A Guide to Multi-Manager Funds in Ireland

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DUBLIN CAYMAN ISLANDS NEW YORK TOKYO

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A GUIDE TO MULTI-MANAGER FUNDS IN IRELAND

Introduction

This publication examines the regulatory frameworks applicable to multi-manager funds and fund of funds in Ireland, a leading key European “exporting” fund domicile, including the opportunities available through the use of pooling techniques.

Multi-Manager Funds v Fund of Funds

It is important to understand at the outset that multi-manager funds and funds of funds are different products and are subject to quite different regulatory regimes, even though one finds that the term “multi-manager” is often loosely used to describe both fund types. The principal differences between the two fund types can be summarised as follows:

Structure:

A fund of funds is one which has as its main object the investment of its assets in other funds, whereas a multi-manager fund, instead of investing in other funds, engages different portfolio managers to directly manage its assets in separate accounts, with discrete asset portfolios being allocated for management across those individual portfolio managers.

Segregation:

A fund of funds will generally be just one of many investors in the underlying funds into which its invests, whereas in a multi-manager fund the assets remain within the scheme, simply being managed on a separate account basis.

Control:

Multi-manager funds set parameters for discrete mandates for each portfolio manager to whom assets are allocated, with the capacity to readily alter those mandates and to re-allocate assets between portfolio managers to achieve particular styles. A fund of funds controls its own allocations across different funds but has no control over the objectives or styles of management of the funds it invests in other than the capacity to redeem (where allowed).

Regulation:

Multi-manager funds are generally not regulated as such (other than in relation to portfolio manager appointments and prospectus disclosure) but the fund itself will have to comply with its own applicable investment restrictions (whether UCITS or non-UCITS) tailored for its investment objective. The true multi-manager element is a management style, not a separate product type. A fund of funds is specifically regulated, normally by reference to the types of underlying funds into which investment may be made (UCITS, non-UCITS, open or closed-ended, or limited liquidity, regulated or unregulated etc.) and the maximum permitted exposures to any one underlying fund.

Portfolio Information:

A fund of funds will normally not have frequent access to detailed portfolio information from the underlying funds, receiving such information only periodically, whereas a multi-manager fund, because it retains its portfolio under its delegates management, will be able to see at all times its portfolio holdings which can more readily facilitate its allocation strategies and enable greater compliance monitoring.

Fees:

A fund of funds is subject to the aggregate fees of each of the underlying funds (management, administration, custody, audit etc.) in which it invests although may be able to negotiate rebates of management fees or invest in classes with lower management fees, depending on size of investment. Regulations may dictate treatment of rebates from underlying managers and entry/exit charges. The fees of individual portfolio managers within a multi-manager scheme are negotiated on a portfolio manager by portfolio manager basis, depending on the type and size of portfolio allocated, the required management style/performance criteria etc.

Viable Size:

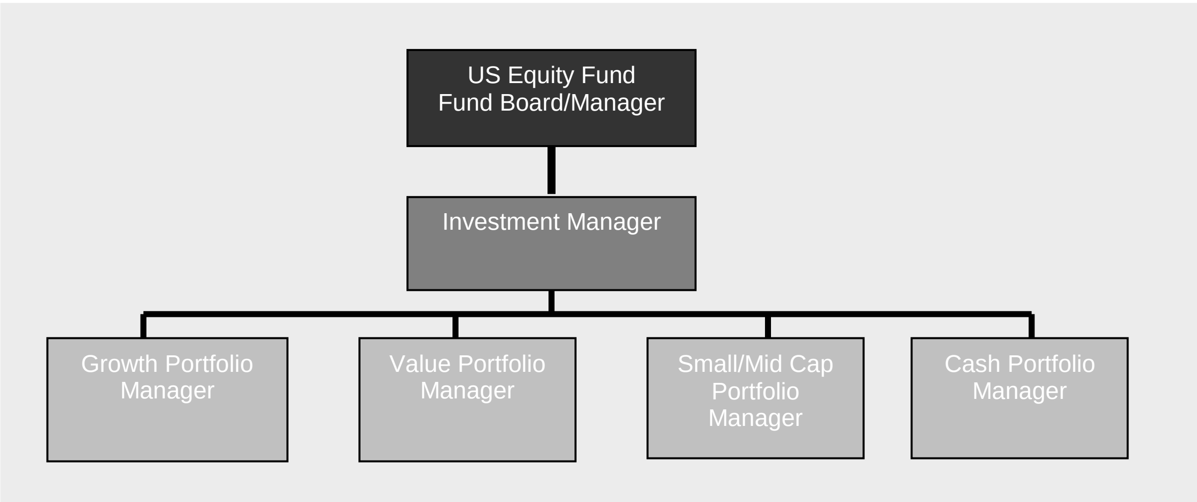
For small funds, adopting a multimanager approach may not be commercially appropriate or practical – the mandates it can allocate may be too small for most portfolio managers and the structural costs (selection process, portfolio and compliance monitoring, account administration and custody) too great to justify such a structure – pooling may offer a solution to this difficulty. A fund of funds benefits from economies of scale as it is generally only one of many investors in other managed funds. Provided it can meet any minimum investment requirements of its target funds, its own size is generally not relevant and relatively small portfolios can readily be managed on a fund of funds basis.

