money-market options in addition to equity and fixed-income sub-funds.

In addition, a promoter may wish to structure a vehicle where one sub-fund of the umbrella fund can invest in another sub-fund of the same umbrella fund. This could greatly facilitate fund promoters seeking to avail of economies of scale within their own investment fund complexes and to rationalise their fund offerings.

5.3 Foreign Taxation Considerations

Taxation considerations for investors in various markets may also affect the choice of structure. For example, the CCF structure is specifically designed as a tax-transparent vehicle to provide investors with the benefits of double tax treaties between their home country and the country where the investment assets are located.

5.4 Target Market

If the fund is to be sold widely within the EU, or to a broad range of investors within one country in the EU, then it is preferable to establish a UCITS. The advantage of establishing a fund as a UCITS is that it can generally be sold without any material restriction to any category or number of investors in any EU Member State, subject to filing appropriate documentation with the relevant regulatory authority in the EU Member State(s) where it is to be sold. This avoids the burden of having to accommodate sales activity within private placement rules, which can be arbitrary and widely divergent between various countries and which may be abolished in 2018 as a result of AIFMD. For a discussion of the difference between UCITS and non-UCITS funds, please refer to section three of this brochure.

5.5 Proposed Distribution Network

Closely linked to the considerations raised by an analysis of the target market are the considerations raised by the proposed distribution network. Where funds are distributed through various agencies and channels in various geographic markets, it is often necessary to tailor the pricing structure accordingly. Multi-class funds allow promoters the opportunity to offer a range of shares best suited to individual categories of investors, with different fee levels applying across the various classes. This allows promoters to offer shares with various combinations of front-end loads, contingent deferred sales charges, or other sales or redemption charges, management fee arrangements or total expense ratios within the same sub-fund.

5.6 Speed of Authorisation

The authorisation process for QIFs allows authorisation in one day, subject only to the various advance approvals of the relevant parties to the fund and the certifications to be given in respect of compliance with the Central Bank’s requirements. The ability to achieve authorisation in a day is a material consideration for fund promoters in terms of rapid response to market demand and speed to market of a regulated product.
6 Approval of the Central Bank
The Central Bank is the regulatory authority responsible for the authorisation and supervision of investment funds established in Ireland, and for fund administration companies, trustees and custodians located in Ireland providing services to Irish and/or non-Irish domiciled funds.

6.1 Approval of Fund Promoter and Investment Manager

The Central Bank must be satisfied with the experience, expertise, reputation and resources of the promoter of an Irish domiciled investment fund and of the investment manager(s) responsible for investing the assets of the fund.

This Central Bank regards the promoter as the driving force behind creating the investment fund. It is the entity which decides what legal structure a fund will take, the proposed investment policy of the fund, where the fund invests and in what jurisdictions it will be sold. In the context of corporate funds, the fund promoter selects the board of directors and the various service providers (administrator, trustee, investment manager, distributor). For non-corporate funds, the promoter establishes or appoints the management company. The Central Bank will turn to the promoter should significant issues arise in relation to the fund.

An investment manager is the entity with discretionary authority to invest and manage the assets of the fund pursuant to the investment objective and policy of the fund as described in the fund’s prospectus. The promoter and the investment manager may be one and the same party or, alternatively, separate entities may act as promoter and investment manager. If the promoter and investment manager are the same entity, the Central Bank concurrently approves the promoter to also act as the investment manager. If the promoter does not propose to act as the fund’s investment manager, then the investment manager needs to seek separate approval.

In determining the suitability for approval, the Central Bank relies on a detailed application form which must be completed and filed prior to the filing of any fund documentation. Where the investment manager is the promoter of the fund then only one application form need be completed. This application form requires applicants to provide the Central Bank with the following information:

- type of investment fund it intends to establish, promote or manage;
- applicant’s ownership structure and regulatory status as well as the regulatory status of any other group companies;
- applicant’s activities, countries of operation, relevant experience and value of assets which the applicant has under discretionary management;
- curriculum vitae for the directors or relevant senior managers of the applicant;
- identity of the proposed administrator and custodian of the investment fund; and
- details of the distribution plans for the investment fund.

In addition to filing a signed application form, applicants are required to provide the Central Bank with the following documentation:

- a chart detailing the applicant’s group structure;
- latest audited accounts of the applicant and its parent company (the Central Bank would generally expect an investment manager to have capital of €635,000); and
- two references for the applicant.

It may be possible for the applicant to avail of a fast-track one week approval process where it holds an authorisation under MiFID implementing legislation in a Member State of the European Economic Area or is a credit institution regulated within the European Economic Area and can provide the necessary information as required by the Central Bank’s fast-track checklist together with an up to date confirmation of regulatory status. In other cases, the approval process generally takes approximately three to five weeks (the timing depends significantly on the speed which with responses to the Central Bank’s queries are provided).
6.2 The Management Company

A unit trust and a CCF must have a management company. An investment company may appoint a management company or operate on a self-managed basis.

A summary of the Central Bank’s requirements for the approval of a management company is set out below.

