Ireland

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1. MARKET OVERVIEW

The Irish investment funds market is founded on Ireland's position as a leading global centre for domiciling and servicing investment funds. Ireland is the world's largest hedge fund administration centre and fastest growing UCITS centre. UCITS have grown 600 per cent since 2000 with 25 per cent growth since the start of 2012. UCITS are aimed at the retail market and, because they may avail of the EU cross-border passport, are far more popular, although this may change with the advent of the Alternative Investment Fund Managers Directive (AIFMD), which also provides for an EU cross-border passport.

Assets serviced by the Irish funds industry stand at over EUR 2.3 trillion or $3 trillion as at March 2013. The Irish funds industry has grown every year for 23 years (the exception being 2008 when there was a small fall). Ireland has developed an effective and robust regulatory framework and it operates a favourable tax environment which delivers the best tax outcome for the investor. Almost all of the world's major fund service providers have a presence in Ireland. Ireland is a member of the EU, Eurozone, OECD, FATF and IOSCO and is an internationally recognised jurisdiction. 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. Irish funds are distributed worldwide.

With a continuously expanding tax treaty network approaching 70 countries, Ireland has one of the most developed and favourable tax treaty networks in the world.

Ireland has signed bilateral Memoranda of Understanding with 24 jurisdictions including China, Dubai, Hong Kong, Isle of Man, Jersey, South Africa, Switzerland, Taiwan, UAE and USA and cooperates with all EU member states.

(All data is from the Irish Funds Industry Association.)

The Central Bank of Ireland (Central Bank) is responsible for the authorisation and ongoing supervision of investment funds in Ireland.

An investment fund may list its shares or units on the Irish Stock Exchange, in which case the Irish Stock Exchange will supervise compliance with its listing rules and continuing obligations.

The last year has seen a significant increase in regulation which includes increasing financial requirements for many financial institutions participating in investment funds, as well as increasing focus on conflicts of interest and corporate governance in general which impacts where financial institutions are participating in investment funds.

The funds market in Ireland has been active in the past year, particularly because the Irish economy has shown signs of tackling the economic challenges which became evident because of the 2008 financial crisis. In addition to this, the perception is that the property market has hit bottom and so provides significant opportunity for growth.

2. ALTERNATIVE INVESTMENT FUNDS

2.1. Common structures

Unregulated funds

Private unregulated funds in Ireland typically take the form of limited partnerships established pursuant to the Limited Partnerships Act 1907. These are suitable for private placement only. The partnership will comprise one or more general partners (who manage the business and have unlimited joint and several liability for the debts and obligations of the partnership) and one or more limited partners. The liability of each limited partner will be limited to their contribution provided that it does not take part in the management and that the partnership has no more than 20 members (except in limited circumstances). In practice, this number can be increased where investors invest in a nominee company which invests as a limited partner. The general partner will typically be a limited company also. The general partner will commonly obtain an indemnity from the partnership in its favour.

It is generally accepted that the general partner of a limited partnership is not providing investment services to third parties (but to its partners) and so does not require to be authorised to provide investment services. Because such structures are unregulated, they do not involve promoter approval, administration or custodian services, investment or borrowing restrictions, and so on. General partners will need to consider their position under the AIFMD regime in the light of their particular circumstances.

Regulated funds

From 22 July 2013 (implementation date for AIFMD), new regulated alternative investment funds (AIFs) fall into the retail investor alternative investment fund (RIAIF) category (detailed under the 'Retail Funds' section below) or the qualifying investor alternative investment fund category (QIAIF).

QIAIFs may be established as:

- unit trusts;
- investment companies with variable share capital;
- common contractual funds; or
- investment limited partnerships.

Investment companies

Part XIII of the Companies Act 1990 (as amended) provides for the incorporation of non-UCITS open ended investment companies with variable capital and closed-ended investment companies with variable capital whose sole object is the collective investment of their funds in property with the aim of spreading investment risk and giving their members the benefit of the results of the management of their funds. Before such an investment

company can raise capital by providing facilities for the direct or indirect participation by the public in the profit and income of the company, it must have been designated by the Central Bank as a designated company. A variable capital company (VCC) may be self-managed and not employ a management company unlike the other vehicles or it may appoint a management company.

The VCC is the most common vehicle chosen for AIFs. It is a public limited company whose share capital does not have a par value but is equal to the net asset value of the VCC at any time. It has a separate legal personality established by its incorporation with memoranda and articles of association as its constitutional document and can enter into contracts itself. The VCC's day-to-day management and control is carried out by a board of directors, which generally delegates many functions to service providers. A VCC may be open-ended or closed-ended.

