



CP99: Central Bank of Ireland Consults with Industry on Amendments to the AIF Rulebook

The Central Bank of Ireland (“**Central Bank**”) has launched a consultation paper (“**CP99**”) outlining a number of proposed amendments to its Alternative Investment Fund (“**AIF**”) Rulebook.

We have set out below a classification table regarding the policy changes proposed in CP99, based on whether the changes represent new requirements, a UCITS alignment or a clarification of existing rules. We have also set out a table summarising the technical changes proposed in CP99.

The Central Bank’s consultation on these proposed amendments to the AIF Rulebook closes on **24 February 2016**. The partners at Matheson intend to prepare a response to CP99, and we will also contribute to industry feedback and responses. We would be delighted to speak with you should you have any queries in relation to the proposals, or to discuss your viewpoint regarding any aspect of the consultation.

1. Proposed Policy Changes

New	Alignment with UCITS Requirements	Clarification
<p>Additional requirements for registered AIFMs: Proposal to extend the requirements applicable to QIAIFs with registered AIFMs during the start up period in order to require the registered AIFM to treat all investors fairly, and to inform investors of any arrangement made by the depositary to contractually discharge itself of liability and any changes with respect to depositary liability.</p>	<p>Production of two sets of semi-annual accounts: Proposal to require AIFMs and AIF management companies to produce a second set of half-yearly accounts covering the second half of the financial year, thereby aligning the AIF Rulebook with the Central Bank UCITS Regulations in relation to the requirements applicable to UCITS management companies. This is required by the Central Bank in order to receive more complete and timely information and to allow it to compare and analyse reports from the first six months of the year with the second six months.</p>	<p>AIFM / entity within AIFM’s group - exemption from QIAIF eligibility criteria and minimum subscription amount: Proposal to extend the category of investors provided with an exemption from the QIAIF eligibility criteria and minimum subscription amount to specifically include the AIFM or an entity within the AIFM’s group, directors of the AIFM and employees of the AIFM either directly involved in the investment activities of the QIAIF or a senior experienced employee.</p>
<p>Reporting by depositaries: AIF depositaries are required to provide a quarterly return to the Central Bank which provides aggregate information on non-Irish authorised investment funds to which they provide depositary services. Under the current AIF Rulebook, depositaries are not required to provide data in respect of investment funds which are included in the return provided by the other entities. It is proposed to remove this provision so that depositaries must always report, even if another entity is also reporting separately, on the services they provide for that investment fund. The Central Bank is proposing this change in CP99 in order to ensure an accurate picture of the amount of activity carried out by each regulated entity in its own right.</p>	<p>Collateral and eligible counterparties: Proposal to align the rules applicable to collateral received by RIAIFs under an OTC derivative contract, a repurchase or a reverse repurchase agreement or a securities lending contract with those that are applied to UCITS; and an amendment to the requirements for eligible counterparties as part of this alignment, so that the rules would include a reference to a threshold which AIFMs must apply in their credit assessment of counterparties. It is also proposed to align the reference to external credit ratings in the investment rules for RIAIF money market funds and QIAIF money market funds with the approach taken to external credit ratings in the equivalent UCITS rules.</p>	<p>Holding of minimum capital by internally-managed AIFs: Proposal to clarify that the requirement to hold minimum capital as eligible assets and in a separate account does not apply to internally-managed AIFs.</p>
	<p>Capital and reporting requirements: Proposal to align the AIFM capital reporting requirements with those applicable to UCITS management companies as set out in the UCITS Regulations¹.</p>	<p>Bearer shares: Proposal to remove all reference to bearer shares in the AIF Rulebook as the issue of bearer shares by investment funds is no longer permitted under Irish company law.</p>

1. For AIF management companies, the Capital and Reporting Requirements section within CP99 also contains a reminder of the proposals pursuant to question one within CP97 ([Consultation on Central Bank Investment Firm Regulations 2015](#)) regarding changes to capital requirements for fund administrators, the outcome of which CP99 states is proposed to be tracked through to AIF management companies in the AIF Rulebook.