**UCITS Management Companies**

UCITS management companies are regulated under the UCITS Regulations and the Notices of the Central Bank. At the core of any application for a management company to manage UCITS is the requirement for a business plan. This is essentially a governance document or a regulatory compliance plan, setting out how the company will be run on a day-to-day basis and how it intends to comply with the Central Bank’s requirements in relation to certain key managerial functions. Where a UCITS management company delegates activities related to key managerial functions, the business plan must include procedures pursuant to which reports specific to the managerial functions are received and reviewed by designated directors.

A key requirement of the business plan is the necessity to demonstrate that the mind and management of the applicant company is in Ireland. The board of directors of the management company must ensure that it is actually operated and carries out its business on the basis of the model set out in the business plan.

A management company to a UCITS may also be authorised to engage in investment management and provision of administrative functions to the fund (including accounting services, valuation and pricing, regulatory compliance monitoring, maintenance of unit-holder register, distribution of income, unit issues and redemptions and contract settlements). In addition, the management company may be authorised to provide discretionary investment management services, and, as ancillary services, investment advisory and custody services.

A UCITS management company must have a minimum level of financial resources equivalent to one quarter of its preceding year’s total expenditure (as set out in its most recent audited accounts) or €125,000 plus an “additional amount”, whichever is greater. The additional amount of capital shall be equal to 0.02% of the amount by which the net asset value of the funds under management exceeds €250,000,000. The required total of the €125,000 and the additional amount shall not, however, exceed €10,000,000. A management company need not provide up to 50% of this additional amount if it (i) benefits from a guarantee of the same amount given by a credit institution or insurance undertaking and (ii) the form of guarantee is approved by the Central Bank.

Management companies of Irish UCITS generally delegate their day-to-day functions to third parties and have no employees, but they do hold periodic board meetings in Ireland and are tax resident in Ireland.

**UCITS Management Company Passport**

Since 1 July 2011, UCITS management companies can manage UCITS funds on a cross-border basis by virtue of the UCITS management company passport. This means that a UCITS authorised in one EU Member State may be managed by a management company established and authorised in another EU Member State.

“Self-managed” UCITS

Investment companies may opt to be “self-managed” and dispense with the appointment of a management company. While such “self-managed” UCITS investment companies must comply with many of the authorisation requirements management companies must satisfy, they are not subject to the same restrictive capital compliance regime as a UCITS management company. The minimum capital requirement for a self managed investment company is €300,000. This initial capital may be removed from the fund once it has received subscriptions from investors of at least €300,000. The self-managed investment company must also submit a business plan.

**Non-UCITS Management Companies**

The Central Bank must be satisfied as to suitability of a non-UCITS management company, its directors, shareholders, and share capital. A non-UCITS management company must have a minimum capitalisation of €125,000 or one quarter of its previous year’s total expenditure (as set out in its most recent audited accounts), whichever is the greater. A non-UCITS management company is not required to produce a business plan. As with UCITS, a non-UCITS investment company may opt to be “self-managed”.

6.3 Approval of Directors

The board of directors of Irish domiciled funds established as investment companies must include at least two Irish resident directors. The same requirement applies to management companies of Irish domiciled funds and general partners of ILPs.

All directors of Irish domiciled investment companies, and directors of any company acting as a “manager” of an Irish fund or as a general partner of an ILP, must be pre-approved by the Central Bank as part of its Fitness and Probity Regime. Sufficient information in respect of all directors must be submitted to the Central Bank by the directors themselves via the Central Bank’s on-line filing system. The directors are required to demonstrate, via an application form and the submission of supporting documents, that they are competent and capable; honest, ethical and able to act with integrity; and financially sound.

In addition to the Central Bank’s requirements relating to directors, a corporate governance code (the “Code”) applies to Irish investment funds and management companies. The Code is voluntary but operates on a “comply or explain” basis so that, where the board of any company decides not to comply with any provision of the Code, the reasons for non-compliance should be set out in its directors’ report or on its website. The Code provides that:

- the board of directors must have a minimum of three directors; a majority of non-executive directors; at least one independent director (who may not an employee of any service provider firm receiving professional fees from the fund); and at least one director who is an employee of the promoter or investment manager;
- each director must have sufficient time to devote to the role of director and associated responsibilities;
- there should be an informal annual review of the board membership and a formal review every three years;
- a non-executive chairman be appointed to the board;
- board meetings take place at least quarterly depending on the nature, scale and complexity of the fund or management company. (For non-UCITS funds, the Code provides that the board could meet less frequently if it believes this is justified, but this must be disclosed in the “comply or explain” statement in the annual report.); and
- conflicts of interest should to be taken into account in making appointments to the board and that there be documented procedures for dealing with conflicts, with an annual review of compliance with these procedures.

6.4 Selection of Custodian and Administrator

Irish domiciled funds must appoint a Central Bank-approved custodian for the safe-keeping of their assets and a Central Bank-approved administrator which is responsible for maintaining the books and records of the fund, calculating the net asset value of the fund and maintaining the shareholder or unitholder register. All of the world’s leading custodians and administrators are Central Bank-approved and have a presence in Ireland.