Unit trusts

A unit trust fund is defined by the Unit Trusts Act 1990 (the principal legislation governing unit trusts in Ireland) as any arrangement made for the purpose, or having the effect, of providing facilities for the participation by the public, as beneficiaries under a trust, in profits or income arising from the acquisition, holding, management or disposal of securities or any other property whatsoever.

Unit trusts may be closed-ended or open-ended. A unit trust is not a separate legal entity. It is created by a trust deed entered into between the trustee and the management company. Because of this, a unit trust must have a management company and does not enter into contracts in its own name. Instead, the management company or trustee enters into contracts on behalf of the unit trust. The trustee is registered as the legal owner of assets on behalf of the trust.

Investors hold units which represent a beneficial interest in the assets of the unit trust. Unit trusts may be single funds or umbrella funds.

Common Contractual Funds (CCFs)

Many multi-national pension schemes seek to achieve economies of scale and efficiency of operation by pooling pension fund assets into one entity. For such pooling to successfully take place, it is imperative that the pooling vehicle is tax transparent (ie, that the income and gains of such vehicle are treated as arising or occurring to the unitholders or investors and not to the vehicle itself) in order to ensure that the tax status of the pension schemes is not prejudiced, and that the efficiencies of a pooling vehicle are not negatived by detrimental tax treatment. CCFs are established under The Investment Funds, Companies and Miscellaneous Provisions Act 2005. Under Irish law, CCFs are tax transparent vehicles which may be established for such purpose. CCFs have the following characteristics:

- they are pooling vehicles established under the laws of contract namely by a deed of constitution to which a management company and custodian will be party;

- they are not body corporates and have no legal personality of their own;
- participants otherwise known as unitholders in CCFs hold co-ownership rights in the property and assets of the CCF represented by units;
- the liability of unitholders is limited to the amount contributed or agreed to be contributed for units;
- the deed of constitution may be drafted to provide that income is distributed on an annual basis so as not to prejudice the tax transparency of the vehicle in certain jurisdictions; and
- the custodian is a party to the deed of constitution to specifically acknowledge its terms and the obligations at law of a custodian. The custodian is not a trustee and its obligations will be more precisely defined in a separate custodian agreement.

Investment limited partnerships

The Investment Limited Partnerships Act 1994 permits the creation of a limited partnership structure as a regulated investment vehicle. As a tax transparent vehicle it has many uses and is particularly suitable as an investment vehicle for investment in US securities with US advisers. The Finance Act 2013 restored the tax transparent nature of investment limited partnerships.

The tax issues relevant to the different structures are set out in section 2.5.

VCCs are the most popular legal structure used for investment funds in Ireland because investors are familiar with the corporate structure. While VCCs may choose to appoint a manager (which must be authorised) they may also choose to operate as self-managed investment companies (SMICs). VCCs have their own legal personality and ultimate management authority resides with the board of directors, two of whom must be Irish resident. VCCs issue shares to investors and these shares do not represent a legal or beneficial interest in the VCCs assets. VCCs must hold an annual general meeting of shareholders and obtain shareholder approval to change their memorandum and articles of association.

Unit trusts are contractual arrangements (created by trust deed) made between the management company and the trustee. Unit trusts must have a management company. This is the most significant difference, in practice, between a unit trust and a VCC. Unit trusts do not have their own legal personality. Ultimate management authority rests with the management company. Unit trusts are not required to hold annual investor meetings. Changes can be made to the trust deed without having to obtain prior investor approval if both the management company and trustee certify that such changes do not prejudice the interests of investors.

CCFs are used to achieve tax transparency in the pooling of multi-national pension fund assets. CCFs do not hold investor meetings and units are redeemable but not transferable.

Investment limited partnerships are particularly suitable as an investment vehicle for investment in US securities with US advisers.

Participants interests in VCCs are called shares, participants interests in unit trusts, CCFs and investment limited partnerships are called units.

Since July 2005, Irish VCCs established as umbrella funds (where sub-funds are established under a common structure, such as a VCC but are treated as separate funds with separate pools of assets, investment objectives and policies and investors) enjoy segregated liability between sub-funds. Unit trusts established as umbrella funds are generally set up with segregated liability between sub-funds. CCFs enjoy segregated liability between sub-funds under statute.

Investment managers and/or investment advisors of Irish authorised AIFs are generally established as limited liability companies and, if EU based, generally hold a MiFID authorisation.

2.2. Regulatory framework

The legislation underlying the different AIF vehicles is set out in section 2.1. above. In addition, the AIFMD and related regulation is relevant as is the Irish regulation implementing the AIFMD regime. Also, the Central Bank has issued its AIF Rulebook and a Q&A document. The Central Bank issues a markets update as necessary and this informs interested parties of recent policy developments.