Investment Compliance:

In a fund of funds, the central compliance focus is on fund selection (due diligence) and monitoring the allocations across underlying funds to ensure both regulatory and self-imposed maximum exposure criteria are met. The fund of funds does not have a contractual control over the management of the underlying funds nor can it monitor the underlying portfolios other than on a periodic basis. The position is quite different for a multi-manager scheme – it manages its own portfolio within its own product limits, contracting directly with portfolio managers to manage discrete portfolios giving each tailored mandates, benchmarks, performance targets, etc. It is for the multimanager fund or its investment manager (responsible for portfolio manager selection and monitoring) to blend those mandates/portfolios to meet the overall fund objective and to comply, on an aggregate basis, with the investment and borrowing restrictions at the fund level. Additionally, as the portfolio managers are delegates of the multi-manager fund, it retains a responsibility over the portfolio managers for asset management and for monitoring performance and other developments at portfolio manager level.

Regulation of Multi-Manager Funds in Ireland

There is no specific regulation of multi-manager funds in Ireland, the applicable rules being those of the actual fund type (UCITS or AIF, vanilla or alternative etc.) and the general rules relating to the process of appointing portfolio managers, continuing filing obligations and prospectus disclosure. The following diagram shows a basic multi-manager structure.



Prior Approval of Portfolio Managers

For Irish domiciled funds, the general rule is that any entity with discretionary asset management capacity, whether an investment manager or a delegate thereof such as a portfolio manager, must be approved in advance by the Central Bank of Ireland (the "Central Bank").

Investment managers or portfolio managers which are one of the following entities will not usually be subject to an additional regulatory review process by the Central Bank:

- UCITS management companies;
- MiFID investment firms authorised to provide portfolio management;
- Credit institutions authorised to provide portfolio management under MiFID; or
- externally-appointed authorised AIFMs.

Investment managers or portfolio managers which are not one of the entities listed above will only be considered where the competent authority in the home jurisdiction of the investment manager/ portfolio manager has signed an MOU with the Central Bank in accordance with AIFMD or the UCITS Directive, as applicable. In addition, such firms must complete an Investment Manager Application Form as part of a review carried out by the Central Bank.

Where the investment manager / portfolio manager is regulated in a jurisdiction not considered to-date by the Central Bank, it must be demonstrated, by way of a formal submission, that the regulatory regime for asset management in the relevant jurisdiction is comparable to the model of prudential regulation applicable to firms included in categories (a) to (d) above. The Central Bank has accepted the following jurisdictions as having a comparable regulatory regime: Australia; Bahamas; Bermuda; Brazil; Canada; Dubai; Guernsey; Hong Kong; India; Japan; Jersey; Malaysia; Singapore; South Africa; Switzerland; and the United States.

In the context of a multi-manager fund, the requirement for prior approval of portfolio managers can impact on the speed by which an investment manager can allocate assets / monies to incoming portfolio managers where such incoming portfolio managers have not previously been approved by the relevant regulator. The implications of the UCITS regime for UCITS multi-manager funds (as outlined below) should also be factored into the selection/approval process.

Prospectus Disclosure

The second relevant regulatory requirement in the context of multi-manager schemes relates to disclosure in the prospectus of certain prescribed information relating to portfolio managers i.e. name, address, business description, details of fees paid out of assets of the fund and material provisions of the relevant agreement.