No single company may act as both management company, administrator or general partner on the one hand and custodian on the other, although affiliated companies of the same group may and regularly do perform these functions independently.

Custodian’s Duties

The custodian of an Irish domiciled fund is responsible not only for the safe-keeping of the assets of the fund and the settlement of trades, but also has trustee duties which require it to supervise the investment activities of the fund and to report to the shareholders or unitholders on an annual basis as to whether the fund has operated in accordance with its prospectus and the applicable regulations. The custodian must have a designated trustee officer with specific responsibilities for ensuring the discharge of these functions.

The Central Bank regards the custodian as a central party in safeguarding investors’ interests and a custodian of an Irish domiciled fund has particular responsibilities and duties pursuant to the Central Bank’s requirements. These include:

- ensuring that the sale, issue, repurchase, redemption and cancellation of shares or units effected by or on behalf of a fund are carried out in accordance with the Central Bank’s requirements and the fund’s constitutive documents;
- ensuring that the value of shares or units is calculated in accordance with the fund’s constitutive documents;
- ensuring that in each transaction involving the fund’s assets any consideration is remitted to it within time limits which are acceptable market practice in the relevant market;
- ensuring that the fund’s income is applied in accordance with its constitutive documents;
- enquiring into the conduct of the fund in each annual accounting period and reporting thereon to the investors in the form of a trustee’s report stating whether in the custodian’s opinion the fund has been managed in that period in accordance with its constitutive documents and the relevant regulations (including any investment or borrowing restrictions) and, if it has not been so managed, in what respects it has not been so managed and the steps which the custodian has taken in respect thereof;
- notifying the Central Bank promptly of any material breach of relevant regulations, conditions imposed by the Central Bank or provisions of the fund’s prospectus; and
- providing the Central Bank with such information and returns concerning the fund as the Central Bank may from time to time request.
In the case of a UCITS, the custodian is liable to the fund and the investors for any loss suffered as a result of its unjustifiable failure to perform its obligations or its improper performance of them. In the case of a non-UCITS fund, the custodian is obliged to exercise due care and diligence in the discharge of its duties and will be liable to the fund and the investors for any loss arising from negligence, fraud, bad faith, wilful default or recklessness in the performance of its duties. The liability of the custodian is not affected by the fact that it may have entrusted to a third party sub custodian some or all of the assets in its safe-keeping. In order to discharge its responsibility the custodian must exercise care and diligence in choosing and appointing a third party as safe-keeping agent and it must ensure that the third party has and maintains the expertise, competence and standing appropriate to discharge the responsibilities concerned. The custodian must maintain an appropriate level of supervision over the safe-keeping agent and make appropriate enquiries from time to time to confirm that the obligations of the agent continue to be completely discharged.

The European Commission intends to put forward a legislative proposal in early 2012 – colloquially referred to as “UCITS V” – on the UCITS custodian function. It is expected that this proposal will address, amongst other things, the following issues: i) the custodian’s duties (including the meaning of “safe-keeping”); ii) the liability of the custodian (for eg improper performance, loss of assets, sub-custodians); iii) eligibility criteria for custodians; and iv) supervision by national regulators and auditors.

Once the AIFMD is implemented across the EU in July 2013, the liability of a non-UCITS custodian will be such that where financial instruments held in custody are lost, the custodian is obliged (subject to certain exceptions) to return identical financial instruments or the corresponding amount to the fund without undue delay; in all other cases, the custodian will be liable for all other losses suffered by the fund or its investors as a result of the custodian’s negligent or intentional failure to perform its obligations.

Administrator’s Duties

In July 2011, the Central Bank replaced rules requiring certain activities to be undertaken in Ireland by an administrator approved for such purpose by the Central Bank with requirements governing the outsourcing of administrative services. Some of the key points regarding the proposed new outsourcing rules include the following: i) administrators will not be permitted to outsource core administration activities (defined as the final checking and release of net asset value calculation for dealing purposes and the maintenance of the shareholder register); ii) outsourcing shall not affect the administrator’s full and unrestricted responsibilities under fund legislation and the Central Bank’s requirements; iii) administrators must put in place a policy that covers all aspects of outsourcing; iv) the outsourcing service provider must have the ability, capacity and any necessary regulatory approvals to perform the outsourced functions reliably and professionally; and v) the outsourcing relationships must be fully documented by a formal contract or service level agreement between the parties which must contain certain mandatory provisions.