Other than private, unregulated funds (detailed in section 2.1. above), AIFs must be authorised by the Central Bank.

For regulatory purposes, the Central Bank requires an application to be made to it to permit an entity to be investment manager of an Irish authorised fund before the application for authorisation of the fund can be made. The investment manager of an Irish authorised fund is not required to be Irish but must be deemed acceptable by the Central Bank. Where the investment manager is located in Ireland, it must hold an authorisation under MiFID. Applications in respect of EU investment managers (who are generally authorised under MiFID) are fast tracked. For non-Irish non-MiFID investment managers, the Central Bank must be satisfied that the firm is authorised and subject to ongoing supervision in its home state.

Where an investment adviser to an Irish authorised fund has discretionary powers, the Central Bank treats it as an investment manager and the entity must be cleared by the Central Bank. Where an investment adviser with no discretionary powers is being appointed, the Central Bank imposes notification requirements.

Irish authorised funds must have two Irish resident directors and an Irish custodian/trustee.

The various parties to the QIAIF which may include the management company, directors, trustee or custodian and other service providers must be approved or deemed acceptable by the Central Bank before the application for authorisation can be made. A QIAIF has a minimum subscription and only qualifying investors may invest in a QIAIF (see below).

A QIAIF can be authorised on the day after its documentation is filed with the Central Bank. The documentation must include a fully completed Central Bank application form, a dated prospectus (which may include supplements), a constitutional document and original counterparts of the material contracts (such as custodian agreement, administration agreement,

management agreement, prime broker agreement, investment management agreement, distribution agreement). The documentation must reflect the necessary authorisation requirements which are detailed in the Central Bank application forms.

2.3. Operational requirements

The investment restrictions of a QIAIF are set out in section 2.6. below.

QIAIFs must appoint a depositary (also currently referred to as a custodian or trustee). The depositary must meet the requirements of AIFMD and:

- have appropriate expertise and experience to carry out its functions;
- have sufficient resources to effectively conduct its business;
- organise and control its internal affairs in a reasonable manner with proper records and adequate arrangements for ensuring that employees are suitable, adequately trained and properly supervised; and
- hold a minimum capital requirement.

AIFMD imposes regulatory reporting requirements as regards main instruments traded, main markets, principal exposures, concentrations, liquidity, risk and requires the filing of monthly and quarterly returns as well as semi-annual and annual reports.

Specific detailed information must be disclosed to investors under a variety of headings (including remuneration) in accordance with AIFMD, before they invest. Periodic disclosures must also be made to investors.

Under AIFMD, the use of side letters is not restricted but investors must be given details of any preferential treatment (or right to preferential treatment) received by an investor (such as by way of a side letter) before they invest.

Funds are subject to a wide variety of regulation (a great deal of which is EU-based with some Irish nuances) on risk (AIFMD), borrowing restrictions (AIFMD); valuation and pricing of the assets held by the fund (AIFMD); insider dealing and market abuse (MAD); transparency (AIFMD); money laundering (AML); and short selling.

Closed-ended investment companies may be required to issue a prospectus under the Prospectus Directive regime in tandem with obtaining Central Bank authorisation unless (in essence) minimum subscription limits are met or the fund is offered to less than 100 investors per EU state.

2.4. Marketing the fund

The production and offering of marketing materials is governed by the same legislation which governs the authorisation of funds (such as Part XIII of the Companies Act 1990, Unit Trusts Act 1990, Prospectus Directive). A fund which is not availing of the AIFMD passport, which is situated in another jurisdiction and which proposes to market its units in Ireland, must make application to the Central Bank in writing, enclosing various documentation and must comply with marketing requirements.

The following services are regulated by the Central Bank under the MiFID regime:

- receiving and transmitting orders;
- executing orders; and

- providing investment advice.

Other than the fund itself and its management company, any entity engaging on a professional basis in Ireland in marketing activities which involve the services listed above requires authorisation under MiFID.

A QIAIF has a minimum subscription of EUR 100,000 (or its equivalent in another currency). The minimum subscription may be spread among various sub-funds of an umbrella QIF. Only a qualifying investor may invest in a QIF, being:

- an investor who is a professional client within the meaning of Annex II of Directive 2004/39/EC (Markets in Financial Instruments Directive); or
- 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 fund; or
- an investor who certifies that they are an informed investor by providing the following:
  - confirmation (in writing) that the investor has such knowledge of, and experience in, financial and business matters as would enable the investor to properly evaluate the merits and risks of the prospective investment; or
  - confirmation (in writing) that the investor's business involves, whether for its own account or the account of others, the management, acquisition or disposal of property of the same kind as the property of the fund.