The Central Bank's general disclosure rule is that the details of the principal investment manager must be disclosed in the prospectus but that the information of portfolio managers (as detailed above) does not need to be disclosed where their fees are paid by the principal investment manager. In such circumstance, the prospectus must disclose only that the investment manager may appoint portfolio managers and that information on such portfolio managers will be provided to unitholders on request. However, where such fees are paid out of the fund itself, such details are required to be disclosed. Some investment managers are willing to make such disclosure but many others find it either cumbersome – regular updating of fund documentation – or strongly object to public disclosure of their chosen portfolio managers given both lack of capacity at many firms and the desire not to disclose strategy to competitors.

Filing of Portfolio Management Agreements

Each executed portfolio management agreement must be filed with the Central Bank. However, such agreements are not subject to prior scrutiny – the filing law firm must certify that the agreement contains certain specific provisions and does not offend others, for example, an investment management agreement / portfolio management agreement must not provide for a notice period in excess of 6 months; an initial term (without termination on notice) in excess of 3 years; or successive periods (without termination on notice) in excess of 1 year.

Filing is effected on the date of execution.

Relevant UCITS Issues

Promoters of UCITS type multi-manager funds need to be cognisant of the portfolio manager approval selection/approval process and liability for delegates. The requirements flow from the Article 5(g) to the UCITS Directive which in summary provides:

- a discretionary mandate may only be given to entities which are authorized /registered for the purpose of asset management and subject to prudential supervision;

- where the mandate is given to a third country (i.e. non-EEA) undertaking, co-operation between the supervisory authorities concerned must be ensured;

- the mandate given must not prevent the persons who conduct the business of the UCITS to give further instructions to the portfolio manager and to withdraw the mandate with immediate effect when this is in the interest of investors; and

- the prospectus must list the functions which the management company has been permitted to delegate.

These provisions can have quite significant practical implications. For example, if the Central Bank does not have in place co-operation arrangements (such as a memorandum of understanding) with the supervisory authorities in the home jurisdiction of the portfolio manager, the appointment may not be able to proceed.

It needs to be borne in mind that putting in place a memorandum of understanding is not necessarily a straightforward exercise and can involve diplomatic as well as regulatory channels and, accordingly, delays may be encountered. Particular care should be taken by UCITS when selecting portfolio managers from emerging markets for this reason. The above provisions may also require the incorporation into the portfolio management agreement of an additional termination capacity to enable the mandate be withdrawn with immediate effect when this is in the interest of investors, although it may be that the capacity to simply re-allocate assets entirely will be sufficient.

It is also important to bear in mind that under the UCITS regime not only are there additional regulatory obligations regarding monitoring of delegates but that it is also clear from Article 5(g)(2) that a management company's delegation of asset management functions to portfolio managers does not affect the management company's liability to investors.

Pooling Opportunities for Multi-Manager Funds

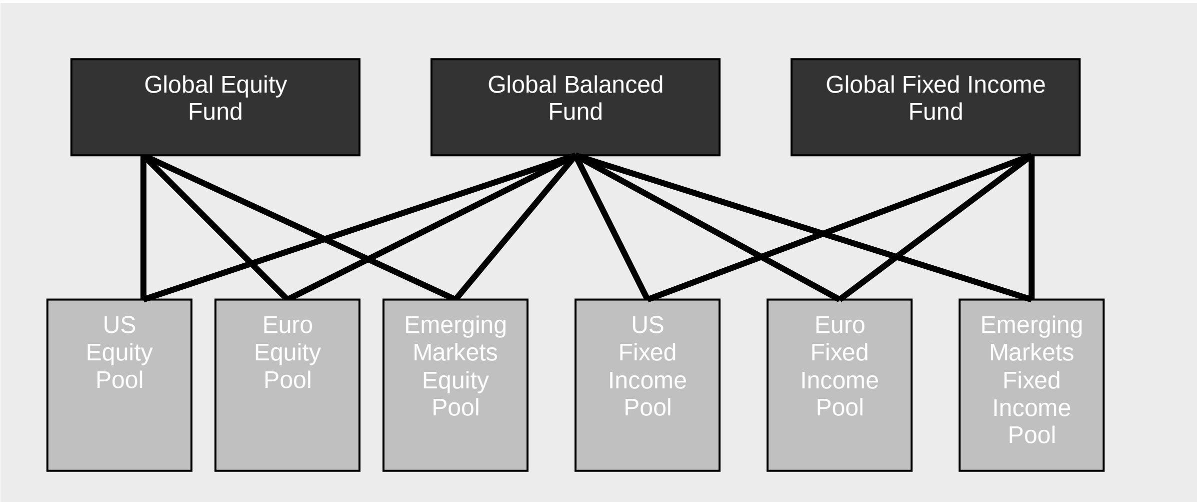
When explaining the key structural differences between multi-manager funds and fund of funds, we noted that it may not be commercially or practically appropriate to manage a small portfolio on a multi-manager basis given the inability to allocate sufficient assets to individual portfolio managers or across a group of portfolio managers whereas, in a fund of funds scheme, given that the fund of funds is generally only one of many investors in the underlying target funds, such difficulties generally do not arise.