6.5 Re-domiciliation

Since September 2010, it is possible for investment funds established and operating in certain jurisdictions other than Ireland to re-register in Ireland. Previously, funds wishing to move to Ireland would have used mechanisms that provided for the creation of a new fund in Ireland, with the transfer of assets from the existing fund to the new fund. The new legal framework seeks to avoid the imposition of unnecessary procedural hurdles and expressly recognises that, for Irish law purposes, a migrating fund will not be treated in Ireland as a new entity, so that its existing identity and track-record will be preserved. The new process also ensures that the administrative aspects of creating a new fund are eliminated, as are any tax issues that previously may have arisen on moving assets between funds.
7 Fund Authorisation Process
7 Fund Authorisation Process

7.1 UCITS, Retail non-UCITS and PIFs

Approval of Fund Documentation

The first step in the fund authorisation process is obtaining approval for the promoter and investment manager of an Irish authorised fund (see section 6.1 in this regard). Once the promoter and investment manager have been approved by the Central Bank, the following documentation must be filed with the Central Bank for its review:

(i) Central Bank application forms appropriate to the fund;
(ii) Directors’ letter of application for authorisation of the fund;
(iii) Fund prospectus (and supplements as appropriate);
(iv) Custodian agreement where the fund is established as an investment company (not required if the fund is a unit trust or CCF); and
(v) Trust deed (if the fund is established as a unit trust).

The following documentation is filed with the Central Bank, along with various confirmations furnished by the legal advisers and service providers to the fund, on the day of the fund’s authorisation.

(i) Memorandum and articles of association where the fund is established as a company or deed of constitution if established as a CCF;
(ii) Certificate of incorporation where the fund is established as an investment company (not required for unit trust);
(iii) Management agreement where the fund is established as a managed investment company;
(iv) Investment management agreement;
(v) Administration agreement;
(vi) Prime brokerage agreement (note that while a UCITS, non-UCITS or PIF can appoint a prime broker the investment restrictions and limits on leverage and borrowings mean that many of the functions normally associated with prime brokers may be limited or prohibited) and sub-custody agreement (as necessary); and
(vii) Various confirmations from Matheson and the service providers.

Where the fund is a self-managed UCITS or is appointing a management company which requires approval, the management company/self-managed UCITS approval process can take place simultaneously with the fund authorisation process (see section 6.2 in this regard).

Matheson can prepare these documents in conjunction with the relevant service providers while the Central Bank is reviewing the applications for approval of the promoter and the directors.

Turnaround Time

The Central Bank will generally provide initial comments on the documents comprising the application within a two to three week period, on the basis that a completed application has been filed and draft documents submitted on application are in substantially agreed and final format and subject only to non-material amendments made in response to comments issued by the Central Bank.

On the basis that initial comments are addressed with outstanding issues negotiated and agreed and revised documents submitted to the Central Bank for further review, the Central Bank’s authorisation generally issues within six weeks of the filing date. This timeframe is dependent on the speed with which responses to any Central Bank queries are provided. Additional factors which can impact upon the precise time taken for authorisation would include the complexity or degree of novelty associated with the proposed fund, the volume of documentation in respect of other projects filed with the Central Bank for review, and the number of issues in respect of which derogations from the Central Bank’s policy need to be negotiated.

The fund cannot commence business until the letter of authorisation issues. However, prior to the Central Bank authorisation, the fund can produce a “red herring” draft prospectus, with appropriate qualification, for marketing purposes. These are employed to determine investor interest prior to launch.

A launch board meeting must be held once the Central Bank has confirmed that it has no further comments on the documentation or once it is clear that any material issues have been agreed with the Central Bank. At that point, the relevant documentation can be approved and executed on behalf of the fund. Original documents must be filed with the Central Bank by 12.00 noon on the day on which authorisation is required and if the fund is listing, the 48 hour documentation required pursuant to the listing must be submitted to the ISE. The review of the prospectus by the ISE takes place during the Central Bank’s review process so that approval should be forthcoming from the ISE at the same time. An investment fund must not commence to trade until the 48 hour period has expired and the shares/units have been admitted to listing. If it does, it will be required to prepare financial information for inclusion in the prospectus/listing particulars.

7.2 QIFs

As noted above in section 3.2, the approval procedure for QIFs is a streamlined one day process. Authorisation can be granted on the day following the date of filing of appropriate QIF documentation once the Central Bank receives a completed application by 3.00 pm on the filing date; all relevant parties to the QIF (eg the promoter, directors and service providers) have been approved in advance of the application; and the fund certifies that it complies with certain agreed parameters codified in the Central Bank’s QIF application form.
8 Taxation of Irish Domiciled Funds
8.1 Taxation of Funds

Irish domiciled funds are exempt from Irish tax on income and gains derived from their investment portfolios and are not subject to any Irish tax on their net asset value. Irish residents may invest in an Irish domiciled fund without affecting the tax-exempt nature of the fund. Individuals may not invest in a CCF (investment is limited in Irish tax legislation to institutional investors and companies only).

8.2 Taxation of Investors

Investors who are not Irish tax resident may receive distributions from Irish domiciled funds without the deduction of any Irish withholding tax. Similarly, redemptions and transfers of units by such investors may take place without the imposition of any Irish tax. Funds must normally obtain declarations from investors confirming their non-resident status. These declarations can be incorporated in the fund’s standard application form. However, where funds are not marketed to Irish investors and certain approved measures are put in place, investor declarations are not required. CCFs are not required to obtain investor declarations (due to their tax transparent nature).