Within the EU, QIAIFs may be marketed to professional investors as defined in the AIFMD, subject to certain filings. Where the member state in question permits, under the laws of that member state, AIFs to be sold to other categories of investors and this permission encompasses investors set out above, they may also be marketed to that category of investor.

The private unregulated funds referred to in section 2.1. above may only be sold by private placement, when approved by the Central Bank.

The marketing materials must satisfy the Central Bank requirements. There are no additional requirements on marketing to public bodies such as government pension funds, other than as prescribed in respect of the investor bodies themselves.

There are no restrictions on the use of intermediaries to assist in the fund-raising process (other than conflict of interest requirements).

2.5. Taxation

Taxation of funds

An Irish fund is not subject to tax on its income and gains. Unless an investor in an Irish fund is resident or ordinarily resident in Ireland, generally there is no tax payable in Ireland in respect of any payments received from the fund by the investor.

Irish regulated funds however they are constituted (whether for example as a variable capital company or a unit trust) are not subject to tax on their income and gains but instead operate an exit tax regime.

VAT

A fund will be required to register for Irish VAT in certain circumstances, for example, where in receipt of services from abroad for which it is obliged to self-account. Registration may also be relevant where the fund is seeking to recover VAT charged to it (although a fund does not necessarily have to register for VAT in order to reclaim VAT suffered), or where an Irish VAT registration number is needed in order for a foreign service provider not to charge foreign VAT on the service. VAT registration does not in itself entitle a fund to recover VAT charged to it. VAT recovery is available either to the extent the fund is engaged in activities which are subject to VAT or is engaged in exempt financial services outside the EU. Based on current practice the latter is considered to apply where a fund has non-EU assets or has non-EU investors. VAT therefore is not necessarily a cost to a fund.

VAT will be chargeable on certain services supplied to a fund eg, legal services provided to the fund. However, there are exemptions for certain services. The principal exemption is for investment management services and applies to discretionary investment management services, administration services and marketing services.

Taxation of CCFs

CCFs are intended to facilitate the obtaining of relief from withholding tax in jurisdictions where investments are held. For Irish tax purposes, the income and gains on CCFs are treated as accruing directly to the investors and therefore, there is no exposure to Irish tax for investors outside the scope of Irish tax. A CCF is tax transparent under Irish law so as to facilitate the CCF investor in obtaining relief under the terms of a double tax treaty between their home jurisdiction and the jurisdiction where the withholding is suffered, effectively ignoring the existence of the Irish CCF. The CCF itself is not liable to tax in Ireland on its income or gains.

Taxation of an Investment Limited Partnership (ILP)

An ILP is a partnership which has as its principal business the investment of its funds in property. The ILP must have at least one general and one limited partner. The Finance Act 2013 has restored the original tax transparency of the ILP. Prior to that an ILP was grouped with other regulated funds such as unit trusts and variable capital companies as an investment undertaking and treated as opaque for tax purposes. An ILP is no longer defined as an investment undertaking but is treated separately as a tax transparent vehicle akin to a CCF.

Double tax relief

Whether the benefits of a double tax agreement can be availed of by an Irish fund is determined under normal treaty principles. Usually, a double tax agreement with Ireland will provide that for a fund to be able to avail of the treaty provisions, it must be resident in Ireland for tax purposes. In practice, if a confirmation of the Irish residence of a fund is requested from the Irish Revenue Commissioners, they will normally issue a letter, where

they are satisfied that the fund concerned is resident in Ireland, that the fund is so resident but will note that the fund is only liable to tax in Ireland to the extent that it has Irish resident investors. As to whether this would be sufficient for the foreign tax authority to grant treaty relief is obviously dependent on the practice of the foreign tax authority.

Taxation of a management company

Subject to certain conditions, it is possible to establish a management company which will be liable to corporation tax on its fee income in respect of the management of funds at the tax rate of 12.5 per cent.

A management company is entitled to the benefit of the Irish double tax treaties. This is of benefit in repatriating profits from the management company to a foreign parent if the relevant treaty has the effect of preserving the benefit of the low rate of Irish tax in the hands of the parent, and may also be of benefit in ensuring that the management company is not subject to tax in a foreign jurisdiction (which has a relevant double tax treaty) unless it carries on business in that jurisdiction through a permanent establishment.

EU Savings Directive

The EU Savings Directive may be relevant in the context of Irish funds which are UCITS, or deemed UCITS, where there are investments in underlying debt securities. The Directive requires the reporting of, or in the case of Austria and Luxembourg the withholding of, interest paid cross-border to EU resident individual beneficial owners.

