



STATUTORY INSTRUMENTS.

S.I. No. 257 of 2013



EUROPEAN UNION (ALTERNATIVE INVESTMENT FUND
MANAGERS) REGULATIONS 2013

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PART 1

PRELIMINARY

1. Citation
2. Subject matter
3. Scope
4. Exemptions
5. Interpretation
6. Determination of the AIFM

PART 2

AUTHORISATION OF AIFMS

7. Conditions for taking up AIFM activities
8. Application for authorisation
9. Conditions for granting authorisation
10. Initial capital and own funds
11. Changes in the scope of the authorisation
12. Withdrawal of the authorisation

PART 3

OPERATING CONDITIONS FOR AIFMS

CHAPTER 1

General requirements

13. General principles
14. Remuneration
15. Conflicts of interest
16. Risk management
17. Supplemental provision in relation to Regulation 16
18. Liquidity management

CHAPTER 2

Organisational Requirements

- 19. General principles
- 20. Valuation

CHAPTER 3

Delegation of Aifm Functions

- 21. Delegation

CHAPTER 4

Depositary

- 22. Depositary

CHAPTER 5

Transparency Requirements

- 23. Annual report
- 24. Disclosure to investors
- 25. Reporting obligations to competent authorities

CHAPTER 6

AIFMs Managing Specific Types of AIF

DIVISION 1

AIFMS MANAGING LEVERAGED AIFS

- 26. Use of information by competent authorities, supervisory cooperation and limits to leverage

DIVISION 2

OBLIGATIONS FOR AIFMS MANAGING AIFS WHICH ACQUIRE CONTROL OF NON-LISTED COMPANIES AND ISSUERS

- 27. Scope
- 28. Notification of the acquisition of major holdings and control of non-listed companies
- 29. Disclosure in case of acquisition of control
- 30. Specific provisions regarding the annual report of AIFs exercising control of non-listed companies

31. Asset stripping

CHAPTER 7

Marketing and Managing EU aifs

32. Marketing of units or shares of EU AIFs managed by Irish AIFMs in the State
33. Other Cases of Marketing of Units or Shares of EU AIFs
34. Conditions for Irish AIFMs managing EU AIFs established in other Member States and for AIFMs from other Member States managing Irish AIFs

CHAPTER 8

Specific Rules In Relation To Third Countries

35. Conditions for Irish AIFMs which manage non-EU AIFs which are not marketed in Member States
36. Conditions for marketing, with a passport, of non-EU AIFs in the European Union or in the State by, respectively, Irish AIFMs and Other Member State AIFMs
37. Conditions for the marketing in the State without a passport of non-EU AIFs managed by an Irish AIFM or an AIFM from another Member State
38. Authorisation of non-EU AIFMs intending to manage Irish AIFs or market AIFs managed by them in the European Union in accordance with Regulation 40 or 41
39. Peer review of authorisation and supervision of non-EU AIFMs
40. Conditions for marketing, with a passport, in the European Union or in the State of EU AIFs managed by, respectively, a non-EU AIFM whose Member State of reference is the State and by such an AIFM whose Member State of reference is another Member State
41. Conditions for marketing, with a passport, in the European Union or in the State of non-EU AIFs managed by, respectively, a non-EU AIFM whose Member State of reference is the State and by such an AIFM whose Member State of reference is another Member State
42. Conditions for managing AIFs established in other Member States and Irish AIFs by, respectively, a non-EU AIFM whose Member State of reference is the State and such an AIFM whose Member State of reference is another Member State
43. Conditions for the marketing in the State without a passport of AIFs managed by a non-EU AIFM

CHAPTER 9

Marketing To Retail Investors

44. Marketing of AIFs by AIFMs to retail investors

PART 4

COMPETENT AUTHORITIES

DESIGNATION, POWERS AND REDRESS PROCEDURES

45. Designation of competent authorities
46. Responsibility of the Bank
47. Supplemental provisions in relation to Regulation 46
48. Powers of the Bank to request Information
49. Power to issue directions
50. Restrictions on certain proceedings or certain other action being taken where direction given
51. Power of High Court to compel compliance with direction
52. Information exchanged to be confidential
53. Reasons for decisions to be given, etc.
54. Cooperation between different competent authorities, obligation to cooperate
55. Transfer and retention of personal data
56. Disclosure of information to third countries
57. Exchange of information relating to the potential systemic consequences of AIFM activity
58. Cooperation in supervisory activities
59. Dispute settlement

PART 5

TRANSITIONAL AND FINAL PROVISIONS

60. Transitional provisions
61. Delegated act on the application of Article 35 and Articles 37 to 41
62. Bank to provide certain information to ESMA
63. Amendments of Central Bank Act 1942

64. Amendments of Unit Trusts Act 1990
65. Amendments of Companies Act 1990
66. Amendments of Investment Funds, Companies and Miscellaneous Provisions Act 2005
67. Amendments of Investment Limited Partnerships Act 1994

SCHEDULE 1

SCHEDULE 2

REMUNERATION POLICY

SCHEDULE 3

DOCUMENTATION AND INFORMATION TO BE PROVIDED IN
CASE OF INTENDED MARKETING IN THE STATE BY IRISH AIFMs
OR BY AIFMs WHOSE MEMBER STATE OF REFERENCE IS THE
STATE

SCHEDULE 4

DOCUMENTATION AND INFORMATION TO BE PROVIDED IN THE
CASE OF INTENDED MARKETING IN OTHER MEMBER STATES BY
IRISH AIFMs OR BY AIFMs WHOSE MEMBER STATE OF
REFERENCE IS THE STATE

S.I. No. 257 of 2013

EUROPEAN UNION (ALTERNATIVE INVESTMENT FUND
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I, MICHAEL NOONAN, Minister for Finance, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), and for the purpose of giving effect to Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EU and 2009/65/EC and Regulations (EC) No. 1060/2009 and (EU) No. 1095/2010¹, hereby make the following regulations:

PART 1

PRELIMINARY

Citation.

1. These Regulations may be cited as the European Union (Alternative Investment Fund Managers) Regulations 2013.

Subject matter.

2. These Regulations contain provisions—

- (a) for the authorisation and ongoing operation of the managers of alternative investment funds who manage or market alternative investment funds in the State (or do both of the foregoing in the State) and provisions for securing the transparency of those activities of them; and
- (b) otherwise giving effect to the Directive.

Scope.

3. (1) Subject to paragraph (3) and Regulation 4, these Regulations apply to—

- (a) an AIFM established in the State which manages one or more than one AIF irrespective of whether such AIF is an EU AIF or a non-EU AIF;
- (b) a non-EU AIFM whose Member State of reference is the State;
- (c) an AIFM from another Member State which markets one or more than one EU AIF in the State;

¹Official Journal L 174/1, 01/07/2011 P. 1

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 30th July, 2013.*

- (d) an AIFM from another Member State which manages one or more than one Irish AIF;
 - (e) an AIFM from another Member State which markets one or more than one non-EU AIF in the State; and
 - (f) a non-EU AIFM which markets one or more than one AIF in the State.
- (2) For the purposes of paragraph (1), the following shall be immaterial:
- (a) whether the AIF belongs to the open-ended or closed-ended type;
 - (b) whether the AIF is constituted under the law of contract, under trust law, under statute, or has any other legal form;
 - (c) the legal structure of the AIFM.
- (3) These Regulations do not apply to the following entities:
- (a) holding companies;
 - (b) institutions for occupational retirement provision to which Directive 2003/41/EC applies including, where applicable, the authorised entities responsible for managing such institutions and acting on their behalf referred to in Article 2(1) of that Directive or the investment managers appointed pursuant to Article 19(1) of that Directive, in so far as they do not manage alternative investment funds;
 - (c) supranational institutions, such as the European Central Bank, the European Investment Bank, the European Investment Fund, the European Development Finance Institutions and bilateral development banks, the World Bank, the International Monetary Fund, and other supranational institutions and similar international organisations, in the event that such institutions or organisations manage alternative investment funds and in so far as such funds act in the public interest;
 - (d) the Bank;
 - (e) state authorities or local authorities which manage funds supporting social security and pension systems.
 - (f) employee participation schemes or employee savings schemes;
 - (g) securitisation special purpose entities.

Exemptions.

4. (1) These Regulations do not apply to an AIFM in so far as it manages one or more than one AIF whose only investors are the AIFM or the parent undertakings or the subsidiaries of the AIFM or other subsidiaries of those parent undertakings, provided that none of those investors is itself an AIF.

(2) Paragraphs (3) to (5) of this Regulation, and no other provision of these Regulations, with the exception of Regulations 48 and 49, shall apply to an AIFM falling within either of the following subparagraphs:

- (a) an AIFM which either directly or indirectly, through a company with which the AIFM is linked by common management or control, or by a substantive direct or indirect holding, manages portfolios of alternative investment funds whose assets under management (including any assets acquired through use of leverage) do not exceed, in total, €100 million; or
- (b) an AIFM which either directly or indirectly, through a company with which the AIFM is linked by common management or control, or by a substantive direct or indirect holding, manage portfolios of alternative investment funds whose assets under management do not exceed, in total, €500 million and those portfolios consist of alternative investment funds that—
 - (i) are unleveraged, and
 - (ii) have no redemption rights exercisable during a period of 5 years following the date of initial investment in each AIF.

(3) An AIFM referred to in paragraph (2)(a) or (b) shall—

- (a) register with the Bank,
- (b) at the time of registration, identify itself and the alternative investment funds that it manages to the Bank,
- (c) at the time of registration, provide the Bank with information on the investment strategies of the alternative investment funds that it manages,
- (d) provide the Bank, at regular intervals, with information on the main instruments in which it is trading and on the principal exposures and most important concentrations of the alternative investment funds that it manages in order to enable the Bank to monitor systemic risk effectively, and
- (e) notify the Bank, in the event that it no longer meets the conditions referred to in paragraph (2), of that fact.

(4) Where the conditions referred to in paragraph (2) are no longer met, the AIFM concerned shall apply for authorisation under these Regulations within 30 days after the date of such occurring in accordance with the relevant procedures specified in these Regulations.

(5) The Bank may impose such requirements as it considers appropriate on an AIFM which stands registered with the Bank under this Regulation and the AIFM shall comply with any such requirements. Those requirements shall be

no more onerous than the requirements to which an authorised AIFM is subject by or under these Regulations.

(6) An AIFM referred to in paragraph (2)(a) or (b) shall not benefit from any of the rights granted under these Regulations unless it chooses to opt in under these Regulations. Where an AIFM so opts in, these Regulations shall become applicable in their entirety to it.

Interpretation.

5. (1) In these Regulations—

“alternative investment fund” or “AIF” means a collective investment undertaking, including investment compartments thereof, which—

- (a) raises capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors, and
- (b) does not require authorisation under Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS):

“alternative investment fund manager” or “AIFM” means a legal person whose regular business is managing one or more than one AIF;

“Bank” means the Central Bank of Ireland;

“branch”, in relation to an AIFM, means a place of business which is a part of the AIFM, which has no legal personality and which provides the services for which the AIFM has been authorised; where all the places of business of an AIFM, whose registered office is in another Member State or in a third country, are established in the State, they shall be regarded as a single branch;

“carried interest” means a share in the profits of the AIF accrued to the AIFM as compensation for the management of the AIF and excluding any share in the profits of the AIF accrued to the AIFM as a return on any investment by the AIFM into the AIF;

“close links” means a situation in which two or more natural or legal persons are linked by:

- (a) participation, namely ownership, directly or by way of control, of 20 per cent or more of the voting rights or capital of an undertaking,
- (b) control, namely the relationship between a parent undertaking and a subsidiary, as referred to in Regulation 4 of the European Communities (Companies: Group

Accounts) Regulations 1992 (S.I. No. 201 of 1992), or a similar relationship between a natural or legal person and an undertaking; for the purposes of this subparagraph a subsidiary undertaking of a subsidiary undertaking shall also be considered to be a subsidiary of the parent undertaking of those subsidiaries.

and a situation in which 2 or more natural or legal persons are permanently linked to the same person by a control relationship shall also be regarded as constituting a “close link” between such persons for the purpose of these Regulations;

“competent authority” means the Bank or, in the case of another Member State, the body or bodies designated by that state to act as a competent authority for the purposes of the Directive;

“competent authorities” in relation to a depositary means:

- (a) if the depositary is a credit institution authorised under Directive 2006/48/EC, the competent authorities as defined in point (4) of Article 4 thereof,
- (b) if the depositary is an investment firm authorised under Directive 2004/39/EC, the competent authorities as defined in point (22) of Article 4(1) thereof,
- (c) if the depositary falls within a category of institution referred to in Regulation 22(3)(c), the Bank;
- (d) if the depositary is an entity referred to in Regulation 22(3)(f), the national authorities of the Member State in which that entity has its registered office and which are empowered by law or regulation to supervise such entity or the official body competent to register or supervise such entity pursuant to the rules of professional conduct applicable thereto;
- (e) if the depositary is appointed as depositary for a non-EU AIF in accordance with Regulation 22(5)(c) and does not fall within any of subparagraphs (a) to (d) of this definition, the relevant national authorities of the third country where the depositary has its registered office;