Pooling may provide a solution for promoters who wish to run smaller funds on a multimanager basis. Pooling arrangements come in a number of different varieties such as entity pooling (within vehicles such as common contractual funds or CCFs), virtual pooling (a co-ownership arrangement supported by common custody and administration functionalities), intra-fund pooling (pooling by funds within a single umbrella scheme), extra-fund pooling (pooling between two separate fund schemes) as well as cross- jurisdictional pooling. Pooling can also be achieved between different types of legal entities, including between investment funds, insurance funds, managed accounts, etc. In the context of multimanager schemes, pooling enables a fund promoter who would not otherwise have the volume of assets sufficient to justify a multimanager approach, to engage underlying portfolio managers directly by participating in a virtual pooling model where it is one of a number of participants in a pool managed centrally by the selected portfolio manager.

In the example below, three different funds pool discrete portfolios to be managed by specialist portfolio managers where a multimanager approach might not be economically viable in its own right without pooling.

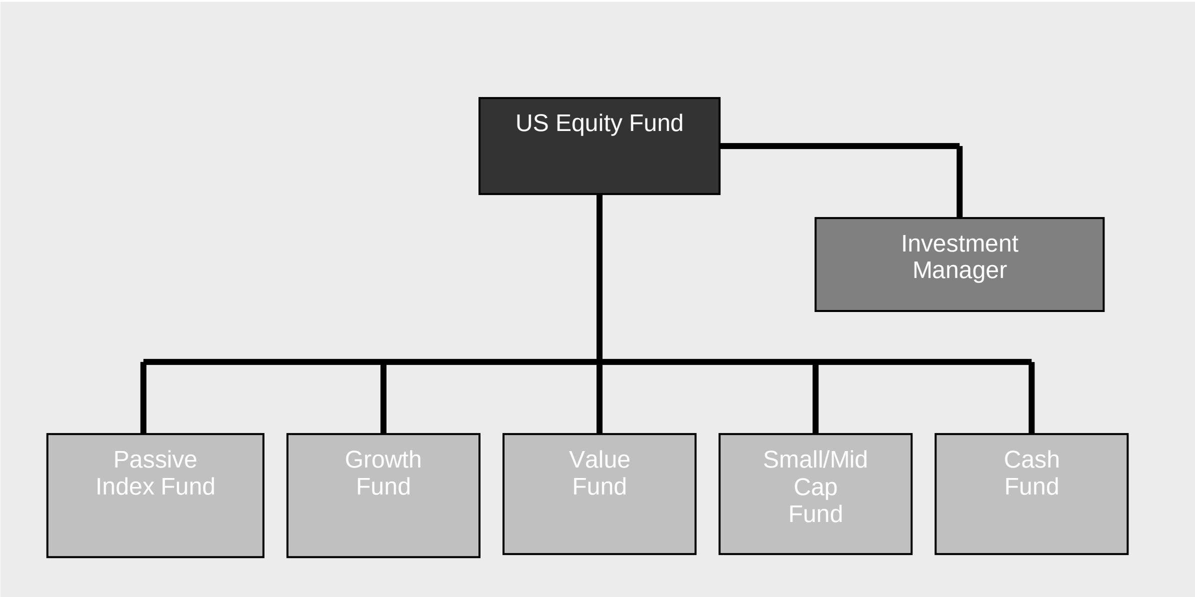
It is important to understand that we are referring to virtual pooling – there is no new legal entity involved- where not only must the pool be managed on a common basis (common portfolio manager, common objectives and common restrictions), but additionally a common custody and fund administration approach is essential to ensure the respective entitlements of each of the participating funds can be clearly established for monitoring, reporting and fiscal purposes.