An exit tax charge should only arise in respect of certain Irish resident or ordinarily resident investors on the happening of certain chargeable events. (Note: In order for non-Irish resident investors to avoid a charge to exit tax, an appropriate declaration is generally required to be provided to the fund in advance of the chargeable event). A chargeable event arises for example on a payment of any kind to an investor, whether an income distribution or a full or partial redemption, on a transfer of units, and on a rolling eight-year deemed disposal at market value. In certain circumstances a fund may elect not to operate the exit tax on such a deemed chargeable event, in which case it is obliged to report certain investor details to the Irish Revenue Commissioners and the tax liability arises on the investor on a self-assessment basis.

Similarly there are a number of categories of Irish resident investor that are entitled to an exemption from this exit tax including:

- pension schemes;
- insurance companies;
- other funds;
- charities;
- approved retirement funds, approved minimum retirement funds, special savings incentive accounts and PRSAs; and
- credit unions.

If there are Irish taxable investors on the occasion of any chargeable event the fund must operate an exit tax deducting the tax due from payments to the relevant investor, or where there is no such payment by appropriating

and cancelling the relevant number of units necessary to pay the tax. The rate of exit tax is 33 per cent where the chargeable event is an income distribution, and on any other chargeable event is 36 per cent of any gain realised by the investor, or in the case of the eight-year chargeable rolling event any deemed gain. However in the case of a company holding units in a fund, and where the appropriate declaration has been made to the fund the rate of exit tax is 25 per cent in all cases. The rate of tax is increased to 56 per cent if, under the terms of an investment in a fund, the investor (being an individual) or certain persons associated with the investor have an ability to influence the selection of the assets of the fund.

Transfers of units/shares in a fund will generally not be liable to Irish stamp duty. Generally gifts/inheritances of units/shares between non-Irish residents will not be liable to gift or inheritance tax provided certain conditions are met.

2.6. Customary or common terms

QIAIFs may be established as open-ended (at least quarterly redemption and other conditions), limited liquidity (less than quarterly redemption and other conditions) or closed-ended and must make this clear. The life of the fund will vary depending on its purpose.

The Central Bank does not impose rules on how liquidity is managed other than to require clear disclosure in the prospectus. Funds operate a variety of restrictions on the issue and redemption of units or shares, depending on the nature of the fund. Funds are not required to provide investors with the right to transfer shares or units, unless they are listed on the Irish Stock Exchange.

QIAIFs may purchase assets and place these in side pockets with no limit placed on the amount of assets that can be side pocketed. A QIAIF which avails of this flexibility must classify itself as 'open-ended with limited liquidity' or 'closed-ended'.

There is no requirement for the management company/adviser to invest its own money in the fund, nor are there requirements for key individuals to be involved in the management of the fund, nor are any key main provisions typically included in the fund arrangements. Investors do not have the direct ability to remove the management company/adviser of the fund although investors may be able to change the directors of the fund (if the fund is structured as a company).

For AIFMs, AIFMD remuneration requirements must be complied with and these requirements will become clearer over time. The Central Bank does not impose rules on how remuneration is typically structured other than that it must be clearly disclosed. The management company's remuneration cannot be increased without investor approval and the calculation of performance fees must be verified by a suitable independent party, such as an auditor.

QIAIF investment restrictions are as follows:

- QIAIFs may not raise capital from the public through the issue of debt securities (this does not operate to prevent the issue of notes by QIAIFS, on a private basis, to a lending institution to facilitate financing arrangements provided that details of the note are provided in the

prospectus).
- QIAIFs may not grant loans or act as a guarantor on behalf of third parties (but QIAIFs may acquire debt securities, securities which are not fully paid and may enter into bridge financing arrangements in certain circumstances).
- QIAIFs may not (and its manager may not) acquire any shares carrying voting rights which would enable it to exercise significant influence over the management of an issuing body (other than as disclosed for venture capital, development capital or private equity QIAIFs or in respect of investments in other investment funds).
- QIAIFs may only invest in units of an investment fund managed by its management company or AIFM or by an associated or related company of either of these, where the management company of the investment fund in which the investment is being made has waived the preliminary/ initial/ redemption charge which it would normally charge.
- QIAIFs must ensure that the calculation of performance fees is verified by the depositary or a competent person appointed by the AIFM and approved for the purpose by the depositary. QIAIFs with a minimum subscription requirement of EUR 500,000 may invest more than 50 per cent in a single unregulated scheme, subject to certain disclosure requirements.
- QIAIFs must have detailed procedures in place to cover a variety of issues which include liquidity management, risk, conflicts of interest, recordkeeping, remuneration and reporting process.
- Under AIFMD, AIFM must set reasonable leverage limits for each AIF. The AIF leverage may be capped by the AIFM's regulator. The amount of leverage employed must be reported to regulators regularly.