“competent authorities of the EU AIF” means the national authorities of a Member State which are empowered by law or regulation to supervise alternative investment funds;

“contravene”, in relation to a provision, includes fail to comply with the provision;

“control” means the relationship between a parent undertaking and a subsidiary, in all the cases being the relationship referred to in Regulation 4 of the European Communities (Companies: Group Accounts) Regulations 1992 (S.I. No. 201 of 1992);

“employees’ representatives” means employees’ representatives as defined in point (e) of Article 2 of Directive 2002/14/EC;

“ESMA” means the European Securities and Markets Authority established by Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010;

“established”, in relation to a place, means:

- (a) in the case of an AIFM, the AIFM having its registered office in the place;
- (b) in the case of an AIF, the AIF being authorised or registered in the place, or, if the AIF is not authorised or registered, the AIF having its registered office in the place;
- (c) in the case of a depositary, the depositary having its registered office or branch in the place;
- (d) in the case of a legal representative that is a legal person, the legal representative having its registered office or branch in the place;
- (e) in the case of a legal representative who is a natural person, the legal representative being domiciled in the place;

“EU alternative investment fund” or “EU AIF” means:

- (a) an AIF which is authorised or registered in a Member State under the applicable national law; or
- (b) an AIF which is not authorised or registered in a Member State, but has its registered office or head office, or both, in a Member State;

“EU alternative investment fund manager” or “EU AIFM” means an AIFM which has its registered office in a Member State;

“external AIFM” shall be read in accordance with Regulation 6(2)(a);

“feeder alternative investment fund” or “feeder AIF” means an AIF which:

- (a) invests at least 85 per cent of its assets in units or shares of another AIF (the “master alternative investment fund”),

- (b) invests at least 85 per cent of its assets in more than one master alternative investment fund where those master alternative investment funds have identical investment strategies; or
- (c) has otherwise an exposure of at least 85 per cent of its assets to such a master alternative investment fund;

“financial instrument” means an instrument specified in Part 3 of Schedule 1 to the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007);

“holding company” means a company with shareholdings in one or more other companies, the commercial purpose of which is to carry out a business strategy or strategies through its subsidiaries, associated companies or participations in order to contribute to their long-term value and which is either a company:

- (a) operating on its own account and whose shares are admitted to trading on a regulated market in the European Union, or
- (b) not established for the main purpose of generating returns for its investors by means of divestment of its subsidiaries or associated companies, evidenced in its annual report or other official documents;

“home Member State of the AIF” means:

- (a) the Member State in which the AIF is authorised or registered under applicable law, or in case of multiple authorisations or registrations, the Member State in which the AIF has been authorised or registered for the first time, or
- (b) if the AIF is neither authorised nor registered in a Member State, the Member State in which the AIF has its registered office or head office or both;

“home Member State of the AIFM” means the Member State in which the AIFM has its registered office; in the case of a non-EU AIFM, references in these Regulations to “home Member State of the AIFM” shall be read as references to the “Member State of reference”, as provided for in Chapter 8 of Part 3;

“host Member State of the AIFM” means any of the following:

- (a) a Member State, other than the home Member State, in which an EU AIFM manages EU alternative investment funds;

- (b) a Member State, other than the home Member State, in which an EU AIFM markets units or shares of an EU AIF;
- (c) a Member State, other than the home Member State, in which an EU AIFM markets units or shares of a non-EU AIF;
- (d) a Member State, other than the Member State of reference, in which a non-EU AIFM manages EU alternative investment funds;
- (e) a Member State, other than the Member State of reference, in which a non-EU AIFM markets units or shares of an EU AIF; or
- (f) a Member State, other than the Member State of reference, in which a non-EU AIFM markets units or shares of a non-EU AIF;

“initial capital” means funds as referred to in points (a) and (b) of the first paragraph of Article 57 of Directive 2006/48/EC;

“issuer” means an issuer within the meaning of point (d) of Article 2(1) of Directive 2004/109/EC where that issuer has its registered office in the Union, and where its shares are admitted to trading on a regulated market within the meaning of Regulation 3(1) of the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007);

“legal representative” means a natural person domiciled in the European Union or a legal person with its registered office in the European Union, and who or which, expressly designated by a non-EU AIFM, acts on behalf of such non-EU AIFM *vis-à-vis* the authorities, clients, bodies and counterparties to the non-EU AIFM in the European Union with regard to the non-EU AIFM’s obligations under these Regulations;

“leverage” means any method by which the AIFM increases the exposure of an AIF it manages whether through borrowing of cash or securities, or leverage embedded in derivative positions or by any other means;

“managing one or more than one alternative investment fund” means performing at least investment management functions referred to in paragraph 1(a) or (b) of Schedule 1 for one or more than one such fund;

“marketing” means a direct or indirect offering or placement at the initiative of the AIFM or on behalf of the AIFM of units or shares of an AIF it manages to or with investors domiciled or with a registered office in the European Union;

“master alternative investment fund” or “master AIF” means an AIF in which another AIF invests or has an exposure in accordance with the definition of “feeder alternative investment fund” in this paragraph;

“Member State of reference” means the Member State determined in accordance with Article 37(4) of the Directive;

“non-EU alternative investment fund” or “non-EU AIF” means an AIF which is not an EU AIF;

“non-EU alternative investment fund manager” or “non-EU AIFM” means an AIFM which is not an EU AIFM;

“non-listed company” means a company which has its registered office in the European Union and the shares of which are not admitted to trading on a regulated market within the meaning of Regulation 3(1) of the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007);

“own funds” means own funds as referred to in Articles 56 to 67 of Directive 2006/48/EC;

“parent undertaking” means an undertaking that has one or more subsidiary undertakings;

“prime broker” means a credit institution, a regulated investment firm or another entity subject to prudential regulation and ongoing supervision, offering services to professional investors primarily to finance or execute transactions in financial instruments as counterparty and which may also provide other services such as clearing and settlement of trades, custodial services, securities lending, customised technology and operational support facilities;

“professional investor” means an investor who is considered to be a professional client or may, on request, be treated as a professional client within the meaning of Annex II to Directive 2004/39/EC

“qualifying holding” means a direct or indirect holding in an AIFM which represents 10 per cent or more of the capital or of the voting rights, in accordance with Articles 9 and 10 of Directive 2004/109/EC, taking into account the conditions regarding aggregation of the holding laid down in Article 12(4) and (5) thereof or which makes it possible to exercise a significant influence over the management of the AIFM in which that holding subsists;

“retail investor” means an investor who is not a professional investor;

“subsidiary” means a subsidiary undertaking as defined in Regulation 4(1) of the European Communities (Companies: Group Accounts) Regulations 1992 (S.I. No. 201 of 1992);

“supervisory authorities”, in relation to a non-EU AIF, means the national authorities of a third country which are empowered by law or regulation to supervise the AIF;

“supervisory authorities”, in relation to a non-EU AIFM, means the national authorities of a third country which are empowered by law or regulation to supervise the AIFM;

“securitisation special purpose entities” means entities whose sole purpose is to carry on a securitisation or securitisations within the meaning of Article 1(2) of Regulation (EC) No. 24/2009 of the European Bank of 19 December 2008 concerning statistics on the assets and liabilities of financial vehicle corporations engaged in securitisation transactions³ and other activities which are appropriate to accomplish that purpose;

“UCITS” means an undertaking for collective investment in transferable securities authorised in accordance with Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS).

(2) For the purposes of the definition of “own funds” in paragraph (1), Regulations 11 to 14 of the European Communities (Capital Adequacy of Investments Firms) Regulations 2006 shall apply with the necessary modifications.

(3) A word or expression that is used in these Regulations and is also used in the Directive has, unless the contrary intention appears, the meaning in these Regulations that it has in the Directive.

Determination of the AIFM.

6. (1) Each AIF managed within the scope of these Regulations shall have a single AIFM, which AIFM shall be responsible for ensuring that these Regulations are complied with.

(2) The AIFM shall be either—

- (a) an external manager, which is the legal person appointed by the AIF or on behalf of the AIF and which, through that appointment, is responsible for managing the AIF (“external AIFM”); or
- (b) where the legal form of the AIF permits an internal management and where the AIF’s governing body chooses not to appoint an external AIFM, the AIF itself, which shall then be authorised as the AIFM.

(3) In a case where an external AIFM is unable to ensure compliance with requirements of these Regulations for which an AIF or another entity on its behalf is responsible, it shall immediately notify the Bank, and, if applicable, the

³OJ L 15, 20.1.2009, p. 1.

competent authorities of the EU AIF concerned, of that fact. The Bank shall require the AIFM to take the necessary steps to remedy the situation.

(4). If, notwithstanding the steps referred to in paragraph (3) being taken, the non-compliance continues, and the case is one that relates to an Irish AIFM managing an AIF or a non-EU AIFM (being an AIFM whose Member State of reference is the State) managing an EU AIF, the Bank shall require that the AIFM resign as AIFM of the AIF concerned and the AIFM shall comply with that requirement. In such a case the AIF shall no longer be marketed in the European Union. If the case is one that relates to a non-EU AIFM (being an AIFM whose Member State of reference is the State) managing a non-EU AIF, the AIF shall no longer be marketed in the European Union.

(5) In either of the cases mentioned in paragraph (4), the Bank shall immediately give notice of the matter to the competent authorities of the host Member States of the AIFM.

PART 2

AUTHORISATION OF AIFMS

Conditions for taking up AIFM activities.

7. (1) An AIFM shall not manage an AIF unless it is authorised in accordance with these Regulations and complies with any conditions that the Bank attaches to such authorisation.

(2) No external AIFM shall engage in activities other than those referred to in Schedule 1, but subject to its being authorised as a UCITS management company under the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011, it may also manage UCITS.

(3) No internally managed AIF shall engage in activities other than the internal management of that AIF in accordance with Schedule 1.

(4) Without prejudice to paragraph (2), an external AIFM may provide the following services:

- (a) management of portfolios of investments, including those owned by pension funds and institutions for occupational retirement provision in accordance with Article 19(1) of Directive 2003/41/EC, in accordance with mandates given by investors on a discretionary, client-by-client basis;
- (b) non-core services comprising:
 - (i) investment advice;
 - (ii) safe-keeping and administration in relation to shares or units of collective investment undertakings;

(iii) reception and transmission of orders in relation to financial instruments.

(5) An AIFM shall not be authorised under these Regulations to provide:

- (a) only the services referred to in paragraph (4),
- (b) non-core services referred to in paragraph (4)(b) without also providing the services referred to in paragraph (4)(a),
- (c) only the activities referred to in paragraph 2 of Schedule 1; or
- (d) the services referred to in paragraph 1(a) of Schedule 1 without also providing the services referred to in paragraph 1(b) of that Schedule or vice versa.

(6) Regulations 5(2), 32, 33 and 76 of the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007) shall apply to the provision of the services referred to in paragraph (4) by an AIFM.

(7) An AIFM shall provide the Bank with the information the Bank requires to monitor compliance with the conditions referred to in these Regulations.

(8) Neither an investment firm authorised under Directive 2004/39/EC nor a credit institution authorised under Directive 2006/48/EC shall be required to obtain an authorisation under these Regulations in order to provide investment services such as individual portfolio management in respect of alternative investment funds. However, an investment firm shall, directly or indirectly, offer units or shares of alternative investment funds to, or place such units or shares with, investors in the State, only to the extent the units or shares can be marketed in accordance with these Regulations.

Application for authorisation.

8. (1) An AIFM shall apply to the Bank for an authorisation under these Regulations.

(2) An AIFM that applies for such an authorisation shall provide to the Bank the following information relating to it:

- (a) information on the persons effectively conducting the business of the AIFM;
- (b) information on the identities of the AIFM's shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings and on the amounts of those holdings;
- (c) a programme of activity setting out the organisational structure of the AIFM, including information on how the AIFM intends to comply with its obligations under these Regulations;

- (d) information on the remuneration policies and practices pursuant to Regulation 14;
- (e) information on arrangements made for the delegation and sub-delegation to third parties of functions as referred to in Regulation 21.

(3) An AIFM that applies for such an authorisation shall provide to the Bank the following information in relation to each AIF it intends to manage:

- (a) information concerning the investment strategies including the types of underlying funds if the AIF is a fund of funds, and the AIFM's policy as regards the use of leverage, and the risk profiles and other characteristics of each AIF it manages or intends to manage, including information about the Member States or third countries in which each AIF is established or is expected to be established;
- (b) information on where the master AIF is established if the AIF is a feeder AIF;
- (c) the rules or instruments of incorporation of each AIF the AIFM intends to manage;
- (d) information on the arrangements made for the appointment of the depositary in accordance with Regulation 22 for each AIF the AIFM intends to manage;
- (e) any additional information referred to in Regulation 24(1) for each AIF the AIFM manages or intends to manage.