The following diagram shows a simple pooling approach:



Regulation of Fund of Funds in Ireland

Whilst there is no specific regulation of multimanager funds in Ireland, the position for funds of funds is quite different. Ireland has specific rules on fund of fund schemes. For ease of understanding, we have addressed separately below the Irish AIF regime and the UCITS regime, and how they have been implemented in Ireland. The following diagram outlines a simple fund of funds structure:



AIF Fund of Funds

Irish AIF fund of fund schemes may be established across the following investor categories - retail investor and qualifying investor. This classification is most important as it dictates the Central Bank's approach to the types of underlying funds in which investment may be made and the maximum permitted exposures to any one underlying fund.

The Central Bank has set out its requirements in the AIF Rulebook which is supplemented by Guidance titled "Retail Investor AIFs which invest more than 30% of Net Assets in another Investment Fund" and "Qualifying Investor AIFs which invest more than 50% of Net Assets in another Investment Fund", which together set out in detail the acceptable investments for Irish authorised AIF fund of fund schemes. The applicable rules set out limitations (expressed as a percentage of net assets) on the proportion of a fund that can be invested in a single underlying scheme, impose requirements in relation to the nature and operational arrangements of such underlying schemes and their domiciles, the treatment of commissions and rebates, and related matters.

Retail Investor Fund of Funds

It is possible to establish a retail investor fund of funds or fund of unregulated funds (i.e. a fund of hedge funds) or a hybrid of these where the underlying funds comprise both regulated and unregulated funds.
The general rule is that a retail investor fund of funds may not invest more than 30% of net assets in an open-ended investment fund except where the underlying fund constitutes what is termed a “Category 1 investment fund” or a “Category 2 investment fund”. However additional rules apply (as detailed below) where more than 20% of net assets are invested in unregulated open-ended funds.

The Central Bank has indicated the following as Category 1 investment funds, which may be invested in without Central Bank approval:-

- UCITS schemes;
- schemes established in Guernsey and authorised as Class A schemes;
- schemes established in Jersey as Recognised Funds;
- schemes established in the Isle of Man as Authorised Schemes;
- retail investor AIFs authorised by the Central Bank.

It is also possible for retail investor fund of funds (subject to prior approval of the Central Bank) to invest more than 30% of net assets in a Category 2 investment fund. The Central Bank has indicated the following as Category 2 investment funds:- other domestic EU schemes that are not UCITS, Guernsey Class B schemes, schemes established in Jersey which are not Recognised Funds, schemes established in the Isle of Man as Unauthorised Schemes, schemes authorised by the US SEC and schemes which the Central Bank may specify upon application, provided all such schemes comply, in all material respects, with the Irish rules relating to retail investor AIFs. Consideration of whether a Category 2 investment fund complies in all “material respects” with the provisions of the AIF Rulebook in respect of retail investor AIFs must include, inter alia, consideration of:

- supervision by the regulatory authority of the investment fund;
- the existence of an independent depositary with similar duties and responsibilities as those to an Irish retail fund in relation to safekeeping and supervision. In this regard, the Central Bank has indicated that the oversight function of the depositary must, at a minimum, include requirements to (i) ensure that valuations of assets are carried out in accordance with the valuation policy: (ii) ensure that units of the underlying

investment fund are issued and redeemed correctly: and (iii) ensure that the management of the assets is carried out correctly;

- requirements as to the spreading of investment risk including concentration limits, ownership restrictions, leverage and borrowing restrictions, etc.;
- availability of pricing information and reporting requirements;
- redemption facilities and frequency;
- restrictions in relation to dealings by related parties.

The Central Bank's assessment of a Category 2 investment fund takes into account the totality of the underlying investment fund's arrangements. For example the fact that the underlying investment fund does not have identical investment rules does not necessarily rule out the underlying investment fund as a permitted investment.

Retail Investor Fund of Unregulated Funds

As stated above, it is possible to establish a retail fund of unregulated schemes (i.e. a fund of hedge funds). The rules for such a fund are that there are appropriate risk warnings, ancillary disclosures and the following diversification rules:

- no more than 20% of net assets may be invested in any one unregulated scheme;
- unregulated schemes must be subject to an independent audit and must have arrangements in place whereby all assets are held by a party/parties independent of the manager of the underlying scheme (this could include the prime broker).