Irish withholding tax is generally deducted by funds (other than CCFs) from distributions to Irish tax resident investors and on disposals and redemptions of units by Irish tax resident investors. The rate of withholding tax is currently 30% or 33% (depending on the type of payment). However, exemptions from this withholding tax are available for certain categories of Irish investors such as pension funds, life assurance companies and other Irish domiciled funds.

8.3 Treaty Access

The Irish tax authorities consider that Irish domiciled funds (other than CCFs) are generally entitled to the benefits of Ireland’s extensive and expanding tax treaty network. However, the availability of treaty benefits in any particular case will ultimately depend on the relevant tax treaty and the approach of the tax authorities in the treaty country. Consequently, treaty access needs to be reviewed on a case-by-case basis.

Because CCFs are tax transparent under Irish law, the Irish tax authorities do not view them as capable of benefiting from the Irish tax treaty network. As a result, the relevant tax treaty is likely to be between the source country (where the CCF’s investment is located) and the unitholder’s country. It is generally advisable to obtain a specific tax ruling from the source country prior to making any investment where treaty benefits will be sought.

8.4 VAT and Transfer Taxes

The provision of management and administration services to an Irish domiciled fund is exempt from Irish VAT. However, other services (such as custody, legal and accounting services) can result in an Irish VAT liability for Irish domiciled funds. Irish funds may not recover such VAT unless, in some circumstances, the nature of the fund’s assets and the location of the assets permit recovery.

For non-Irish resident unitholders, no Irish transfer taxes apply to the transfer, exchange or redemption of units in Irish domiciled funds. No capital duty is payable on the issue of fund units.
9 Funds Irish Stock Exchange Listing
The ISE is an internationally recognised, regulated exchange for the listing of Irish and non-Irish domiciled investment funds and it is widely regarded as one of the leading exchanges in the world for the listing of investment funds. A stock exchange listing on a recognised exchange in an OECD jurisdiction, such as the ISE, can be particularly important for the profile of a fund, attracting certain categories of institutional investors or investors in certain jurisdictions who are prohibited or restricted from investing in unquoted securities.

In addition to the recognised regulatory status of the ISE, other factors such as speed and efficiency of listing, and comparative cost effectiveness, have contributed to the development of Ireland as a premier international centre for the listing of investment funds domiciled in Ireland and elsewhere. The listing process can normally be completed within four weeks of submission of relevant documents and, in the case of Irish domiciled funds, it can be completed contemporaneously with the Central Bank’s authorisation process.

The ISE is prepared to list Irish and non-Irish domiciled open ended and closed ended funds, whether constituted as investment companies, unit trusts, ILPs or CCFs.

Umbrella funds may be listed, through the approval by the ISE of the umbrella and the shares in each sub-fund, or each class of shares within each sub-fund, as the case may be, can be listed as required. The ISE Investment Fund Listing Rules require that listing particulars or an equivalent offering document be prepared for the purposes of listing. The listing requirements for Irish domiciled funds which are authorised by the Central Bank have been substantially streamlined and, in the case of QIFs, many of the listing requirements are disapplied.

With respect to an application for listing on behalf of a fund established as a closed ended fund, there are additional conditions and disclosure requirements. Since 2005, closed ended funds listing on the ISE must be compliant with the requirements of the Prospectus Directive and the domestic regulations and rules published thereunder. Approval pursuant to the Prospectus Directive facilitates cross-border marketing within the EU.

In the absence of a specific derogation from the ISE, funds domiciled in unregulated jurisdictions which apply for ISE listing must be confined to sophisticated investors, ie investors whose initial subscription is not less than US$100,000. Jurisdictions such as the Cayman Islands and the British Virgin Islands are regarded as "unregulated jurisdictions". There is no such requirement for funds domiciled in regulated jurisdictions such as an EU Member State, Jersey, Guernsey, Isle of Man or Bermuda or a fund which has been authorised in Hong Kong by the Securities & Futures Commission.

The ISE requires that the trustee or custodian of the fund has suitable and relevant experience and expertise in the provision of custody services. A further condition is that the custodian or trustee of a fund must be separate legal entity to the investment manager and any investment adviser, although it can be an affiliated entity.

### 9.1 Listing Particulars

As the ISE does not regard the listing particulars as a marketing document it will not allow the inclusion of what it considers to be marketing information, except to the extent necessary to facilitate investors in making a fully informed assessment as to the nature of the fund and the quality of its manager and investment adviser.

In assessing a fund’s application for listing, the majority of the matters which must be addressed in the listing particulars would be addressed in the fund’s prospectus in any event and the prospectus can often be used as a base from which to produce listing particulars.