(4) Where a management company is authorised pursuant to the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (S.I. No. 352 of 2011) and applies for authorisation as an AIFM under these Regulations, the Bank shall not require the UCITS management company to provide information or documents which the UCITS management company already provided when applying for authorisation under the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011, provided that such information or documents remain up-to-date.

(5) In each year, the Bank shall, on a quarterly basis, notify ESMA of authorisations granted or withdrawn in accordance with this Part.

Conditions for granting authorisation.

9. (1) (a) The Bank shall not grant an authorisation unless—

- (i) it is satisfied that the AIFM will be able to meet the conditions of these Regulations;
- (ii) the AIFM has sufficient initial capital and own funds in accordance with Regulation 10;

- (iii) the persons who effectively conduct the business of the AIFM are of sufficiently good repute and are sufficiently experienced also in relation to the investment strategies pursued by each AIF managed by the AIFM, the names of those persons and of every person succeeding them in office being communicated forthwith to the Bank and the conduct of the business of the AIFM being decided by at least two persons meeting such conditions;
 - (iv) the shareholders or members of the AIFM who have qualifying holdings are suitable taking into account the need to ensure the sound and prudent management of the AIFM; and
 - (v) the head office and the registered office of the AIFM are located in the State.
- (b) Without prejudice to its powers to impose conditions or requirements otherwise under these Regulations or any other enactment, the Bank may attach such conditions to an authorisation as it considers appropriate.
- (c) Without prejudice to subparagraph (b), the Bank may, if it thinks fit, attach to an authorisation, subsequent to the grant thereof, such one or more conditions as it considers appropriate.
- (d) The Bank may alter or revoke conditions attached to an authorisation under subparagraph (b) or (c).
- (2) The Bank shall consult the relevant competent authorities of other Member States before it grants an authorisation to any of the following:
- (a) a subsidiary of another AIFM, of a UCITS management company, of an investment firm, of a credit institution or of an insurance undertaking authorised in another Member State;
 - (b) a subsidiary of the parent undertaking of another AIFM, of a UCITS management company, of an investment firm, of a credit institution or of an insurance undertaking authorised in another Member State; and
 - (c) a company controlled by the same natural or legal persons as those that control another AIFM, a UCITS management company, an investment firm, a credit institution or an insurance undertaking authorised in another Member State.
- (3) The Bank shall refuse to grant an authorisation to an AIFM where the effective exercise of the Bank's supervisory functions would be prevented by any of the following:
- (a) close links between the AIFM and other natural or legal persons;

- (b) the laws, regulations or administrative provisions of a third country governing natural or legal persons with which the AIFM has close links;
- (c) difficulties involved in the enforcement of those laws, regulations and administrative provisions.

(4) Without prejudice to other powers to attach conditions to an authorisation, the Bank may attach a condition to an authorisation restricting the authorisation's scope in such manner as it sees fit, in particular as regards the investment strategies of each AIF the AIFM is allowed to manage.

(5) The Bank shall inform, in writing, the applicant for the grant of an authorisation within 3 months after the date of submission to it by the applicant of a complete application, whether or not the authorisation has been granted.

(6) The Bank may extend, by up to 3 additional months, the period referred to in paragraph (5) where it considers it necessary to do so because of the specific circumstances of the case and after having notified the AIFM accordingly.

(7) For the purpose of paragraph (5) an application shall be deemed to be complete if the AIFM has at least submitted the information referred to in Regulation 8 (2)(a) to (d) and Regulation 8(3)(a) and (b).

(8) An AIFM may start managing alternative investment funds with investment strategies described in the application in accordance with Regulation 8(3)(a) in the State as soon as the authorisation is granted, but not earlier than 1 month after having submitted any missing information referred to in Regulation 8(2)(e) and Regulation 8(3)(c) to (e).

Initial capital and own funds.

10. (1) An AIFM which is an internally managed AIF shall have an initial capital of at least €300,000.

(2) Where an AIFM is appointed as external manager of alternative investment funds, the AIFM shall have an initial capital of at least €125,000.

(3) Where the value of the portfolios of the alternative investment funds managed by the AIFM exceeds €250,000,000, the AIFM shall provide an additional amount of own funds. That additional amount of own funds shall be equal to 0.02 per cent of the amount by which the value of the portfolios of the AIFM exceeds €250,000,000 but the required total of the initial capital and the additional amount shall not, however, exceed €10,000,000.

(4) For the purpose of paragraph (3), alternative investment funds managed by the AIFM, including such funds for which the AIFM has delegated functions in accordance with Regulation 20 but excluding AIF portfolios that the AIFM is managing under delegation, shall be deemed to be the portfolios of the AIFM.

(5) Irrespective of paragraph (3), the own funds of the AIFM shall never be less than the amount required under Article 21 of Directive 2006/49/EC.

(6) The Bank may, to the following extent and subject to the following condition, relieve an AIFM from the requirement to comply with paragraph (3), namely by permitting it not to provide up to 50 per cent of the additional amount of own funds referred to in that paragraph on condition that it benefits from a guarantee of the same amount given by—

- (a) a credit institution or an insurance undertaking which has its registered office in a Member State, or
- (b) a credit institution or an insurance undertaking in a third country in which the institution or undertaking is subject to prudential rules considered by the Bank as equivalent to those laid down in European Union law.

(7) To cover potential professional liability risks resulting from activities an AIFM may carry out pursuant to these Regulations, an internally managed AIF and an external AIFM shall either:

- (a) have additional own funds which are appropriate to cover potential liability risks arising from professional negligence; or
- (b) hold a professional indemnity insurance against liability arising from professional negligence which is appropriate to the risks covered.

(8) Own funds, including any additional own funds as referred to in paragraph (7)(a), shall be invested in liquid assets or assets readily convertible to cash in the short term and shall not include speculative positions.

(9) This Regulation shall not apply to an AIFM which is also a UCITS management company with the exception of paragraphs (7) and (8).

Changes in the scope of the authorisation.

11. (1) An AIFM shall notify the Bank before implementation of any proposed changes that would materially affect the basis on which the authorisation had been granted to it, or on which the Bank has attached any conditions to the authorisation; for the purpose of this paragraph changes that are material include material changes to the information provided in accordance with Regulation 8.

(2) Where the Bank receives a notification under paragraph (1), the Bank may either—

- (a) decide to alter the conditions attached to the authorisation so as to take account of the changes proposed; or
- (b) decide that the changes proposed should not be proceeded with,

and, in either case, shall make its decision, and inform the AIFM of it, within 1 month after the receipt of the notification; where the decision is that under subparagraph (a), the Bank shall alter the conditions accordingly.

(3) The Bank may extend, by up to one additional month, the period referred to in paragraph (2) where it considers it necessary to do so because of the specific circumstances of the case and after having notified the AIFM accordingly.

(4) If the Bank fails to comply with paragraph (2) within the period referred to therein (or, as the case may be, that period as extended under paragraph (3)), the changes referred to in paragraph (1) may be carried into effect.

Withdrawal of the authorisation.

12. The Bank may withdraw the authorisation granted to an AIFM where the AIFM—

- (a) does not make use of the authorisation within 12 months after the date of its grant, expressly renounces the authorisation or has ceased the activity to which these Regulations apply for the preceding 6 months, unless the Bank has provided for the authorisation to lapse in such cases;
- (b) obtained the authorisation by making false statements or by any other irregular means;
- (c) no longer complies with one or more of the conditions attached to the authorisation;
- (d) no longer complies with Directive 2006/49/EC if its authorisation also covers the discretionary portfolio management service referred to in Regulation 7(4)(a); or
- (e) has contravened any of these Regulations and the contravention or contraventions is or are, in the opinion of the Bank, of a serious or systematic nature.

PART 3

OPERATING CONDITIONS FOR AIFMS

Chapter 1

General requirements

General principles.

13. (1) An AIFM shall at all times:

- (a) act honestly, with due skill, care and diligence and fairly in conducting its activities;
- (b) act in the best interests of each AIF or the investors of each AIF it manages and the integrity of the market;
- (c) have and employ effectively the resources and procedures that are necessary for the proper performance of its business activities;

- (d) take all reasonable steps to avoid conflicts of interest and, when they cannot be of interest in order to prevent them from adversely affecting the interests of each AIF and its investors and to ensure that each AIF it manages is fairly treated;
- (e) comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of each AIF or the investors of each AIF it manages and the integrity of the market;
- (f) treat all AIF investors fairly.

No investor in an AIF shall obtain preferential treatment, unless such preferential treatment is disclosed in the relevant AIF's rules or instruments of incorporation.

(2) Each AIFM which is also authorised to provide the service of discretionary portfolio management referred to in Regulation 7(4)(a) shall:

- (a) not invest all or part of a client's portfolio in units or shares of any AIF it manages, unless it receives prior general approval from the client;
- (b) with regard to the services referred to in Regulation 7(4) be subject to Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes.

Remuneration.

14. (1) An AIFM shall have remuneration policies and practices for the categories of staff referred to in paragraph (2) that are consistent with and promote sound and effective risk management and do not encourage risk-taking which is inconsistent with the risk profiles, rules or instruments of incorporation of each AIF it manages.

(2) The staff referred to in paragraph (1) are staff of the AIFM, including senior management, risk-takers, control functions, and any employees receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers, whose professional activities have a material impact on the risk profiles of the AIFM or of any AIF it manages.

(3) An AIFM shall determine the remuneration policies and practices in accordance with Schedule 2.

Conflicts of interest.

15. (1) An AIFM shall take all reasonable steps to identify conflicts of interest that arise in the course of managing alternative investment funds between:

- (a) the AIFM, including its managers, employees or any person directly or indirectly linked to the AIFM by control, and the AIF managed by the AIFM or the investors in that AIF;

- (b) the AIF or the investors in that AIF, and another AIF or the investors in that AIF;
- (c) the AIF or the investors in that AIF, and another client of the AIFM;
- (d) the AIF or the investors in that AIF, and a UCITS managed by the AIFM or the investors in that UCITS; or
- (e) two clients of the AIFM.

(2) An AIFM shall maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to identify, prevent, manage and monitor conflicts of interest in order to prevent them from adversely affecting the interests of each AIF and its investors.

(3) An AIFM shall segregate, within its own operating environment, tasks and responsibilities which may be regarded as incompatible with each other or which may potentially generate systematic conflicts of interest. An AIFM shall assess whether its operating conditions may involve any other material conflicts of interest and disclose them to the investors of each AIF.

(4) Where organisational arrangements made by the AIFM to identify, prevent, manage and monitor conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to investors' interests will be prevented, the AIFM shall clearly disclose the general nature or sources of conflicts of interest to the investors before undertaking business on their behalf, and develop appropriate policies and procedures.

(5) Where the AIFM on behalf of an AIF uses the services of a prime broker, the terms shall be set out in a written contract. In particular any possibility of transfer and reuse of AIF assets shall be provided for in that contract and shall comply with the AIF rules or instruments of incorporation. The contract shall provide that the depositary be informed of the contract.

(6) An AIFM shall exercise due skill, care and diligence in the selection and appointment of prime brokers with whom a contract is to be concluded.

Risk management.

16. (1) An AIFM shall separate, functionally and hierarchically, the functions of risk management from the operating units, including from the functions of portfolio management.

(2) The functional and hierarchical separation of the functions of risk management in accordance with the paragraph (1) shall be reviewed by the Bank in accordance with the principle of proportionality.

(3) For the purposes of a review under paragraph (2), the AIFM shall, in any event, be able to satisfy the Bank that specific safeguards against conflicts of interest allow for the independent performance of risk management activities and that the risk management process satisfies the requirements of this Regulation and is consistently effective.

(4) An AIFM shall implement adequate risk management systems in order to identify, measure, manage and monitor appropriately all risks relevant to each AIF investment strategy and to which each AIF is or may be exposed.

(5) An AIFM shall review the risk management systems with appropriate frequency at least once a year and adapt them whenever necessary.

(6) An AIFM shall at least—

- (a) implement an appropriate, documented and regularly updated due diligence process when investing on behalf of the AIF, according to the investment strategy, the objectives and risk profile of the AIF;
- (b) ensure that the risks associated with each investment position of the AIF and their overall effect on the AIF's portfolio can be properly identified, measured, managed and monitored on an ongoing basis, including through the use of appropriate stress testing procedures;
- (c) ensure that the risk profile of the AIF shall correspond to the size, portfolio structure and investment strategies and objectives of the AIF as laid down in the AIF rules or instruments of incorporation, prospectus and offering documents.