Importantly a fund of unregulated funds scheme may not invest in units of an investment fund which itself invests more than 30% of net assets in another investment fund. However this restriction does not apply in limited circumstances where the first underlying investment fund provides the only means of investing in a second underlying investment fund and the first and second underlying investment funds act, in effect, as a singular structure. In this case, the prospectus of the fund of unregulated funds scheme must include certain prescribed information relating to the layered structure.

There must be no double charging of investment management fees in such circumstances and disclosure of other areas of duplication of fees must be made.

Additional requirements relate to the experience and expertise of the manager of the fund of funds and its delegate(s) and the capacity of its systems to monitor the underlying funds.

QIAIF Fund of Funds

A qualifying investor AIF or "QIAIF" as it is also known as (i.e. an AIF with a minimum subscription of €100,000 or its equivalent in other currencies and which can only accept subscriptions from investors who constitute professional investors or certify that they are informed investors or receive an appraisal that they have the appropriate expertise, experience and knowledge to adequately understand the investment in the QIAIF) may invest up to 100% of its assets in other funds, subject to a maximum of 50% of net assets in any one underlying unregulated fund (subject to the exception referred to below).

It is therefore possible to establish a QIAIF fund of funds or a QIAIF fund of unregulated funds (i.e. a fund of hedge funds) or a hybrid of these where the underlying funds comprise both regulated and unregulated funds. However a QIAIF fund of funds may not invest more than 50% of its net asset assets in any one unregulated fund unless the exception outlined below is complied with.

Where a QIAIF fund of funds invests more than 50% of net assets in an investment fund, the underlying investment fund must (subject to the exception relating to investment of more than 50% of net assets in an unregulated fund detailed below) be authorised in Ireland or in another jurisdiction by a supervisory authority established in order to ensure the protection of unitholders and which, in the opinion of the Central Bank, provides an equivalent level of investor protection to that provided under Irish laws, regulations and conditions governing QIAIFs. Acceptable underlying investment funds to the Central Bank are broken down into Category 1 investment funds and Category 2 investments similar to those listed in the above section relating to "Retail Investor Fund of Funds" except that Category 1 investment funds extend to QIAIFs authorised by the Central Bank and Category 2 investment funds must comply in "all material respects" with the provisions of the AIF Rulebook in respect of QIAIFs (as opposed to retail investor AIFs).

The consideration of "all material respects" must include, inter alia, consideration of the following:

- supervision by the regulatory authority of the investment fund;
- the existence of an independent depositary with similar duties and responsibilities in relation to both safe-keeping and supervision. In this regard, the Central Bank has acknowledged that oversight responsibilities, as opposed to the safe keeping function, of a depositary of an underlying fund may not be equivalent to those of Irish

depositaries but that the oversight function of the depositary must, at a minimum, include requirements to (i) ensure that valuations of assets are carried out in accordance with the valuation policy: (ii) ensure that units of the underlying investment fund are issued and redeemed correctly: and (iii) ensure that the management of the assets is carried out correctly;

- availability of pricing information and reporting requirements; and

- restrictions in relation to dealings by related parties.

A QIAIF fund of funds may only invest in another investment fund which itself invests more than 50% of net assets in other investment funds where the QIAIF has made clear disclosure regarding increased costs and lack of transparency concerning the ultimate exposure. Any such investments must not be made for the purpose of duplicating management and/or investment management fees. However a QIAIF fund of funds may itself not invest more than 50% of its net assets in an investment fund which invests more than 50% of its net assets in another investment fund (subject to the conditions detailed below in the context of an investment of more than 50% of net assets in an unregulated fund).

The requirement stated above that a QIAIF fund of funds cannot invest more than 50% of net assets in an unregulated fund (i.e. an investment fund other than a Category 1 or Category 2 investment fund) does not apply where;

- the QIAIF imposes a minimum initial subscription requirement of €500,000 on its investors (however, the aggregate of an investor's investments in the sub-funds of an umbrella QIAIF cannot be taken into account for the purposes of determining this requirement); and

- the prospectus of the QIAIF contains a detailed and prominent disclosure which identifies on an item-by-item basis those obligations and conditions which apply to the QIAIF and its AIFM but which do not apply to the underlying investment fund and its management company.