The ISE must be satisfied with the particular investment policy and restrictions of the fund and in this regard, as a general rule, the listing particulars must state that:

- legal or management control of underlying investments will not be taken. This does not preclude the fund from investing in the form of partnership arrangements, participations, joint ventures and other forms of non-corporate investment. The ISE may permit derogations in the case of feeder funds, venture capital or property funds;

- no more than 20% of the value of the gross assets of an applicant may be lent to or invested in the securities of any one issuer (including the issuer’s subsidiaries or affiliates). The 20% rule does not apply to investment in securities issued or guaranteed by a government, government agency or instrumentality of any EU Member State or OECD Member State or by any supranational authority of which one or more EU or OECD Member States are members, and any other state approved for such purpose by the ISE. In addition, the rule does not apply to index tracker funds or to QIFs; and

- the investment policy set out in the listing particulars will be adhered to for at least three years following the listing and may not be changed in a material manner without shareholder approval.

The ISE will list multi-adviser funds provided that the manager of the fund undertakes to monitor the portfolio to ensure compliance with ISE diversification requirements. The ISE will require that no more than 40% of the gross assets of a fund be allocated to any one trading adviser or fund. This limit is disapplied to QIFs.
9.2 Ongoing Requirements

As regards continuing obligations of a fund listed on the ISE, the general principle is that any information necessary to enable shareholders to appraise the position of the fund or which might reasonably be expected to have a material effect on market activity in, and prices of, shares or units in the fund must be notified to the ISE. In addition, there are specific continuing obligations including for example:

- the fund (other than a QIF investment company or ILP) must prepare a half-yearly report on its activities during the first six months of each financial year and this report must either be sent to shareholders or made available to them in a manner acceptable to the ISE within four months of the end of the period to which it relates. A copy of the report must be sent to the ISE;
- the fund must prepare an annual report and audited accounts within six months of the end of the financial period to which they relate and this annual report must be sent to shareholders, with a copy sent to the ISE;
- drafts of all circulars and other communications to shareholders must be sent to the ISE;
- the fund must provide notification to the ISE of (and in some cases obtain prior approval for) various matters, including:
  
  (a) any significant change in the directors, manager, trustee or custodian, investment manager, prime broker, administrator or auditor of the fund;
  (b) any proposed or actual material change in:
     (i) the general character or nature of the operation of the fund;
     (ii) the investment policy and/or objective of the fund;
     (iii) investment, borrowing and/or leverage restrictions; or
     (iv) the fund’s constitutional document.
  (c) any change in the frequency of calculation of the net asset value or any material change in the fund’s redemption policy;
  (d) any material change in the fees payable by the listed fund or material change in its material contracts;
  (e) any intention to renew, vary or terminate the fund; and
  (f) any other information necessary to enable the shareholders to appraise the position of the fund and to avoid the establishment of a false market in shares or units in the fund.
- the net asset value of the fund units must be calculated at least every calendar quarter and notified to the ISE immediately. Any suspension of such calculations must also be notified to the ISE;
- details of dividend decisions must be notified to the ISE; and
- details of any changes in shareholdings in the fund held by directors must be notified to the ISE.
10 Continuing Obligations
An Irish domiciled fund must submit monthly, half-yearly and annual reports to the Central Bank, containing certain prescribed financial information on the fund including, in the case of half-yearly and annual reports, a detailed statement of assets and liabilities and a detailed analysis of the portfolio. The annual reports must be audited. QIFs established as investment companies or ILPs are not required to prepare half yearly reports.

Irish domiciled fund management companies and any company acting as general partner of an ILP must submit half-yearly financial and annual audited accounts to the Central Bank. Annual audited accounts of a non-resident general partner of an ILP and of its shareholders, and annual audited accounts of the shareholders of an Irish authorised management company or of the sponsor of an investment company, together with annual audited accounts of the investment manager, must be submitted to the Central Bank.

There are certain other matters which the Central Bank must be notified in advance of, and must approve. These include any proposed changes to the constitutive documents of an Irish fund, any proposed material changes to the prospectus, any proposed changes to the composition of the board of directors and any proposed increases in the fees payable out of the assets of the fund.
11 Definitions and Useful Terms
AIFMD means the Alternative Investment Fund Managers Directive, which was adopted in November 2010 and will be transposed into the national laws of the EU Member States by July 2013;

CCF means a common contractual fund, an unincorporated body established by a manager pursuant to which the investors, by contractual arrangements, participate and share in the property of the collective investment fund as co-owners of the assets of the fund;

Central Bank means the Central Bank of Ireland, the body with responsibility for authorisation and ongoing supervision of investment funds and service providers in Ireland;

Companies Acts means the principal legislation applying to Irish companies and pursuant to which investment funds are established as investment companies;

Eligible Assets Directive means the EU Directive on Eligible Assets for UCITS of March 2007, which was transposed into Irish law by domestic regulations in December 2007;

EU means the European Union;

EU Member State means a member state of the European Union;

IFSC means the International Financial Services Centre, established by the Irish government for the purposes of fostering an international financial services industry in Ireland;

Investment Funds Act 2005

ILP means an investment limited partnership, formed under the ILP Act;

ILP Act means the Investment Limited Partnership Act 1994, pursuant to which investment funds are established as investment limited partnerships;