Supplemental provision in relation to Regulation 16.

17. An AIFM shall set a maximum level of leverage which it may employ on behalf of each AIF it manages as well as the extent of the right to reuse collateral or guarantee that could be granted under the leveraging arrangement, taking into account, inter alia:

- (a) the type of the AIF;
- (b) the investment strategy of the AIF;
- (c) the sources of leverage of the AIF;
- (d) any other inter-linkage or relevant relationships with other financial services institutions, which could pose systemic risk;
- (e) the need to limit the exposure to any single counterparty;
- (f) the extent to which the leverage is collateralised;
- (g) the asset-liability ratio;
- (h) the scale, nature and extent of the activity of the AIFM on the markets concerned.

Liquidity management.

18. (1) An AIFM shall for each AIF that it manages which is not an unleveraged closed-ended AIF, employ an appropriate liquidity management system and adopt procedures which enable it to monitor the liquidity risk of the

AIF and to ensure that the liquidity profile of the investments of the AIF complies with its underlying obligations.

(2) An AIFM shall regularly conduct stress tests, under normal and exceptional liquidity conditions, which enable it to assess the liquidity risk of each AIF and monitor the liquidity risk of each AIF accordingly.

(3) An AIFM shall ensure that, for each AIF that it manages, the investment strategy, the liquidity profile and the redemption policy are consistent.

Chapter 2

Organisational Requirements

General principles.

19. (1) An AIFM shall use, at all times, adequate and appropriate human and technical resources that are necessary for the proper management of each AIF.

(2) In particular, the Bank, having regard also to the nature of each AIF managed by the AIFM, shall require that the AIFM has sound administrative and accounting procedures, control and safeguard arrangements for electronic data processing and adequate internal control mechanisms including, in particular, rules for personal transactions by its employees or for the holding or management of investments in order to invest on its own account and ensuring, at least, that each transaction involving each AIF may be reconstructed according to its origin, the parties to it, its nature, and the time and place at which it was effected and that the assets of each AIF managed by the AIFM are invested in accordance with the AIF rules or instruments of incorporation and the legal provisions in force.

Valuation.

20. (1) An AIFM shall ensure that, for each AIF that it manages, appropriate and consistent procedures are established so that a proper and independent valuation of the assets of the AIF can be performed in accordance with this Regulation and the AIF rules or instruments of incorporation.

(2) The AIF rules or instruments of incorporation shall set out the rules applicable to the valuation of assets and the calculation of the net asset value per unit or share of the AIF.

(3) An AIFM shall also ensure that the net asset value per unit or share of each AIF is calculated and disclosed to the investors in accordance with this Regulation and the AIF rules or instruments of incorporation.

(4) The valuation procedures used shall ensure that the assets are valued and the net asset value per unit or share is calculated at least once a year.

(5) If the AIF is of the open-ended type, such valuations and calculations shall also be carried out at a frequency which is both appropriate to the assets held by the AIF and its issuance and redemption frequency.

(6) If the AIF is of the closed-ended type, such valuations and calculations shall also be carried out in case of an increase or decrease of the capital by the relevant AIF.

(7) The investors shall be informed of the valuations and calculations as set out in the relevant AIF rules or instruments of incorporation.

(8) An AIFM shall ensure that the valuation function is either performed by:

(a) an external valuer, being a legal or natural person independent from the AIF, the AIFM and any other persons with close links to the AIF or the AIFM; or

(b) the AIFM itself, provided that the valuation task is functionally independent from the portfolio management and the remuneration policy and other measures ensure that conflicts of interest are mitigated and that undue influence upon the employees is prevented.

(9) The depositary appointed for an AIF shall not be appointed as external valuer of that AIF, unless it has functionally and hierarchically separated the performance of its depositary functions from its tasks as external valuer and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the AIF.

(10) Where an external valuer performs the valuation function, the AIFM shall demonstrate that:

(a) the external valuer is subject to mandatory professional registration recognised by law or to legal or regulatory provisions or rules of professional conduct;

(b) the external valuer can provide sufficient professional guarantees to be able to perform effectively the relevant valuation function in accordance with paragraphs (1) to (3); and

(c) the appointment of the external valuer complies with Regulation 21(1) and (2).

(11) The appointed external valuer shall not delegate the valuation function to a third party.

(12) An AIFM shall notify the appointment of the external valuer to the Bank which may require that another external valuer be appointed instead, where the conditions specified in paragraph (5) are not met.

(13) The valuation shall be performed impartially and with all due skill, care and diligence.

(14) Where the valuation function is not performed by an independent external valuer, the Bank may require the AIFM to have its valuation

procedures or valuations (or both) verified by an external valuer or, where appropriate, by an auditor.

(15) An AIFM shall be responsible for the proper valuation of AIF assets, the calculation of the net asset value and the publication of that net asset value. The AIFM's liability towards the AIF and its investors shall not be affected by the fact that the AIFM has appointed an external valuer.

(16) Notwithstanding paragraph (15) and irrespective of any contractual arrangements providing otherwise, the external valuer shall be liable to the AIFM for any losses suffered by the AIFM as a result of the external valuer's negligence or intentional failure to perform its tasks.

Chapter 3

Delegation of AIFM Functions

Delegation.

21. (1) An AIFM which intends to delegate to third parties the task of carrying out functions on its behalf shall notify the Bank before the delegation arrangements become effective. The following conditions shall be met in relation to such delegation:

- (a) the AIFM shall be able to justify its entire delegation structure to the Bank on objective reasons;
- (b) the delegate shall dispose of sufficient resources to perform the respective tasks and the persons who effectively conduct the business of the delegate shall be of sufficiently good repute and sufficiently experienced;
- (c) where the delegation concerns portfolio management or risk management, it shall be conferred only on undertakings which are authorised or registered for the purpose of asset management and subject to supervision or, where that condition cannot be met, only subject to prior approval by the Bank;
- (d) where the delegation concerns portfolio management or risk management and is conferred on a third-country undertaking, in addition to the requirements in paragraph (c), co-operation between the Bank and the supervisory authority of the undertaking shall be ensured;
- (e) the delegation shall not prevent the effectiveness of supervision of the AIFM, and, in particular, shall not prevent the AIFM from acting, or the AIF from being managed, in the best interests of its investors;
- (f) the AIFM shall be able to demonstrate that the delegate is qualified and capable of undertaking the functions in question, that it was selected with all due care and that the AIFM is in a position to monitor effectively at any time the delegated activity, to give at any

time further instructions to the delegate and to withdraw the delegation with immediate effect when this is in the interest of investors.

The AIFM shall review the services provided by each delegate on an ongoing basis.

(2) No delegation of portfolio management or risk management shall be conferred on:

- (a) the depositary or a delegate of the depositary; or
- (b) any other entity whose interests may conflict with those of the AIFM or the investors of the AIF, unless such entity has functionally and hierarchically separated the performance of its portfolio management or risk management tasks from its other potentially conflicting tasks, and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the AIF.

(3) The AIFM's liability towards the AIF and its investors shall not be affected by the fact that the AIFM has delegated functions to a third party, or by any further sub-delegation.

(4) The AIFM shall not delegate its functions to the extent that, in essence, it can no longer be considered to be the manager of the AIF and to the extent that it becomes a letterbox entity.

(5) The third party may sub-delegate any of the functions delegated to it provided that the following conditions are met:

- (a) the AIFM consented prior to the sub-delegation;
- (b) the AIFM notified the Bank before the sub-delegation arrangements become effective;
- (c) the conditions specified in paragraph (1), and for this purpose each reference in that paragraph to the "delegate" shall be read as a reference to the "sub-delegate".

(6) No sub-delegation of portfolio management or risk management shall be conferred on:

- (a) the depositary or a delegate of the depositary; or
- (b) any other entity whose interests may conflict with those of the AIFM or the investors of the AIF, unless such entity has functionally and hierarchically separated the performance of its portfolio management or risk management tasks from its other potentially conflicting tasks, and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the AIF.

The relevant delegate shall review the services provided by each sub-delegate on an ongoing basis.

(7) Where the sub-delegate further delegates any of the functions delegated to it, the conditions set out in paragraph (5) shall apply with any necessary modifications.

Chapter 4

Depositary

Depositary.

22. (1) For each AIF it manages, the AIFM shall ensure that a single depositary is appointed in accordance with this Regulation.

(2) The appointment of the depositary shall be evidenced by written contract. The contract shall, inter alia, govern the communication and exchange of information deemed necessary to allow the depositary to perform its functions for the AIF for which it has been appointed as depositary, as set out in these Regulations and in other relevant laws, regulations or administrative provisions.

(3) (a) The depositary shall be:

- (i) a credit institution having its registered office in the State or another Member State and authorised in accordance with Directive 2006/48/EC;
- (ii) an investment firm having its registered office in the State or another Member State subject to capital adequacy requirements in accordance with Article 20(1) of Directive 2006/49/EC including capital requirements for operational risks and authorised in accordance with Directive 2006/39/EC and which also provides the ancillary service of safe-keeping and administration of financial instruments for the account of clients in accordance with point (1) of Section B of Annex I to Directive 2004/39/EC; such investment firms shall in any case have own funds not less than the amount of initial capital referred to in Article 9 of Directive 2006/49/EC; or
- (iii) a company incorporated in the State which is authorised as an investment business firm under the Investment Intermediaries Act 1995 and—
 - (I) is wholly owned by a credit institution, provided the liabilities of the company are guaranteed by the credit institution and the credit institution has a paid up share capital which is not less than the limits specified in Regulation 6(1) of the European Communities (Licensing and Supervision of Credit Institutions) Regulations 1992 or such other sum as the Bank may, from time to time, prescribe under that Regulation; or

- (II) is wholly owned by an institution in a third country which has a paid up share capital which is not less than the limits specified in Regulation 6(1) of the EC (Licensing and Supervision of Credit Institution) Regulations 1992 or such other sum as the Bank may, from time to time, prescribe under that Regulation.
- (iv) in the case of an AIF established in another Member State, an entity which that Member State has determined to be a depositary in accordance with Article 21(3) of the Directive;
- (v) for a non-EU AIF only, and without prejudice to paragraph (5)(c), the depositary may also be a credit institution or any other entity of the same nature as the entities referred to in clauses (i) and (ii), provided that the conditions in paragraph (6) are met.
- (b) In addition to what is provided for in subparagraph (a), the Bank may allow that in relation to an AIF which has no redemption rights exercisable during the period of 5 years from the date of the initial investments and which, in accordance with its core investment policy, generally does not invest in assets that must be held in custody in accordance with paragraph (8)(a) or generally invest in issuers or non-listed companies in order to potentially acquire control over such companies in accordance with Regulation 27, the depositary may be an entity which carries out depositary functions as part of its professional or business activities in respect of which such entity is subject to mandatory professional registration recognised by law or to legal or regulatory provisions or rules of professional conduct and which can provide sufficient financial and professional guarantees to enable it to perform effectively the relevant depositary functions and meet the commitments inherent in those functions.
- (4) In order to avoid conflicts of interest between the depositary and the AIFM and the AIF (or between the depositary and either of the latter) or between the depositary and the AIF and its investors (or between the depositary and either of the latter):
- (a) an AIFM shall not act as depositary;
- (b) a prime broker acting as counterparty to an AIF shall not act as depositary for that AIF, unless it has functionally and hierarchically separated the performance of its depositary functions from its tasks as prime broker and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the AIF;
- (c) a depositary may delegate its custody tasks to a prime broker referred to in subparagraph (b) in accordance with paragraph (11) if the relevant conditions are met.
- (5) The depositary shall be established in one of the following locations:

- (a) for an Irish AIF, in the State;
- (b) for an EU AIF, in the home Member State of the AIF;
- (c) for a non-EU AIF, in the third country where the AIF is established or in the home Member State of the AIFM managing the AIF or in the Member State of reference of the AIFM managing the AIF.

(6) Without prejudice to the requirements set out in paragraph (3), the appointment of a depositary established in a third country shall, at all times, be subject to the following conditions:

- (a) (i) where a non-EU AIF is managed by either an Irish AIFM or a non-EU AIFM whose Member State of reference is the State, the competent authorities of the Member States in which the units or shares of the non-EU AIF are intended to be marketed and the Bank have signed cooperation and exchange of information arrangements with the competent authorities of the depositary; or
- (ii) where a non-EU AIF is managed by an AIFM which does not fall within the scope of clause (i) and the units or shares of a non-EU AIF are intended to be marketed in the State, the Bank and the competent authorities of the home Member State of the AIFM have signed cooperation and exchange of information arrangements with the competent authorities of the depositary;
- (b) the depositary is subject to effective prudential regulation, including minimum capital requirements, and supervision which have the same effect as European Union law and are effectively enforced;
- (c) the third country where the depositary is established is not listed as a Non-Cooperative Country and Territory by FATF;
- (d) (i) where a non-EU AIF is managed by either an Irish AIFM or a non-EU AIFM whose Member State of reference is the State, the competent authorities of the Member States in which the units or shares of the non-EU AIF are intended to be marketed and the Bank have signed an agreement with the third country where the depositary is established which complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters including any multilateral tax agreements; or
- (ii) where the units or shares of a non-EU AIF are intended to be marketed in the State, the Bank and the competent authorities of the home Member State of the AIFM, have signed an agreement with the third country where the depositary is established which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and

ensures an effective exchange of information in tax matters including any multilateral tax agreements;

- (e) the depositary shall by contract be liable to the AIF or to the investors of the AIF, consistently with paragraphs (12) and (13), and shall expressly agree to comply with paragraph (11).