Investing in Funds with Lock-ups

Investing in funds with lock-ups is acceptable for retail funds of unregulated funds and for qualifying investor funds, where the following factors are taken into consideration:

- the frequency at which units of the fund may be redeemed by its investors;

- the duration of the lock up period of the underlying schemes;

- the amount invested in underlying schemes for this lock up period.

The key issue for an open-ended scheme investing in underlying schemes with lock-up periods is to ensure that the latter does not affect the redemption arrangements provided for in the prospectus issued by the Irish AIF.

Commission Received

Commission received by the manager or AIFM of an Irish AIF arising off investing in underlying schemes must be paid into the Irish AIF and entry fees at the underlying fund level must be waived where the manager or AIFM of the underlying fund or any associated or related company thereof is the manager or AIFM of the Irish AIF.

Cross Investment within umbrellas

Where a sub-fund invests in one or more sub-funds of the same umbrella, there can be no double charging of the annual management fee (or investment management fee) to the investing sub-fund as a result of its investments in such other sub-funds (whether such fee is paid directly at the investing sub-fund level, indirectly at the level of the sub-fund(s) invested in or a combination of both).

Additionally, investment may not be made by a retail investor AIF in a sub-fund which itself holds units in other sub-funds within the same umbrella.

UCITS Fund of Funds

UCITS are permitted to invest up to 100% of their assets in other open-ended collective investment schemes ("CIS") where those CIS are:

- other UCITS; or

- other EU or non-EU CIS the sole object of which is the collective investment in transferable series and/or in other liquid financial assets of capital raised from the public and which operate on the principle of risk spreading and the units of which are at the request of holders, repurchased or redeemed, directly or indirectly out of those undertakings assets provided that:

  (a) such other CIS are authorised under laws which provide that they are subject to supervision considered by the Central Bank to be equivalent to that laid down in community law and that co-operation between authorities is sufficiently insured;

  (b) the level of protection for unitholders in the other CIS is equivalent to that provided for investors in a UCITS and in particular that the rules on assets segregation, borrowing, lending and uncovered sales of transferable securities and money market instruments are equivalent to the requirements of the UCITS;

  (c) the business of the other CIS is reported in half-yearly and annual reports to enable an assessment to be made of the assets and liabilities, income and operations over the reporting period; and

  (d) no more than 10% of the UCITS or other CIS assets, whose acquisition is contemplated, can be, according to its rules or instruments of incorporation invested in aggregate in units of other UCITS or other open-ended CIS.

The European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 as amended (the "UCITS Regulations") do not require that an AIF in which a UCITS intends to invest includes conforming provisions in its constitutional document except that, in accordance with the UCITS Regulations, the constitutional document must include a prohibition on investing more than 10% of its assets in other investment funds.

Investment Restrictions

In addition to the restrictions on the types of non-UCITS CIS that a UCITS may invest in, there are four main investment restrictions which apply to UCITS investing in other CIS which are that:

- the maximum exposure to any one CIS (except in the case of a UCITS master-feeder structure) may not exceed 20% of the net asset value of a UCITS (each sub-fund of an underlying umbrella CIS being regarded as a separate CIS for the purpose of applying this limit);
- the maximum aggregate investment in non-UCITS CIS may not exceed 30% of the net asset value of the UCITS;
- investment in a CIS which can itself invest more than 10% of net assets in other CIS is not permitted; and
- investment in a CIS must not result in the acquisition of more than 25% of the units of any single CIS (or sub-fund of an umbrella CIS).

Acceptable Types of AIFs

The Central Bank has indicated in its Guidance Note titled "UCITS Acceptable Investment in other Investment Funds" that it will permit investment by UCITS in the following categories of AIFs:

- schemes established in Guernsey and authorised as Class A schemes;
- schemes established in Jersey as Recognised Funds;
- schemes established in the Isle of Man as Authorised Schemes;
- Retail investor AIFs authorised by the Central Bank itself provided such funds comply in "*all material respects*" with the provisions of the UCITS Regulations and the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) Regulations 2015 as amended (the "CBI UCITS Regulations");
- AIFs authorised in the Member State of the EEA, the United States, Jersey, Guernsey or the Isle of Man and which comply, in "*all material respects*" with the provisions of the UCITS Regulations and the CBI UCITS Regulations.