2. Proposed Technical Changes

Description of Proposal	Central Bank Rationale for Technical Change
Clarification of rules applicable to QIAIFs with a non-EU AIFM, pending a decision on the AIFMD third country passport	Proposal to amend Part III of the QIAIF chapter of the AIF Rulebook (additional provisions applicable to QIAIFs which have a registered AIFM) to state clearly that Part III applies to QIAIFs with a non-EU AIFM.
Removal of reference to the requirement for Central Bank approval of changes in direct or indirect ownership of AIFMs from the AIF Rulebook	The Central Bank is of the view that it is not necessary to incorporate this requirement in the AIF Rulebook on the basis that legislation provides that an AIFM cannot be authorised unless, <i>inter alia</i> , the Central Bank is satisfied as to the suitability of the shareholders who have qualifying holdings, and changes to ownership post authorisation must be notified to the Central Bank for decision.
Amendment of the rule regarding approval by the Central Bank of changes in direct or indirect ownership of AIF management companies	Correction of typographical error.
Removal of the reference to the rule whereby, as part of collective portfolio management functions, an AIFM may maintain client asset accounts for processing subscription and redemption monies and in such cases must comply with the Client Asset Requirements issued by the Central Bank pursuant to the MiFID Regulations of 2007	Proposal to remove this reference on the basis that the Investor Money Regulations are now applicable, and AIFMs are included within the scope of those regulations.
Clarification of rules that apply when a QIAIF invests more than 50% in a single unregulated investment fund	QIAIFs may invest in unregulated investment funds provided that investment in any one underlying fund is limited to 50% of net assets. This rule does not apply where the QIAIF has a minimum subscription of €500,000 and provides certain disclosures. In response to stakeholder feedback, the Central Bank proposes to clarify the current text in the AIF Rulebook on the basis that it gives rise to some misunderstanding where QIAIFs avail of this exemption, particularly with regard to an obligation to provide investors with periodic reports from the underlying unregulated investment fund.
Clarification of rules applicable to AIF subsidiaries	The AIF Rulebook requires that a subsidiary must not appoint any third parties or enter into any contractual arrangements unless the AIF is a party to such appointments or contractual arrangements. The Central Bank proposes to clarify that the reference to contractual arrangements is to those arrangements relating to the appointment of third parties.
Clarification that a RIAIF which invests in an underlying fund of funds is not subject to the obligation to ensure that the underlying fund of funds does not itself invest more than 30% in other funds	RIAIFs may invest in other investment funds, provided that the funds in which they invest do not themselves invest more than 30% in other investment funds. RIAIFs may also invest in an underlying investment fund which is itself a fund of funds, provided that the fund is regulated and due attention is brought to the higher fees which will arise from this layered structure. The Central Bank notes that the AIF Rulebook currently implies that the underlying fund of funds could not invest more than 30% in other funds and it is proposed to amend the AIF Rulebook to clarify this.
Clarification regarding the conditions which apply where RIAIFs create share classes	The current AIF Rulebook could be interpreted to invalidate the application of some of the rules which apply when share classes are created by RIAIFs. It is therefore proposed to clarify this text.

CP 99, the Central Bank's current consultation paper on amendments to the AIF Rulebook may be accessed [here](#).

Full details of the Asset Management and Investment Funds Group, together with further updates, articles and briefing notes written by members of the Asset Management and Investment Funds team, can be accessed at www.matheson.com.

Contacts



Michael Jackson

PARTNER
DUBLIN OFFICE

D +353 1 232 2219
E michael.jackson@matheson.com



Dualta Counihan

PARTNER
DUBLIN OFFICE

D +353 1 232 2451
E dualta.counihan@matheson.com



Joe Beashel

PARTNER
DUBLIN OFFICE

D +353 1 232 2101
E joe.beashel@matheson.com



Tara Doyle

PARTNER
DUBLIN OFFICE

D +353 1 232 2221
E tara.doyle@matheson.com



Anne-Marie Bohan

PARTNER
DUBLIN OFFICE

D +353 1 232 2212
E anne-marie.bohan@matheson.com



Elizabeth Grace

PARTNER
DUBLIN OFFICE

D +353 1 232 2104
E elizabeth.grace@matheson.com



Philip Lovegrove

PARTNER
DUBLIN OFFICE

D +353 1 232 2538
E philip.lovegrove@matheson.com



Shay Lydon

PARTNER
DUBLIN OFFICE

D +353 1 232 2281
E shay.lydon@matheson.com



Liam Collins

PARTNER
DUBLIN OFFICE

T +353 1 232 2195
E liam.collins@matheson.com



Aiden Kelly

PARTNER
NEW YORK OFFICE

T +1 646 354 6585
E aiden.kelly@matheson.com

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