Where a competent authority of another Member State and the Bank disagree with the assessment made on the application of subparagraph (a), (c) or (e), the Bank and the other competent authority may refer the matter to the ESMA to act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No. 1095/2010.

- (7) (a) The depositary shall in general ensure that the AIF's cash flows are properly monitored, and shall in particular ensure that all payments made by or on behalf of investors upon the subscription of units or shares of an AIF have been received and that all cash of the AIF has been booked in cash accounts opened in the name of the AIF or in the name of the AIFM acting on behalf of the AIF or in the name of the depositary acting on behalf of the AIF at an entity referred to in points (a), (b) and (c) of Article 18(1) of Directive 2006/73/EC, or another entity of the same nature, in the relevant market where cash accounts are required provided that such entity is subject to effective prudential regulation and supervision which have the same effect as European Union law and are effectively enforced and in accordance with the principles set out in Article 16 of Directive 2006/73/EC.
 - (b) Where the cash accounts are opened in the name of the depositary acting on behalf of the AIF, no cash of the entity referred to in subparagraph (a) and none of the depositary's own cash shall be booked on such accounts.
- (8) The assets of the AIF or the AIFM acting on behalf of the AIF shall be entrusted to the depositary for safe-keeping, as follows:
- (a) for financial instruments that can be held in custody:
 - (i) the depositary shall hold in custody all financial instruments that can be registered in a financial instruments account opened in the depositary's books and all financial instruments that can be physically delivered to the depositary,
 - (ii) for that purpose, the depositary shall ensure that all those financial instruments that can be registered in a financial instruments account opened in the depositary's books are registered in the depositary's books within segregated accounts in accordance with the principles set out in Article 16 of Directive 2006/73/EC, opened in the name of the AIF or the AIFM acting on behalf of the AIF, so that they can be clearly identified as belonging to the AIF in accordance with the applicable law at all times;

(b) for other assets:

- (i) the depositary shall verify the ownership of the AIF or the AIFM acting on behalf of the AIF of such assets and shall maintain a record of those assets for which it is satisfied that the AIF or the AIFM acting on behalf of the AIF holds the ownership of such assets,
- (ii) the assessment whether the AIF or the AIFM acting on behalf of the AIF holds the ownership shall be based on information or documents provided by the AIF or the AIFM and, where available, on external evidence,
- (iii) the depositary shall keep its record up-to-date.

(9) In addition to the tasks referred to in paragraphs (7) and (8), the depositary shall:

- (a) ensure that the sale, issue, re-purchase, redemption and cancellation of units or shares of the AIF are carried out in accordance with the applicable national law and the AIF rules or instruments of incorporation;
 - (b) ensure that the value of the units or shares of the AIF is calculated in accordance with the applicable national law, the AIF rules or instruments of incorporation and the procedures specified in Regulation 20;
 - (c) carry out the instructions of the AIFM, unless they conflict with the applicable national law or the AIF rules or instruments of incorporation;
 - (d) ensure that in transactions involving the AIF's assets any consideration is remitted to the AIF within the usual time limits;
 - (e) ensure that an AIF's income is applied in accordance with the applicable national law and the AIF rules or instruments of incorporation.
- (10) (a) In the context of their respective roles, the AIFM and the depositary shall each act honestly, fairly, professionally, independently and in the interest of the AIF and the investors of the AIF.
- (b) A depositary shall not carry out activities with regard to the AIF or the AIFM on behalf of the AIF that may create conflicts of interest between the AIF, the investors in the AIF, the AIFM and itself, unless the depositary has functionally and hierarchically separated the performance of its depositary tasks from its other potentially conflicting tasks, and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the AIF.

- (c) The assets referred to in paragraph (8) shall not be reused by the depositary without the prior consent of the AIF or the AIFM acting on behalf of the AIF.
- (11) (a) The depositary shall not delegate to third parties its functions as described in this Regulation, other than those referred to in paragraph (8).
- (b) The depositary may delegate to third parties the functions referred to in paragraph (8) subject to the following conditions:
- (i) the tasks are not delegated with the intention of avoiding the requirements of these Regulations;
 - (ii) the depositary can demonstrate to the Bank, if the Bank so requires, that there is an objective reason for the delegation;
 - (iii) the depositary has exercised all due skill, care and diligence in the selection and the appointment of any third party to whom it wishes to delegate parts of its tasks, and keeps exercising all due skill, care and diligence in the periodic review and ongoing monitoring of any third party to whom it has delegated parts of its tasks and of the arrangements of the third party in respect of the matters delegated to it; and
 - (iv) it ensures that the third party meets the following conditions at all times during the performance of the tasks delegated to it:
 - (I) the third party has the structures and the expertise that are adequate and proportionate to the nature and complexity of the assets of the AIF or the AIFM acting on behalf of the AIF which have been entrusted to it;
 - (II) for custody tasks referred to in paragraph (8)(a), the third party is subject to effective prudential regulation, including minimum capital requirements, and supervision in the jurisdiction concerned and the third party is subject to an external periodic audit to ensure that the financial instruments are in its possession;
 - (III) the third party segregates the assets of the depositary's clients from its own assets and from the assets of the depositary in such a way that they can at any time be clearly identified as belonging to clients of a particular depositary;
 - (IV) the third party does not make use of the assets without the prior consent of the AIF or the AIFM acting on behalf of the AIF and prior notification to the depositary; and
 - (V) the third party complies with the general obligations and prohibitions set out in paragraphs (8) and (10).

- (c) Notwithstanding subclause (II) of subparagraph (b)(iv), where the law of a third country requires that certain financial instruments be held in custody by a local entity and no local entities satisfy the requirements specified in that subclause, the depositary may delegate its functions to such a local entity only to the extent required by the law of the third country and only for as long as there are no local entities that satisfy those requirements, subject to the following being satisfied:
 - (i) the investors of the relevant AIF shall be duly informed that such delegation is required due to legal constraints in the law of the third country and of the circumstances justifying the delegation, prior to their investment; and
 - (ii) the AIF, or the AIFM on behalf of the AIF, shall instruct the depositary to delegate the custody of such financial instruments to such local entity.
 - (d) The third party may, in turn, sub-delegate those functions, subject to the same requirements. In such a case, paragraph (13) shall apply with the necessary modifications to the relevant parties.
 - (e) For the purposes of this paragraph, the provision of services as specified by Directive 98/26/EC by securities settlement systems as designated for the purposes of that Directive or the provision of similar services by third-country securities settlement systems shall not be considered a delegation of its custody functions.
- (12) (a) The depositary shall be liable to the AIF or to the investors of the AIF, for the loss by the depositary or a third party to whom the custody of financial instruments held in custody in accordance with paragraph (8)(a) has been delegated.
- (b) In the case of such a loss of a financial instrument held in custody, the depositary shall return a financial instrument of identical type or the corresponding amount to the AIF or the AIFM acting on behalf of the AIF without undue delay. The depositary shall not be liable if it can prove that the loss has arisen as a result of an external event beyond its reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary.
 - (c) The depositary shall also be liable to the AIF, or to the investors of the AIF, for all other losses suffered by them as a result of the depositary's negligent or intentional failure to properly fulfil its obligations pursuant to these Regulations.
- (13) (a) The depositary's liability shall not be affected by any delegation referred to in paragraph (11).
- (b) Notwithstanding subparagraph (a), in case of a loss of financial instruments held in custody by a third party pursuant to paragraph (11), the depositary may discharge itself of liability if it can prove that:

- (i) all requirements for the delegation of its custody tasks set out in subparagraph (b) of paragraph (11) are met;
- (ii) a written contract between the depositary and the third party expressly transfers the liability of the depositary to that third party and makes it possible for the AIF or the AIFM acting on behalf of the AIF to make a claim against the third party in respect of the loss of financial instruments or for the depositary to make such a claim on their behalf; and
- (iii) a written contract between the depositary and the AIF or the AIFM acting on behalf of the AIF, expressly allows a discharge of the depositary's liability and establishes the objective reason to contract such a discharge.

(14) Further, where the law of a third country requires that certain financial instruments are held in custody by a local entity and there are no local entities that satisfy the requirements specified in subclause (II) of paragraph (11)(b)(iv), the depositary can discharge itself of liability provided that the following conditions are met:

- (a) the rules or instruments of incorporation of the AIF concerned expressly allow for such a discharge under the conditions set out in this paragraph;
- (b) the investors of the relevant AIF have been duly informed of that discharge and of the circumstances justifying the discharge prior to their investment;
- (c) the AIF or the AIFM on behalf of the AIF instructed the depositary to delegate the custody of such financial instruments to a local entity;
- (d) there is a written contract between the depositary and the AIF or the AIFM acting on behalf of the AIF, which expressly allows such a discharge; and
- (e) there is a written contract between the depositary and the third party that expressly transfers the liability of the depositary to that local entity and makes it possible for the AIF or the AIFM acting on behalf of the AIF to make a claim against that local entity in respect of the loss of financial instruments or for the depositary to make such a claim on their behalf.

(15) Liability to the investors of the AIF may be invoked directly or indirectly through the AIFM, depending on the legal nature of the relationship between the depositary, the AIFM and the investors.

- (16) (a) In the case of an Irish AIF, the depositary shall make available to the Bank, on request, all information which it has obtained while performing its duties and that may be necessary for the Bank or the competent authorities of the AIFM. If the Bank and the competent

authorities of the AIFM are different, the Bank shall share the information received without delay with the competent authorities of the AIFM.

- (b) In the case of a non-EU AIF which has appointed a depositary established in the State, the depositary shall make available to the Bank, on request, all information which it has obtained while performing its duties and that may be necessary for the competent authorities of the AIF or the Bank. The Bank shall share the information received without delay with the competent authorities of the AIF and the competent authorities of the AIFM, if not the Bank.

CHAPTER 5

Transparency Requirements

Annual report.

23. (1) (a) An AIFM shall, for each EU AIF it manages and for each AIF it markets in the European Union, make available an annual report for each financial year no later than 6 months following the end of the financial year. The annual report shall be provided to investors on request. The annual report shall be made available to the Bank, and, where applicable, the competent authority of the home Member State of the AIF.
- (b) Where the AIF is required to make public an annual financial report in accordance with Directive 2004/109/EC only such additional information referred to in paragraph (2) shall be provided to investors on request, either separately or as an additional part of the annual financial report. In the latter case the annual financial report shall be made public no later than 4 months following the end of the financial year.
- (2) The annual report shall at least contain the following:
- (a) a balance-sheet or a statement of assets and liabilities;
 - (b) an income and expenditure account for the financial year;
 - (c) a report on the activities of the financial year;
 - (d) any material changes in the information listed in Regulation 24 during the financial year covered by the report;
 - (e) the total amount of remuneration for the financial year, split into fixed and variable remuneration, paid by the AIFM to its staff, and number of beneficiaries, and, where relevant, carried interest paid by the AIF;
 - (f) the aggregate amount of remuneration broken down by senior management and members of staff of the AIFM whose actions have a material impact on the risk profile of the AIF.

(3) The accounting information given in the annual report shall be prepared in accordance with the accounting standards of the home Member State of the AIF or in accordance with the accounting standards of the third country where the AIF is established and with the accounting rules laid down in the AIF rules or instruments of incorporation.

(4) The accounting information given in the annual report shall be audited by one or more persons empowered by law to audit accounts in accordance with Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts⁴. The auditor's report, including any qualifications, shall be reproduced in full in the annual report.

(5) By way of derogation from paragraph (4), the Bank may permit an AIFM marketing a non-EU AIF to subject the annual reports of that AIF to an audit that meets international auditing standards in force in the country where the AIF has its registered office.

Disclosure to investors.