Central Bank's consideration of "in all material respects"

In this regard, the Central Bank's consideration of "all material respects", includes, inter alia, consideration of:

- the existence of an independent depositary with similar (to Irish depositaries) duties and responsibilities in relation to both safekeeping and supervision;
- requirements for the spreading of investment risk, including concentration limits, ownership restrictions, leverage and borrowing restrictions, etc.;
- availability of pricing information and reporting requirements;
- redemption facilities and frequency;
- restrictions in relation to dealings by related parties.

Other Jurisdictions Tests

As you will note from the above, the Central Bank has indicated a number of jurisdictions and types of AIFs which it considers to be acceptable for investment by a UCITS. Other jurisdictions and types of AIFs may be considered by the Central Bank on submission to it and in assessing any such submissions, the Central Bank has indicated in its Guidance Note titled "UCITS Acceptable Investment in other Investment Funds" that it will have regard:

- to memoranda of understanding (bi-lateral or multi-lateral), membership of an international organisation of regulators or other co-operative arrangements (such as exchange of letters) to ensure satisfactory co-operation between the Central Bank and the competent authority of the AIF;
- whether the management company of the target AIF, its rules and its choice of trustee have been approved by its own regulator;
- whether the AIF is authorised in an OECD jurisdiction.

Central Bank's consideration of "equivalence" for AIFs

As indicated above, in order for a non-UCITS to be an acceptable investment of a UCITS, the Central Bank needs to be satisfied that:

- it is authorised under a legislative regime which provides that it is subject to supervision considered by the Central Bank *to be equivalent* to that specified in Community law and that co-operation between authorities is sufficiently ensured;

- it is subject to a regulatory regime such that the level of protection for investors is *equivalent* to that provided for investors in a UCITS and, in particular, that the rules on segregation of assets, borrowing, lending and uncovered sales of transferable securities and money market instruments are *equivalent* to the requirements by the UCITS Directive; and

- it is required to report on a half-yearly and annual basis to enable an assessment to be made of the assets and liabilities, income and operations over the reporting period.

The Central Bank has indicated in its Guidance Note titled "UCITS Acceptable Investment in other Investment Funds" that it will use the following factors to guide its consideration as to whether such equivalence exists:

- rules guaranteeing the autonomy of the management of the AIF, and management in the exclusive interest of the unitholders;

- the existence of an independent depositary with similar duties and responsibilities in relation to both safekeeping and supervision. Where an independent depositary is not a requirement of local law, robust governance structures may provide a suitable alternative;

- availability of pricing information and reporting requirements;

- redemption facilities and frequency;

- restrictions in relation to dealings by related parties;

- the extent of asset segregation; and

- local requirements for borrowing, lending and uncovered sales of transferable securities and money market instruments regarding the portfolio of the AIF.

Fees/Charges and Disclosures

Where a UCITS intends to invest more than 20% of its net assets in other CIS, its prospectus must disclose the maximum level of management fees that may be charged to the UCITS itself and to the underlying CIS. In other words, the aggregate management fees at both levels have to be disclosed. In addition, actual aggregate management fees at both levels have to be disclosed in the UCITS annual report.

Furthermore in the case of UCITS which may invest more than 20% of net assets in other investment funds, the prospectus must list:

- the jurisdictions in which prospective investment funds investments will be domiciled;
- the types of investment funds in which the UCITS will invest, including a description of their regulatory status.

Where a UCITS invests in a linked CIS (where both the UCITS and CIS are managed, directly or indirectly by delegation by the same management company or where the management company of both the UCITS and underlying CIS are linked by common management or control or by a substantial direct or indirect holding), the manager of the underlying CIS is not permitted to charge subscription or redemption fees by account of the UCITS investment in it.

Cross Investment within umbrellas

One sub-fund of a UCITS umbrella can invest in one or more other sub-funds of the same umbrella provided that such cross-investment may not be made in a sub-fund which, itself, holds units in other sub-funds within the umbrella.

Where the UCITS umbrella is an investment company type scheme, cross-investment is only permitted where the umbrella scheme or its delegate (i.e. the administrator) has the systems capability to provide disclosure in relation to cross-holdings in accordance with industry adopted standards.

Where a sub-fund invests in one or more sub-funds of the same umbrella, in addition to waiving entry/exit fees, the investing sub-fund may not charge an annual management fee (or investment management fee) in respect of that portion of its assets invested in other sub-funds.

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