3. RETAIL FUNDS

3.1. Common structures

From a regulatory perspective, the most popular structure for retail funds in Ireland are UCITS. All UCITS, however structured, must comply with UCITS investment and borrowing restrictions, authorisation processes and operating conditions (such as two redemption dates per month) and must have an Irish based trustee/custodian. Retail funds may also be established as Retail Investor Alternative Investment Funds (RIAIFs).

The different retail investment fund vehicles, whether a UCITS or a RIAIF (which mirror the vehicles used for AIFs as detailed above) are:
- unit trusts;
- investment companies with variable share capital; and
- common contractual funds.

RIAIFs may be structured as investment limited partnerships. Technically UCITS may also be established as companies with fixed capital but these are not used in practice.

The advantages and disadvantages of the structures are detailed in section 2.1. above as regards the vehicle used. As regards the choice between a UCITS or a RIAIF, UCITS enjoy an EU marketing passport (subject to filings and

complying with local marketing requirements) whereas the RIAIF enjoys slightly more flexibility in respect of its investment restrictions and leverage but no EU wide marketing passport.

3.2. Regulatory framework

UCITS are authorised under the UCITS regime (the UCITS Directive, Regulations, ESMA materials, implementing Irish regulations, Central Bank UCITS Notices, Guidance Notes and policy). RIAIFs are authorised under the legislation underlying the particular vehicle used, ie Part XIII of the Companies Act 1990 (as amended), Unit Trusts Act 1990, The Investment Funds, Companies and Miscellaneous Provisions Act 2005 and the Investment Limited Partnerships Act 1994 as detailed in section 2.1. above.

In addition the Central Bank has issued its AIF Rulebook and a Q&A to further clarify its requirements. The Central Bank also issues a Markets Update which informs interested parties of recent policy developments.

The funds themselves must be authorised by the Central Bank.

The principal statutes regulating the funds are detailed in section 2.1. above. In addition to this, details relating to the investment manager are outlined in section 2.1.

There are no exemptions from the regulatory regime.

The various parties to the RIAIF or UCITS (which may include the management company, directors, trustee or custodian and other service providers) must be approved or deemed acceptable by the Central Bank.

The fund documentation must be approved by the Central Bank and must comply with its detailed requirements. This will include a fully completed Central Bank application form, a dated prospectus (which may include supplements), a constitutional document, and original counterparts of the material contracts (such as custodian agreement, administration agreement, management agreement, investment management agreement, distribution agreement). For a UCITS, it will also include a business plan, risk management process and Key Investor Information Document (KIID).

3.3. Operational requirements

RIAIFs are more limited in terms of investment restrictions and eligible assets than QIAIFs, UCITS are more limited again (see section 3.6. below).

All Irish regulated funds must appoint a custodian/trustee to safe-keep the assets of the fund. That entity must itself be authorised.

All Irish authorised funds make regular filings with the Central Bank on a monthly, quarterly and annual basis.

UCITS and RIAIFs are subject to significant reporting and disclosure obligations which are aligned with requirements under the UCITS regime and the AIFMD regime respectively.

The use of side letters is not restricted provided that all investors are treated equally by the fund in the case of a UCITS and fairly in the case of a RIAIF.

Funds are subject to a wide variety of regulation (a great deal of which is EU-based with some Irish nuances) on risk, borrowing restrictions, transparency, valuation and pricing of the assets held by the fund (UCITS and

AIFMD); insider dealing and market abuse (MAD); money laundering (AML); and short selling.

Closed-ended investment companies may be required to issue a prospectus under the Prospectus Directive regime in tandem with obtaining Central Bank authorisation unless (in essence) minimum subscription limits are met or the fund is offered to less than 100 investors per EU state.

3.4. Marketing the fund

The issues are as detailed for AIFs above except that UCITS funds may be marketed under the EU passport, anywhere in the EU, subject to registration and compliance with local marketing rules.

There are no restrictions concerning to whom a retail fund may be marketed (save as set out in the fund documentation). The key content requirements and required authorisations for marketing materials is set out in section 2.4. above.

There are no restrictions on the use of intermediaries to assist in the fund-raising process.

3.5. Taxation

The tax treatment for retail funds is as set out in section 2.5. above.

3.6. Customary or common terms

UCITS must have two dealing days in every month and do not set a life term. For RIAIFs, the issues are as detailed for AIFs above.

For UCITS, there will not be any restrictions on liquidity of interests. Typically, investors will not be able to transfer or assign their interests in unit trusts or CCFs but will be able to transfer shares in VCCs. For RIAIFs, the issues are as detailed for AIFs above.