24. (1) An AIFM shall for each EU AIF that it manages and for each AIF that it markets in the European Union make available to persons, in accordance with the AIF rules or instruments of incorporation, the following information before they invest in the AIF, as well as any material changes thereof:

- (a) a description of the investment strategy and objectives of the AIF, information on where any master AIF is established and where the underlying funds are established if the AIF is a fund of funds, a description of the types of assets in which the AIF may invest, the techniques it may employ and all associated risks, any applicable investment restrictions, the circumstances in which the AIF may use leverage, the types and sources of leverage permitted and the associated risks, any restrictions on the use of leverage and any collateral and asset reuse arrangements, and the maximum level of leverage which the AIFM is entitled to employ on behalf of the AIF;
- (b) a description of the procedures by which the AIF may change its investment strategy or investment policy, or both;
- (c) a description of the main legal implications of the contractual relationship entered into for the purpose of investment, including information on jurisdiction, on the applicable law and on the existence or not of any legal instruments providing for the recognition and enforcement of judgments in the territory where the AIF is established;
- (d) the identity of the AIFM, the AIF's depositary, auditor and any other service providers and a description of their duties and the investors' rights;

⁴OJ L 157, 9.6.2006, p. 87.

- (e) a description of how the AIFM is complying with the requirements of Regulation 10(7);
- (f) a description of any delegated management function as referred to in Schedule 1 by the AIFM and of any safe-keeping function delegated by the depositary, the identification of the delegate and any conflicts of interest that may arise from such delegations;
- (g) a description of the AIF's valuation procedure and of the pricing methodology for valuing assets, including the methods used in valuing hard-to-value assets in accordance with Regulation 20;
- (h) a description of the AIF's liquidity risk management, including the redemption rights both in normal and in exceptional circumstances, and the existing redemption arrangements with investors;
- (i) a description of all fees, charges and expenses and of the maximum amounts thereof which are directly or indirectly borne by investors;
- (j) a description of how the AIFM ensures a fair treatment of investors and, whenever an investor obtains preferential treatment or the right to obtain preferential treatment, a description of that preferential treatment, the type of investors who obtain such preferential treatment and, where relevant, their legal or economic links with the AIF or AIFM;
- (k) the latest annual report referred to in Regulation 23;
- (l) the procedure and conditions for the issue and sale of units or shares;
- (m) the latest net asset value of the AIF or the latest market price of the unit or share of the AIF, in accordance with Regulation 20;
- (n) where available, the historical performance of the AIF;
- (o) the identity of the prime broker and a description of any material arrangements of the AIF with its prime brokers and the way the conflicts of interest in relation thereto are managed and the provision in the contract with the depositary on the possibility of transfer and reuse of AIF assets, and information about any transfer of liability to the prime broker that may exist;
- (p) a description of how and when the information required under paragraphs (4) and (5) will be disclosed.

(2) The AIFM shall inform persons before they invest in the AIF of any arrangement made by the depositary to contractually discharge itself of liability in accordance with Regulation 22(13). The AIFM shall also inform investors of any changes with respect to depositary liability without delay.

(3) Where the AIF is required by law to publish a prospectus, only such information referred to in paragraphs (1) and (2) which is in addition to that contained in the prospectus shall be disclosed separately or as additional information in the prospectus.

(4) An AIFM shall, for each EU AIF that it manages and for each AIF that it markets in the European Union, periodically disclose to investors:

- (a) the percentage of the AIF's assets which are subject to special arrangements arising from their illiquid nature;
- (b) any new arrangements for managing the liquidity of the AIF;
- (c) the current risk profile of the AIF and the risk management systems employed by the AIFM to manage those risks.

(5) An AIFM that manages an EU AIF employing leverage or that markets in the European Union an AIF employing leverage shall, for each such AIF, disclose on a regular basis:

- (a) any changes to the maximum level of leverage which the AIFM may employ on behalf of the AIF as well as any right of the reuse of collateral or any guarantee granted under the leveraging arrangement;
- (b) the total amount of leverage employed by that AIF.

Reporting obligations to competent authorities.

25. (1) (a) An AIFM shall regularly report to the Bank on the principal markets and instruments in which it trades on behalf of each AIF it manages.

- (b) It shall provide information on the main instruments in which it is trading, on markets of which it is a member or where it actively trades, and on the principal exposures and most important concentrations of each AIF it manages.

(2) An AIFM shall, for each EU AIF it manages and for each AIF it markets in the European Union, provide the following information to the Bank:

- (a) the percentage of the AIF's assets which are subject to special arrangements arising from their illiquid nature;
- (b) any new arrangements for managing the liquidity of the AIF;
- (c) the current risk profile of the AIF and the risk management systems employed by the AIFM to manage the market risk, liquidity risk, counterparty risk and other risks including operational risk;

- (d) information on the main categories of assets in which the AIF invested; and
- (e) the results of the stress tests performed in accordance with Regulations 16(6)(b) and 17(2).

(3) The AIFM shall, on request, provide the following documents to the Bank:

- (a) an annual report of each EU AIF managed by the AIFM and of each AIF marketed by it in the European Union, for each financial year, in accordance with Regulation 23(1);
- (b) for the end of each quarter a detailed list of every AIF which the AIFM manages.

(4) An AIFM managing alternative investment funds employing leverage on a substantial basis shall make available to the Bank information about the overall level of leverage employed by each AIF it manages, a break-down between leverage arising from borrowing of cash or securities and leverage embedded in financial derivatives and the extent to which the AIF's assets have been reused under leveraging arrangements.

(5) (a) That information shall include the identity of the five largest sources of borrowed cash or securities for each AIF managed by the AIFM, and the amounts of leverage received from each of those sources for each AIF.

(b) In relation to a non-EU AIFM, the reporting obligations referred to in this paragraph shall only apply to each EU AIF managed by it and each non-EU AIF marketed by it in the European Union.

(6) The Bank may require an AIFM to provide to it information in addition to that referred to in the preceding provisions of this Regulation, where—

- (a) in the opinion of the Bank it is necessary to do so for the effective monitoring of systemic risk, or
- (b) where requested to do so by ESMA to ensure the stability and integrity of the financial system, or to promote long term growth, and the AIFM shall comply with such a requirement.

(7) The Bank shall inform ESMA about the additional information required by it under paragraph (6).

CHAPTER 6

AIFMs Managing Specific Types of AIF

DIVISION 1

AIFMS Managing Leveraged AIFS

Use of information by competent authorities, supervisory cooperation and limits to leverage.

26. (1) The Bank shall use the information provided to it under Regulation 25 for the purposes of identifying the extent to which the use of leverage contributes to the build-up of systemic risk in the financial system, risks of disorderly markets or risks to the long-term growth of theeconomy.

(2) The Bank shall ensure that all information provided to it under Regulation 25 in respect of every AIFM that it supervises and the information provided to it under Regulation 8 is made available to competent authorities of other relevant Member States, ESMA and the ESRB by means of the procedures set out in Regulation 49 on supervisory cooperation. The Bank shall, without delay, also provide information by means of those procedures, and bilaterally to the competent authorities of other Member States directly concerned, if an AIFM under its responsibility, or an AIF managed by that AIFM, could potentially constitute an important source of counterparty risk to a credit institution or other systemically relevant institutions in other MemberStates.

(3) (a) The AIFM shall demonstrate that the leverage limits set by it for each AIF it manages are reasonable and that it complies with those limits at all times.

(b) The Bank shall assess the risks that the use of leverage by an AIFM with respect to each AIF it manages could entail, and, where deemed necessary in order to ensure the stability and integrity of the financial system, the Bank, after having notified ESMA, the ESRB and the competent authorities of the relevant AIF, shall impose limits to the level of leverage that an AIFM is entitled to employ or other restrictions on the management of the AIF with respect to each AIF under its management to limit the extent to which the use of leverage contributes to the build-up of systemic risk in the financial system or risks of disorderly markets.

(c) The Bank shall duly inform ESMA, the ESRB and the competent authorities of the AIF, of actions taken in the foregoing respect, by means of the procedures set out in Regulation 49.

(4) (a) The notification referred to in subparagraph (c) of paragraph (3) shall be made not less than 10 working days before the proposed measure under that paragraph is intended to take effect or to be renewed.

(b) The notification shall include details of the proposed measure, the reasons for the measure and when the measure is intended to take effect.

(c) In exceptional circumstances, the Bank may decide that the proposed measure takes effect within the period referred to subparagraph (a).

(5) If the Bank proposes to take action contrary to ESMA's advice referred to in paragraph 6 or 7 of Article 25 of the Directive it shall inform ESMA, stating its reasons.

DIVISION 2

Obligations for AIFMS Managing AIFS which Acquire Control of Non-Listed Companies and Issuers

Scope.

27. (1) This Division shall apply to the following:

(a) an AIFM managing one or more than one AIF which either individually or jointly on the basis of an agreement aimed at acquiring control, acquires control of a non-listed company in accordance with paragraph (5);

(b) an AIFM cooperating with one or more other alternative investment fund managers on the basis of an agreement pursuant to which the alternative investment funds managed by those fund managers jointly, acquire control of a non-listed company in accordance with paragraph (5).

(2) This Division shall not apply where the non-listed company concerned is:

(a) a small or medium-sized enterprise within the meaning of Article 2(1) of the Annex to Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises⁵; or

(b) a special purpose vehicle with the purpose of purchasing, holding or administering real

(3) Without prejudice to paragraphs (1) and (2), Regulation 28(1) shall also apply to an AIFM that manages one or more than one AIF that acquires a non-controlling participation in a non-listed company.

(4) Regulations 29(1), (2) and (3) and 30 shall apply also to an AIFM that manages one or more than one AIF that acquires control over issuers. For the purposes of those Regulations, paragraphs (1) and (2) of this Regulation shall apply with the necessary modifications.

⁵OJ L 124, 20.5.2003, p. 36.

- (5) (a) For the purpose of this Division, in relation to a non-listed company, “control” means more than 50 per cent of the voting rights of the company.
- (b) When calculating the percentage of voting rights held by the relevant AIF, in addition to the voting rights held directly by the relevant AIF, the voting rights of the following shall be taken into account, subject to control as referred to in subparagraph (a) being established:
- (i) an undertaking controlled by the AIF; and
 - (ii) a natural or legal person acting in its own name but on behalf of the AIF or on behalf of an undertaking controlled by the AIF.
- (c) The percentage of voting rights shall be calculated on the basis of all the shares to which voting rights are attached even if the exercise thereof is suspended.
- (d) Notwithstanding the definition of “control” in Regulation 5(1), for the purpose of Regulations 29(1), (2) and (3) and Regulation 31 in regard to issuers control shall be determined in accordance with Article 5(3) of Directive 2004/25/EC.

(6) This Division shall apply subject to the conditions and restrictions set out in Article 6 of Directive 2002/14/EC.

(7) This Division shall apply without prejudice to any stricter rules with respect to the acquisition of holdings in issuers and non-listed companies in the State.

Notification of the acquisition of major holdings and control of non-listed companies.

28. (1) Where an AIF acquires, disposes of or holds shares of a non-listed company, the AIFM managing such an AIF shall notify the Bank of the proportion of voting rights of the non-listed company held by the AIF any time when that proportion reaches, exceeds or falls below one or more of the following percentages, namely 10 per cent, 20 per cent, 30 per cent, 50 per cent and 75 per cent, each of which is referred to in this Regulation as a threshold.

(2) Where an AIF acquires, individually or jointly, control over a non-listed company pursuant to paragraph (1) of Regulation 27, the AIFM managing such an AIF shall notify the following of the acquisition of control by the AIF:

- (a) the non-listed company;
- (b) the shareholders of which the identities and addresses are available to the AIFM or can be made available by the non-listed company or through a register to which the AIFM has or can obtain access; and
- (c) the Bank.

(3) The notification required under paragraph (2) shall contain the following additional information:

- (a) the resulting situation in terms of voting rights;
- (b) the conditions subject to which control was acquired, including information about the identity of the different shareholders involved, any natural person or legal entity entitled to exercise voting rights on their behalf and, if applicable, the chain of undertakings through which voting rights are effectively held;
- (c) the date on which control was acquired.

(4) In its notification to the non-listed company, the AIFM shall request the board of directors of the company to inform the employees' representatives or, where there are none, the employees themselves, without undue delay of the acquisition of control by the AIF managed by the AIFM and of the information referred to in paragraph (3). The AIFM shall use its best efforts to ensure that the employees' representatives or, where there are none, the employees themselves, are duly informed by the board of directors in accordance with this Regulation.

(5) The notifications referred to in paragraphs (1), (2) and (3) shall be made as soon as possible, but no later than 10 working days after the date on which the AIF has reached, exceeded or fallen below the relevant threshold or has acquired control over the non-listed company.

Disclosure in case of acquisition of control.

29. (1) Where an AIF acquires, individually or jointly, control of a non-listed company or an issuer pursuant to paragraph (1) of Regulation 27, the AIFM managing such AIF shall make the information referred to in paragraph (2) of this Regulation available to:

- (a) the company concerned,
- (b) the shareholders of the company of which the identities and addresses are available to the AIFM or can be made available by the company or through a register to which the AIFM has or can obtain access; and;
- (c) the Bank.