ISE means the Irish Stock Exchange, an internationally recognised, regulated exchange which lists Irish and non-Irish domiciled investment funds;

MiFID means the EU Markets in Financial Instruments Directive 2004, which was transposed into Irish law by domestic regulations in 2007;

Notices means the notices issued by the Central Bank, in respect of both UCITS and non-UCITS, which set out the Central Bank’s specific requirements in relation to each;

OECD means the Organisation for Economic Co-operation and Development, an international body which works to address economic, social and governance matters, including financial stability, trade and investment, sustainable economic growth, technology, innovation, employment and development;

OECD Member State means a member state of the OECD;

PIF means a professional investor fund, which is an investment fund with a minimum initial subscription requirement of €100,000;

Product Directive means the EU Product Directive 2011, which was transposed into Irish law by domestic regulations in 2003;

Prospectus Directive means the EU Prospectus Directive 2003, which was transposed into Irish law by domestic regulations in 2005;

QIF means a qualifying investor fund, an investment fund with a minimum initial subscription requirement of €100,000 and which can only sell its shares or units to qualifying investors;

UCITS means Undertakings for Collective Investment in Transferable Securities, a creation of the UCITS Directive, implemented in Ireland by the UCITS Regulations;

UCITS Directive means the EU Directive of 2011, which was implemented in Ireland by the UCITS Regulations;

UCITS Regulations means Irish domestic regulations implementing the UCITS Directive; and

Unit Trusts Act 1990 means the principal legislation pursuant to which investment funds are established as unit trusts.
APPENDIX I

A UCITS is a diversified limited-leverage fund, the investment policy of which is subject to certain restrictions and must be to invest at least 90% of its assets in transferable securities or liquid financial assets listed or traded on recognised exchanges or markets.

(A) Criteria for Transferable Securities

“Transferable securities” include shares in companies (and other securities equivalent to shares), bonds and other forms of securitised debt, other negotiable securities which carry the right to acquire any such transferable securities, money market instruments, deposits, exchange traded and OTC financial derivative instruments, and units in other collective investment funds.

A summary of the criteria which apply in order to determine whether an instrument is a transferable security within the meaning of the UCITS Directive is set out below.

(i) Transferable securities are financial instruments which fulfil the following criteria:

(a) the potential loss which the UCITS may incur with respect to holding those instruments is limited to the amount paid for them;

(b) their liquidity does not compromise the ability of the UCITS to comply with its redemption frequency;

(c) reliable valuation is available for them as follows:
   - in the case of securities admitted to or dealt in on a regulated market, in the form of accurate, reliable and regular prices which are either market prices or prices made available by valuation systems independent from issuers;
   - in the case of other securities, in the form of a valuation on a periodic basis which is derived from information from the issuer of the security or from competent investment research;

(d) appropriate information is available for them as follows:
   - in the case of securities admitted to or dealt in on a regulated market, in the form of regular, accurate and comprehensive information to the market on the security or, where relevant, on the portfolio of the security;
   - in the case of other securities, in the form of regular and accurate information to the UCITS on the security or, where relevant, on the portfolio of the security;

(e) they are negotiable;

(f) their acquisition is consistent with the investment objectives or the investment policy, or both, of the UCITS;

(g) their risks are adequately captured by the risk management process of the UCITS.

Unless there is information available to the UCITS that would lead to a different determination, financial instruments which are admitted or dealt in on a regulated market shall be presumed not to compromise the ability of the UCITS to comply with its redemption frequency and shall also be presumed to be negotiable.

(ii) In particular, transferable securities shall be taken to include the following:

(a) units in closed ended funds constituted as investment companies or as unit trusts which fulfil the following criteria:
   - they fulfil the criteria described at (i) above;
   - they are subject to corporate governance mechanisms applied to companies;
   - where asset management activity is carried out by another entity on behalf of the closed ended fund, that entity is subject to national regulation for the purpose of investor protection;

(b) units in closed ended funds constituted under the law of contract which fulfil the following criteria:
   - they fulfil the criteria described at (i) above;
   - they are subject to corporate governance mechanisms equivalent to those applied to companies;
   - they are managed by an entity which is subject to national regulation for the purpose of investor protection;

(c) financial instruments which fulfil the following criteria:
they fulfil the criteria described at (i) above;
they are backed by, or linked to the performance of, other assets, which may differ from those referred to at point (a) above.

Where a financial instrument covered by point (ii)(c) contains an embedded derivative component, the requirements of the Central Bank in relation to efficient portfolio management apply to that component.

(B) Investment Restrictions

The investment policy of a UCITS is also subject to certain restrictions, a summary of which is set out below.