The Central Bank does not impose rules on how remuneration is typically structured other than that it must be clearly disclosed, the management company's remuneration cannot be increased without investor approval and the calculation of performance fees must be verified.

UCITS and RIAIFs must have detailed procedures in place to cover a variety of issues which include liquidity management, risk, conflicts of interest, recordkeeping and reporting processes.

Permitted investments

Investments of a UCITS are confined to:

- transferable securities and money market instruments which are listed on a stock exchange or other regulated market;
- recently issued transferable securities which will be admitted to official listing on a stock exchange or other regulated market within a year;
- money market instruments, as defined in the UCITS Notices, other than those dealt on a regulated market;
- units of UCITS;
- units of non-UCITS as set out in Central Bank Guidance ;
- deposits with credit institutions as prescribed in the UCITS Notices; and
- financial derivative instruments (FDIs) as prescribed in the UCITS Notices.

Investment restrictions
The following investment restrictions apply to UCITS:
- A UCITS cannot invest more than 10 per cent of net assets in transferable securities and money market instruments other than those referred to above (permitted investments).
- A UCITS cannot invest more than 10 per cent of net assets in recently issued transferable securities which will be admitted to official listing on a stock exchange or other market within a year.
- A UCITS cannot invest more than 10 per cent of net assets in transferable securities or money market instruments issued by the same body provided that the total value of transferable securities and money market instruments held in the issuing bodies in each of which it invests more than 5 per cent must be less than 40 per cent. This limit of 10 per cent is raised to 35 per cent if the transferable securities or money market instruments are issued or guaranteed by a member state or its local authorities, or by a non-member state or public international body of which one or more member states are members.
- A UCITS cannot invest more than 20 per cent of net assets in deposits made with the same credit institution. Deposits with certain institutions, held as ancillary liquidity, must not exceed 10 per cent of net assets. This limit can be raised to 20 per cent in the case of deposits made with the trustee or custodian.
- The risk exposure of a UCITS to a counterparty to an OTC derivative cannot exceed 5 per cent of net assets. This limit is raised to 10 per cent if the counterparty is a certain type of credit institution.
- A combination of two or more of the following issued by, or made or undertaken with, the same body cannot exceed 20 per cent of net assets: investments in transferable securities or money market instruments; deposits; and/or risk exposures arising from OTC derivatives transactions.
- A UCITS fund can invest 100 per cent of its net assets in transferable securities and money market instruments issued or guaranteed by: an EU member state, its local authorities or agencies; an Organisation for Economic Co-operation and Development (OECD) member state; or public international bodies of which one or more EU member states are members.
- A UCITS cannot invest more than 20 per cent of net assets in any one collective investment scheme (CIS). Investment in non-UCITS cannot, in aggregate, exceed 30 per cent of net assets. A UCITS cannot invest in a CIS, which can itself invest more than 10 per cent of net assets in other schemes.
- A UCITS can invest up to 20 per cent of net assets in shares and/or debt securities issued by the same body where the investment policy of the fund is to replicate an index which satisfies the criteria set out in the UCITS Notices and is recognised by the Central Bank. This 20 per cent limit can be raised to 35 per cent, and applied to a single issuer, where this is justified by exceptional market conditions.
- An investment company, or a management company acting in

connection with all of the CIS it manages, cannot acquire any shares carrying voting rights which would enable it to exercise significant influence over the management of an issuing body.
- UCITS are generally restricted from acquiring more than: 10 per cent of the non-voting shares of any single issuing body; 10 per cent of the debt securities of any single issuing body; 25 per cent of the units of any single CIS; 10 per cent of the money market instruments of any single issuing body.
- A UCITS cannot carry out uncovered sales of: transferable securities; money market instruments; units of CIS; or FDIs.
- A UCITS's global exposure (as prescribed in the UCITS Notices) relating to derivatives must not exceed its total net asset value.
- A UCITS can borrow up to 10 per cent of its net asset value provided such borrowing is on a temporary basis. A UCITS can charge its assets as security for such borrowings.

Examples of some of the alternative investment strategies being employed within UCITS include:
- equity long/short funds;
- 130/30 funds;
- hedge fund or commodities index products;
- fund of funds/fund of hedge funds;
- managed futures/commodity trading products;
- absolute return funds; and
- tactical asset allocation funds.