(2) The AIFM shall make available:

- (a) the identity of the alternative investment fund managers which either individually or in agreement with other such fund managers manage the alternative investment funds that have acquired control;
- (b) the policy for preventing and managing conflicts of interest, in particular between the AIFM, the AIF and the company, including information about the specific safeguards established to ensure that any agreement between the AIFM and the company or between the

AIF and the company (or between the AIFM and both those others) is concluded at arm's length; and

- (c) the policy for external and internal communication relating to the company in particular as regards employees.

(3) In its notification to the company pursuant to paragraph (1)(a), the AIFM shall request the board of directors of the company to inform the employees' representatives or, where there are none, the employees themselves, without undue delay of the information referred to in paragraph (1). The AIFM shall use its best efforts to ensure that the employees' representatives or, where there are none, the employees themselves, are duly informed by the board of directors in accordance with this Regulation.

(4) Where an AIF acquires, individually or jointly, control of a non-listed company pursuant to paragraph (1) of Regulation 27, the AIFM managing such AIF shall ensure that the AIF, or the AIFM acting on behalf of the AIF, disclose its intentions with regard to the future business of the non-listed company and the likely repercussions on employment, including any material change in the conditions of employment, to:

- (a) the non-listed company; and
- (b) the shareholders of the non-listed company of which the identities and addresses are available to the AIFM or can be made available by the non-listed company or through a register to which the AIFM has or can obtain access.

(5) In addition, the AIFM managing the relevant AIF shall request and use its best efforts to ensure that the board of directors of the non-listed company makes available the information set out in paragraph (4) to the employees' representatives or, where there are none, the employees themselves, of the non-listed company.

(6) Where an AIF acquires control of a non-listed company pursuant to paragraph (1) of Regulation 27, the AIFM managing such an AIF shall provide the Bank and the AIF's investors with information on the financing of the acquisition.

Specific provisions regarding the annual report of AIFs exercising control of non-listed companies.

30. (1) Where an AIF acquires, individually or jointly, control of a non-listed company pursuant to paragraph (1) of Regulation 27, the AIFM managing such an AIF shall either:

- (a) request and use its best efforts to ensure that the annual report of the non-listed company drawn up in accordance with paragraph (2) is made available by the board of directors of the company to the employees' representatives or, where there are none, to the employees themselves within the period such annual report has to be drawn up in accordance with the national applicable law; or

- (b) for each such AIF include in the annual report provided for in Regulation 23 the information referred to in paragraph (2) relating to the relevant non-listed company.

(2) The additional information to be included in the annual report of the company or the AIF, in accordance with paragraph (1), shall include at least a fair review of the development of the company's business representing the situation at the end of the period covered by the annual report. The report shall also give an indication of:

- (a) any important events that have occurred since the end of the financial year;
- (b) the company's likely future development; and
- (c) the information concerning acquisitions of own shares prescribed by Article 22(2) of Council Directive 77/91/EEC⁶.

(3) The AIFM managing the relevant AIF shall either:

- (a) request and use its best efforts to ensure that the board of directors of the non-listed company makes available the information referred to in paragraph (1)(b) relating to the company concerned to the employees' representatives of the company concerned or, where there are none, to the employees themselves within the period referred to in Regulation 23(1); or
- (b) make available the information referred to in paragraph (1)(a) to the investors of the AIF, in so far as already available, within the period referred to in Regulation 23(1) and, in any event, no later than the date on which the annual report of the non-listed company is drawn up in accordance with the national applicable law.

Asset stripping.

31. (1) Where an AIF, individually or jointly, acquires control of a non-listed company or an issuer pursuant to paragraph (1) of Regulation 27, the AIFM managing such an AIF shall for a period of 24 months following the acquisition of control of the company by the AIF:

- (a) not facilitate, support or instruct any distribution, capital reduction or share redemption or acquisition (or redemption and acquisition) of own shares by the company as described in paragraph (2);
- (b) in so far as the AIFM is authorised to vote on behalf of the AIF at the meetings of the governing bodies of the company, not vote in favour of a distribution, capital reduction or share redemption (or redemption and acquisition) of own shares by the company as described in paragraph (2); and

⁶OJ L 26, 31.1.1977, p. 1.

- (c) in any event use its best efforts to prevent distributions, capital reductions or share redemptions or acquisition (or redemption and acquisition) of own shares by the company as described in paragraph (2).

(2) The obligations imposed on an AIFM pursuant to paragraph (1) shall relate to the following:

- (a) any distribution to shareholders made when on the closing date of the last financial year the net assets as set out in the company's annual accounts are, or following such a distribution would become, lower than the amount of the subscribed capital plus those reserves which may be not distributed under the law or the statutes, and, for the purposes of this subparagraph, where the uncalled part of the subscribed capital is not included in the assets shown in the balance sheet, this amount shall be deducted from the amount of subscribed capital;
- (b) any distribution to shareholders the amount of which would exceed the amount of the profits at the end of the last financial year plus any profits brought forward and sums drawn from reserves available for this purpose, less any losses brought forward and sums placed to reserve in accordance with the law or the statutes;
- (c) to the extent that acquisitions of own shares are permitted, the acquisitions by the company, including shares previously acquired by the company and held by it, and shares acquired by a person acting in his own name but on the company's behalf, that would have the effect of reducing the net assets below the amount mentioned in subparagraph (a).

(3) For the purposes of paragraph (2):

- (a) "distribution" in subparagraphs (a) and (b) of that paragraph includes, in particular, the payment of dividends and of interest relating to shares;
- (b) the provisions on capital reductions shall not apply on a reduction in the subscribed capital, the purpose of which is to offset losses incurred or to include sums of money in a non-distributable reserve provided that, following that operation, the amount of such reserve is not more than 10 per cent of the reduced subscribed capital; and
- (c) the restriction set out in subparagraph (c) of that paragraph shall be subject to points (b) to (h) of Article 20(1) of Directive 77/91/EEC.

CHAPTER 7

MARKETING AND MANAGING EU AIFs

Marketing of units or shares of EU AIFs managed by Irish AIFMs in the State.

32. (1) (a) An authorised Irish AIFM may market units or shares of any EU AIF that it manages to professional investors in the State as soon as the conditions specified in this Regulation are met.

(b) Where the EU AIF is a feeder AIF the right to market referred to in subparagraph (a) is subject to the condition that the master AIF is also an EU AIF which is managed by an authorised EU AIFM.

(2) The Irish AIFM shall notify the Bank of each EU AIF that it intends to market in the State. That notification shall comprise the documentation and information set out in Schedule 3.

(3) (a) Within 20 working days following receipt of a complete notification file pursuant to paragraph (2), the Bank shall inform the Irish AIFM whether it may start marketing the EU AIF identified in the notification referred to in paragraph (2). The Bank shall prevent the marketing of the EU AIF only if the Irish AIFM's management of the EU AIF does not or will not comply with these Regulations or the Irish AIFM otherwise does not or will not comply with these Regulations. In the case of a decision to permit such marketing, the Irish AIFM may start marketing the EU AIF in the State from the date of the notification by the Bank to that effect.

(b) Where the EU AIF is regulated by the competent authorities of another Member State, the Bank shall also inform those competent authorities that the Irish AIFM may start marketing units or shares of the EU AIF in the State.

(4) (a) In the event of a material change to any of the particulars provided in accordance with paragraph (2), the Irish AIFM shall give written notice of that change to the Bank—

(i) in the case of any change planned by the AIFM — at least 1 month before implementing the change, or

(ii) in the case of where an unplanned change has occurred — immediately after its occurrence.

(b) If, pursuant to a planned change, the Irish AIFM's management of the EU AIF would no longer comply with these Regulations or the Irish AIFM would otherwise no longer comply with these Regulations, the Bank shall inform the Irish AIFM without undue delay that it is not to implement the change.

(c) If, notwithstanding the requirements of subparagraphs (a) and (b), a planned change is implemented or if an unplanned change has taken

place pursuant to which the Irish AIFM's management of the EU AIF no longer complies with these Regulations or the Irish AIFM otherwise no longer complies with these Regulations, the Bank shall take all due measures in accordance with Regulation 49, including, if necessary, the express prohibition of marketing of the EU AIF in the State.

(5) Without prejudice to Regulation 44(1), an EU AIF managed and marketed by an Irish AIFM may only be marketed in the State to professional investors.

Other Cases of Marketing of Units or Shares of EU AIFs.

33. (1) An authorised Irish AIFM may market units or shares of an EU AIF that it manages to professional investors in another Member State as soon as the conditions specified in this Regulation are met.

(2) An authorised AIFM from another Member State may market units or shares of an EU AIF that it manages to professional investors in the State as soon as the conditions specified in Article 32 of the Directive are met.

(3) Where the EU AIF is a feeder AIF the right to market referred to in paragraphs (1) and (2) is subject to the condition that the master AIF is also an EU AIF and is managed by an authorised EU AIFM.

(4) The Irish AIFM shall submit a notification to the Bank in respect of each EU AIF that it intends to market in another Member State. That notification shall comprise the documentation and information set out in Schedule 4.

(5) (a) The Bank shall, no later than 20 working days after the date of receipt of the complete notification file referred to in paragraph (4), transmit the complete notification file to the competent authorities of the Member States where it is intended that the EU AIF be marketed. Such transmission shall occur only if the Irish AIFM's management of the EU AIF complies with and will continue to comply with these Regulations and if the Irish AIFM otherwise complies with these Regulations..

(b) The Bank shall enclose a statement to the effect that the Irish AIFM concerned is authorised to manage an EU AIF with a particular investment strategy.

(c) Upon transmission of the notification file, the Bank shall, without delay, notify the Irish AIFM about the transmission. The Irish AIFM may start marketing the EU AIF in the host Member State of the Irish AIFM as of the date of that notification.

(d) Where the EU AIF is regulated by the competent authorities of another Member State, the Bank shall also inform those competent authorities that the Irish AIFM may start marketing units or shares of the EU AIF in that other Member State.

- (6) (a) The notification letter by the Irish AIFM referred to in paragraph (4) and the statement referred to in paragraph (5)(b) shall be in the English language.
- (b) Where the Bank receives a notification from a competent authority of the home Member State of an EU AIFM in compliance with the obligations set out in paragraph 3 of Article 32 of the Directive, the Bank shall accept that notification if transmitted or filed by electronic means or otherwise in writing.
- (7) (a) In the event of a material change to any of the particulars provided in accordance with paragraph (4), the Irish AIFM shall give written notice of that change to the Bank—
- (i) in the case of any change planned by the AIFM — at least 1 month before implementing the change, or
 - (ii) in the case of where an unplanned change has occurred — immediately after its occurrence.
- (b) If, pursuant to a planned change, the Irish AIFM’s management of the EU AIF would no longer comply with these Regulations or the Irish AIFM would otherwise no longer comply with these Regulations, the Bank shall inform the Irish AIFM without undue delay that it is not to implement the change.
- (c) If, notwithstanding the requirements of subparagraphs (a) and (b), a planned change is implemented or if an unplanned change has taken place pursuant to which the Irish AIFM’s management of the EU AIF would no longer comply with these Regulations or the Irish AIFM otherwise would no longer comply with these Regulations, the Bank shall take all due measures in accordance with Regulation 49, including, if necessary, the express prohibition of marketing of the EU AIF in other Member States.
- (d) If the changes are acceptable because they do not affect the compliance of the Irish AIFM’s management of the EU AIF with these Regulations, or compliance by the Irish AIFM with these Regulations otherwise, the Bank shall, without delay, inform the competent authorities of the host Member State of the Irish AIFM of those changes.
- (8) Without prejudice to Regulation 44(1), an EU AIF managed by an AIFM from another Member State and marketed in the State may only be marketed to professional investors.

Conditions for Irish AIFMs managing EU AIFs established in other Member States and for AIFMs from other Member States managing Irish AIFs.

34. (1) An authorised Irish AIFM may manage an EU AIF established in another Member State either directly or by establishing a branch, provided that the Irish AIFM is authorised to manage that type of AIF.

(2) An authorised AIFM from another Member State may manage an Irish AIF either directly or by establishing a branch in the State, provided that the AIFM is authorised to manage that type of AIF.

(3) An Irish AIFM intending to manage an EU AIF established in another Member State for the first time shall provide the following information to the Bank:

- (a) the Member State in which it intends to manage the EU AIF directly or establish a branch;
- (b) a programme of operations stating in particular the services which it intends to perform and identifying the EU AIF it intends to manage.

(4) If the Irish AIFM intends to establish a branch in another Member State, it shall provide the following information in addition to that referred to in paragraph (3):

- (a) the organisational structure of the branch;
- (b) the address in the home Member State of the EU AIF from which documents may be obtained;
- (c) the names and contact details of the persons responsible for the management of the branch.