(i) subject to the paragraphs below, a fund may not invest more than 10% of its assets in transferable securities issued by the same issuer, and the total value of transferable securities held in issuers in which it invests more than 5% must not exceed 40% (this is known as the “5/10/40 Rule”);
(ii) the 10% limit referred to in paragraph (i) is raised to 35%, and the securities are not taken into account in applying the 40% limit, if the securities are issued or guaranteed by an EU Member State or its local authorities or by a non-EU Member State or by a public international body of which one or more EU Member States are members;
(iii) the 10% limit referred to in paragraph (i) is raised to 25% for certain bonds, and the bonds are not taken into account in applying the 40% limit, if the bonds are issued by a credit institution having its registered office in an EU Member State and subject to special supervision to protect bond holders;
(iv) a fund may invest in money market instruments, either dealt in on a regulated market or not (provided they are issued or guaranteed by central banks, local authorities or undertakings which have securities listed or dealt in on regulated markets) provided that not more than 10% of net assets are invested in money market instruments issued by any one body. This restriction is raised to 35% for transferable securities issued or guaranteed by an EU Member State, its local bodies or any other state or public international bodies of which an EU Member State is a member;
(v) the 10% limit referred to in paragraph (i) is raised to 20% where the fund is attempting to replicate the composition of a certain index which is sufficiently diversified, represents an adequate benchmark for the market to which it refers and is published in an appropriate manner. Where exceptional market conditions require, this limit may be raised to 35% of the net assets of the fund;
(vi) a fund may invest up to 20% of its net assets in the units of another single UCITS or up to 30% of its net assets in aggregate in the units of non-UCITS funds. Each sub-fund of an underlying UCITS umbrella fund may be regarded as a separate scheme for the purpose of applying this limit;
(vii) a fund may invest in deposits which are payable on demand and mature in no more than 12 months. The fund may invest up to 20% of its net assets in deposits with certain credit institutions, and up to 10% in deposits with other credit institutions;
(viii) a fund may invest in financial derivative instruments, both exchange traded and OTC, provided that the financial derivative instruments do not expose the fund to risks which it could not otherwise assume. The risk exposure of the fund to a counterparty in an OTC derivative transaction is limited to 10% of net assets, provided the counterparty is a certain type of credit institution, and 5% in all other cases. Furthermore, the exposure of each fund to financial derivative instruments must not exceed the net assets of the fund and the UCITS must have systems in place to ensure that the valuation of OTC derivatives are reliable;
(ix) a fund may not combine investment in transferable securities and money market instruments issued by a single body, deposits made with the same body and exposure to OTC derivatives transactions undertaken with the same body in excess of 20% of the net assets of the fund;
(x) the fund may invest 100% of its net assets in different transferable securities and money market instruments issued or guaranteed by a Member State of the EU, by its local authorities or agencies, or by another Member State of the OECD or by public international bodies of which one or more Member States of the EU are members, provided that such fund holds securities from at least six different issues and securities from one issue do not account for more than 30% of the net assets of such fund;
(xi) a fund may use techniques and instruments such as repurchase and reverse repurchase agreements, stocklending and techniques for protection against exchange rate risk, provided such techniques and instruments are used for efficient portfolio management purposes only;
(xii) a fund cannot engage in uncovered short sales;
(xiii) a fund cannot acquire shares or units carrying voting rights which would enable it to exercise a significant influence over the management of an issuer.

Funds may derogate from the restrictions for six months from launch, once they observe the principle of risk spreading.
APPENDIX II

The general investment and borrowing restrictions which apply to retail non-UCITS funds include the general rules listed below. Funds may derogate from these restrictions for six months from launch, once they observe the principle of risk spreading.

(i) a non-UCITS fund may not invest more than 10% of its assets in securities which are not listed or traded on a market approved by the Central Bank;

(ii) subject to paragraphs (iii), (iv) and (v) below, a non-UCITS fund may not invest more than 10% of its assets in securities issued by a single issuer;

(iii) a non-UCITS fund may not maintain more than 10% of its assets on deposit with any one institution. This limit is increased to 30% for deposits with, or securities evidencing deposits issued by, or securities guaranteed by credit institutions authorised in certain designated jurisdictions;

(iv) a non-UCITS fund may not invest more than 20% of its assets in other regulated investment funds unless the non-UCITS fund qualifies as a fund of funds, a feeder fund or a PIF;

(v) a non-UCITS fund may not own more than 10% of any class of security issued by any single issuer, unless the issuer is an open ended collective investment fund;

(vi) a non-UCITS fund may, with the approval of the Central Bank, invest up to 100% of its assets in different securities issued or guaranteed by a sovereign government or its agencies or by any supranational or public international bodies;

(vii) a non-UCITS fund cannot engage in uncovered short sales;

(viii) the borrowings of a non-UCITS fund may not exceed 25% of its net asset value. A non-UCITS fund may engage in leverage to a limited extent through the use of techniques and instruments permitted for the purposes of efficient portfolio management under the conditions laid down by the Central Bank. The net maximum potential exposure created by such techniques and instruments, or created through borrowing, or through both of these together, must not exceed 25% of the net asset value of the fund. The prospectus for a non-UCITS fund must clearly disclose the fund’s intention to engage in leverage; and

(ix) a non-UCITS fund may not acquire any shares or units carrying voting rights which would enable it to exercise significant influence over the management of an issuer.