The following investment restrictions apply to RIAIFs. RIAIFs:
- may not (and its manager may not) acquire any shares carrying voting rights which would enable it to exercise significant influence over the management of an issuing body (this requirement does not apply to investments in other investment funds and is also disapplied for RIAIFs which are venture capital, development capital or private equity RIAIFs provided its prospectus indicates its intention regarding the exercise of legal and management control over underlying investments);
- may not grant loans or act as a guarantor on behalf of third parties (this is without prejudice to the right of a RIAIF to acquire debt securities and will not prevent RIAIFs from acquiring securities which are not fully paid);
- may not raise capital from the public through the issue of debt securities;
- may only track or gain an exposure to an index where the index complies with certain conditions;
- may not invest more than 20 per cent of its net assets in securities which are not traded in or dealt on a regulated market which operates regularly and is recognised and open to the public;
- in general, the RIAIF may not invest more than 20 per cent of its net assets in securities issued by the same institution. For RIAIFs whose investment policy is to replicate an index, this limit is increased to 35 per cent in the case of a single issuer where this is justified by exceptional market conditions, for example in regulated markets where certain transferable securities or money market instruments are highly dominant

or other exceptional market conditions;
- in general, a RIAIF may not hold more than 20 per cent of any class of security issued by any single issuer. This requirement does not apply to investments in other open-ended investment funds;
- may only invest up to 100 per cent of its net assets in transferable securities issued or guaranteed by any state, its constituent states, its local authorities, or public international bodies of which one or more states are members with the prior approval of the Central Bank;
- may not keep on deposit more than 10 per cent of its net assets with any one institution; this limit is increased to 30 per cent of net assets for deposits with or securities evidencing deposits issued by or securities guaranteed by certain institutions;
- in general, may only invest in open-ended investment funds provided the underlying investment funds are regulated investment funds;
- in general, may not invest more than 30 per cent of net assets in any one open-ended investment fund;
- where a RIAIF invests more than 30 per cent of net assets in other investment funds it must ensure that the investment funds in which it invests are prohibited from investing more than 30 per cent of net assets in other investment funds. Any such investments must not be made for the purpose of duplicating management and/or investment management fees;
- may not invest more than 20 per cent of net assets in unregulated open-ended investment funds;
- may only invest in units of an investment fund managed by its management company or AIFM or by an associated or related company of either of these where the management company of the investment fund in which the investment is being made has waived the preliminary/initial/redemption charge which it would normally charge;
- must ensure that any commission or other fee received by the management company or AIFM must be paid into the property of the RIAIF;
- may not have a risk exposure to a counterparty in an OTC derivative transaction which exceeds the following:
- where the counterparty is a relevant institution, 10 per cent of the RIAIF's net assets, or
- in any other case, 5 per cent of the RIAIFs net assets;
- must ensure that its global exposure relating to FDIs does not exceed the total net asset value of its portfolio. When a transferable security or money market instrument contains an embedded derivative, the latter shall be taken into account;
- may only: (i) borrow; and (ii) secure such borrowing on the assets of the RIAIF where permitted by its constitutional document;
- may not borrow, or have at any given time, borrowings exceeding 25 per cent of its net assets. The RIAIF shall not offset credit balances (eg, cash) against borrowings when determining the percentage of borrowings outstanding;
- where the RIAIF engages in transactions in FDIs, whether such

transactions are for investment purposes or for hedging purposes, it must comply with specific requirements;
- in terms of warehousing, the RIAIF may only acquire assets pursuant to a warehousing arrangement where the use of such arrangements is fully disclosed in its prospectus, including details of any fee payable in relation to such arrangements and that the RIAIF will pay no more than current market value for these assets;
- may establish side pocket share classes into which assets which have become illiquid or difficult to value may be placed provided that the ability to establish these share classes has been provided for in the RIAIF's constitutional document and has been disclosed to investors in advance; and
- physical short selling will be permitted in RIAIFs and RIAIFs may gain exposure to any commodity through derivatives. RIAIFs will also be permitted to invest directly in gold. Direct investment in other commodities may be permitted.

4. PROPOSED CHANGES AND DEVELOPMENTS

At EU and global level, we see many proposals which will reform or impact the investment funds market and these will impact on Ireland. These include UCITS V and VI, PRIPs, money market funds, FATCA, AML reform, EMIR, European Long-Term Investment Funds, European Social Entrepreneurship Funds, European Venture Capital Funds and so on.

In Ireland, the Minister for Finance has approved, in principle, the development of legislative proposals for a new corporate structure (an ICAV) which will be more suited to the funds industry as it will remove the need for compliance with various requirements under Irish company law which serve no real purpose where investment vehicles are concerned, resulting in a reduced administrative burden and reduced costs. One of the primary advantages of the ICAV will be to provide for a corporate entity that meets US check-the-box taxation rules.

The Central Bank is consulting on the circumstances in which QIAIFs may engage in lending activities (eg, investing in loans on the primary market). It is also consulting on streamlining its authorisation process and other improvements.