(5) (a) The Bank shall, within 1 month after receiving the complete documentation in accordance with paragraph (3) or within 2 months after receiving the complete documentation in accordance with paragraph (4), transmit the complete documentation to the competent authorities of the host Member State of the Irish AIFM. Such transmission shall occur only if the Irish AIFM's management of the EU AIF complies, and will continue to comply, with these Regulations and the Irish AIFM otherwise complies with these Regulations.

(b) The Bank shall enclose a statement to the effect that the Irish AIFM concerned is authorised by it. The Bank shall immediately notify the Irish AIFM about the transmission.

(c) Upon receipt of the transmission notification the Irish AIFM may start to provide its services in its host Member State.

(6) (a) In the event of a change to any of the information provided in accordance with paragraph (3), and, where relevant, paragraph (4), an Irish AIFM shall give written notice of that change to the Bank—

- (i) in the case of any change planned by the AIFM — at least 1 month before implementing the change, or

- (ii) in the case of where an unplanned change has occurred — immediately after its occurrence.
- (b) If, pursuant to a planned change, the Irish AIFM's management of the EU AIF would no longer comply with these Regulations or the Irish AIFM would otherwise no longer comply with these Regulations, the Bank shall inform the Irish AIFM without undue delay that it is not to implement the change.
- (c) If, notwithstanding the requirements of subparagraphs (a) and (b), a planned change is implemented, or if an unplanned change has taken place pursuant to which the Irish AIFM's management of the EU AIF would no longer comply with these Regulations or the Irish AIFM otherwise would no longer comply with these Regulations, the Bank shall take all due measures in accordance with Regulation 49.
- (d) If the changes are acceptable because they do not affect the compliance of the Irish AIFM's management of the EU AIF with these Regulations, or the compliance by the Irish AIFM with these Regulations otherwise, the Bank shall, without undue delay, inform the competent authorities of the host Member States of the Irish AIFM of those changes.

Chapter 8

Specific Rules In Relation to Third Countries

Conditions for Irish AIFMs which manage non-EU AIFs which are not marketed in Member States.

35. An authorised Irish AIFM may manage a non-EU AIF which is not marketed in the European Union provided that:

- (a) the Irish AIFM complies with all the requirements provided for in these Regulations, other than Regulations 22 and 23, in respect of that non-EU AIF; and
- (b) appropriate cooperation arrangements are in place between the Bank and the supervisory authorities of the third country where the non-EU AIF is established in order to ensure at least an efficient exchange of information that enables the Bank to carry out its duties in accordance with these Regulations.

Conditions for marketing, with a passport, of non-EU AIFs in the European Union or in the State by, respectively, Irish AIFMs and Other Member State AIFMs.

36. (1) An authorised Irish AIFM may market to professional investors in the European Union units or shares of a non-EU AIF it manages and of an EU feeder AIF that does not fulfil the requirements referred to in Regulation 32(1)(b) as soon as the conditions specified in this Regulation are met.

(2) An authorised AIFM from another Member State may market to professional investors in the State units or shares of an non-EU AIF it manages and of an EU feeder AIF that does not fulfil the requirements referred to in the second subparagraph of Article 31(1) of the Directive as soon as the conditions specified in Article 35 of the Directive are met.

(3) An Irish AIFM marketing units or shares as mentioned in paragraph (1) shall comply with all the requirements provided for in these Regulations, other than Chapter 7. In addition the following conditions shall be met:

- (a) appropriate cooperation arrangements are in place between the Bank and the supervisory authorities of the third country where the non-EU AIF is established in order to ensure at least an efficient exchange of information, taking into account Regulation 54(3), that enables the Bank to carry out its duties in accordance with these Regulations;
 - (b) the third country where the non-EU AIF is established is not listed as a Non-Cooperative Country and Territory by FATF;
 - (c) the third country where the non-EU AIF is established has signed an agreement with the State and with each other Member State in which the units or shares of the non-EU AIF are intended to be marketed, which complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and Capital and ensures an effective exchange of information in tax matters, including any multilateral tax agreements.
- (4) (a) An AIFM from another Member State marketing units or shares as mentioned in paragraph (2) shall comply with all the requirements provided for in the Directive, other than Chapter VI. In addition the following conditions shall be met:
- (i) appropriate cooperation arrangements shall be in place between the competent authorities of the home Member State of the AIFM and the supervisory authorities of the third country where the non-EU AIF is established in order to ensure at least an efficient exchange of information, taking into account Article 50(4), that enables the competent authorities to carry out their duties in accordance with this Directive;
 - (ii) the third country where the non-EU AIF is established is not listed as a Non-Cooperative Country and Territory by FATF;
 - (iii) the third country where the non-EU AIF is established has signed an agreement with the home Member State of the authorised AIFM and with the State, which complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and Capital and ensures an effective exchange of information in tax matters, including any multilateral tax agreements.

- (b) Where the Bank, in the case of an AIFM authorised in another Member State, disagrees with the assessment made on the application of clauses (i) and (ii) of subparagraph (a) by the competent authorities of the home Member State of the AIFM, the Bank may refer the matter to ESMA.

(5) If an Irish AIFM intends to market units or shares of one or more than one non-EU AIF in the State, the Irish AIFM shall submit a notification to the Bank in respect of each non-EU AIF that it intends to market. That notification shall comprise the documentation and information set out in Schedule 3.

- (6) (a) No later than 20 working days following receipt of a complete notification pursuant to paragraph (5), the Bank shall inform the Irish AIFM whether it may start marketing the non-EU AIF identified in the notification referred to in paragraph (5) in the State. The Bank shall prevent the marketing of the non-EU AIF only if the Irish AIFM's management of the non-EU AIF does not or will not comply with these Regulations or the Irish AIFM otherwise does not or will not comply with these Regulations. In the case of a decision to permit such marketing, the Irish AIFM may start marketing the non-EU AIF in the State as of the date of the notification by the Bank to that effect.

- (b) The Bank shall also inform ESMA that the Irish AIFM may start marketing the units or shares of the non-EU AIF in the State.

(7) If an Irish AIFM intends to market units or shares of one or more than one non-EU AIF in another Member State, the Irish AIFM shall submit a notification to the Bank in respect of each non-EU AIF that it intends to market. That notification shall comprise the documentation and information set out in Schedule 4.

- (8) (a) The Bank shall, no later than 20 working days after the date of receipt of the complete authorities of the Member State where the non-EU AIF is intended to be marketed. Such transmission will occur only if the Irish AIFM's management of the non-EU AIF complies and will continue to comply with these Regulations and that the Irish AIFM otherwise complies with these Regulations.

- (b) The Bank shall enclose a statement to the effect that the Irish AIFM concerned is authorised to manage a non-EU AIF with a particular investment strategy.

- (c) Upon transmission of the notification file, the Bank shall, without delay, notify the Irish AIFM about the transmission. The Irish AIFM may start marketing the non-EU AIF in the relevant host Member States of the Irish AIFM as of the date of that notification by the Bank.

- (d) The Bank shall also inform ESMA that the Irish AIFM may start marketing the units or shares of the non-EU AIF in the host Member States of the Irish AIFM.
- (9) (a) Arrangements referred to in paragraph (h) of Schedule 4 shall be subject to the laws and supervision of the host Member States of the Irish AIFM.
- (b) Arrangements referred to in paragraph (h) of Schedule 4 shall be subject to the laws and supervision of the Bank where the State is the host Member State of an AIFM from another Member State.
- (10) (a) The notification letter of the Irish AIFM referred to in paragraph (7) and the statement referred to in paragraph (8) shall be in the English language.
- (b) Where the Bank receives a notification from a competent authority of the home Member State of an AIFM from another Member State in compliance with the obligations set out in paragraph 6 of Article 35 of the Directive, the Bank shall accept that notification if transmitted or filed by electronic means or otherwise in writing.
- (11) (a) In the event of a material change to any of the particulars provided in accordance with paragraph (5) or (7), the Irish AIFM shall give written notice of that change to the Bank—
- (i) in the case of any change planned by the AIFM — at least 1 month before implementing the change, or
 - (ii) in the case of where an unplanned change has occurred — immediately after its occurrence.
- (b) If pursuant to a planned change, the Irish AIFM's management of the non-EU AIF would no longer comply with these Regulations or the Irish AIFM would no longer comply with these Regulations, the Bank shall inform the Irish AIFM without undue delay that it is not to implement the change.
- (c) If, notwithstanding the requirements of subparagraphs (a) and (b), a planned change is implemented, or if an unplanned change has taken place pursuant to which the Irish AIFM's management of the non-EU AIF would no longer comply with these Regulations or the Irish AIFM otherwise would no longer comply with these Regulations, the Bank shall take all due measures in accordance with Regulation 49, including, if necessary, the express prohibition of marketing of the non-EU AIF.
- (d) If the changes are acceptable because they do not affect the compliance of the Irish AIFM's management of the non-EU AIF with these Regulations, or the compliance by the Irish AIFM with these Regulations otherwise, the Bank shall, without delay, inform ESMA

in so far as the changes concern the termination of the marketing of certain non-EU alternative investment funds or additional non-EU alternative investment funds marketed and, if applicable, the competent authorities of the host Member States of the Irish AIFM of those changes.

(12) In case a competent authority from another Member State rejects a request from the Bank to exchange information in accordance with the regulatory technical standards developed by ESMA pursuant to Article 35 (14) of the Directive, the Bank may refer the matter to ESMA.

(13) Without prejudice to Regulation 44(1) a non-EU AIF managed and marketed by an Irish AIFM may be marketed only to professional investors.

(14) Without prejudice to Regulation 44(1), a non-EU AIF managed and marketed in the State by an AIFM from another Member State may be marketed only to professional investors.

Conditions for the marketing in the State without a passport of non-EU AIFs managed by an Irish AIFM or an AIFM from another Member State.

37. (1) This Regulation provides an alternative basis (in the circumstances specified by it) to the basis provided by Regulation 36 for an AIFM being permitted to market units or shares of a non-EU AIF.

(2) An authorised Irish AIFM may market to professional investors, in the State, units or shares of a non-EU AIF it manages and of an EU feeder AIF that does not fulfil the requirements referred to in Regulation 32(1)(b), provided that:

- (a) the Irish AIFM complies with all the requirements provided for in these Regulations other than Regulation 22. That Irish AIFM shall however ensure that one or more entities are appointed to carry out the duties referred to in Regulation 22(7), (8) and (9). The Irish AIFM shall not perform those functions. The Irish AIFM shall provide the Bank with information about the identity of those entities responsible for carrying out the duties referred to in Regulation 22(7), (8) and (9);
- (b) appropriate cooperation arrangements for the purpose of systemic risk oversight and in line with international standards are in place between the Bank and the supervisory authorities of the third country where the non-EU AIF is established in order to ensure an efficient exchange of information that allows the Bank to carry out its duties in accordance with these Regulations;
- (c) the third country where the non-EU AIF is established is not listed as a Non-Cooperative Country and Territory by FATF.

(3) An authorised AIFM from another Member State may market to professional investors, in the State, units or shares of a non-EU AIF it manages

and of an EU feeder AIF that does not fulfil the requirements referred to in the second subparagraph of Article 31(1) of the Directive, provided that:

- (a) the AIFM complies with all the requirements provided for in the Directive other than Article 21. That AIFM shall however ensure that one or more entities are appointed to carry out the duties referred to in Article 21(7), (8) and (9) of the Directive. The AIFM shall not perform those functions. The AIFM shall provide its supervisory authorities with information about the identity of those entities responsible for carrying out the duties referred to in Article 21(7), (8) and (9) of the Directive;
 - (b) appropriate cooperation arrangements for the purpose of systemic risk oversight and in line with international standards are in place between the competent authorities of the home Member State of the AIFM and the supervisory authorities of the third country where the non-EU AIF is established in order to ensure an efficient exchange of information that allows the competent authorities of the home Member State of the AIFM to carry out their duties in accordance with the Directive;
 - (c) the third country where the non-EU AIF is established is not listed as a Non-Cooperative Country and Territory by FATF.
- (4) An AIFM falling with paragraph (2) or (3) shall give written notification to the Bank before marketing to professional investors in the State units or shares of an AIF managed by it that falls within paragraph (2) or (3). This notification shall include the name of the AIFM and the AIF and the identity of the home Member State of the AIFM and the jurisdiction where the AIF is domiciled.
- (5) (a) Without prejudice to the power of the Bank to impose conditions or requirements under these Regulations, where the Bank considers it necessary for the proper and orderly regulation and supervision of alternative investment fund managers, the Bank may impose conditions or requirements, in addition to those specified in paragraph (2) or (3), as the case may be, on an AIFM that markets in the State to professional investors units or shares of an non-EU AIF it manages and of an EU feeder AIF that does not fulfil the requirements referred to in Regulation 32(1)(b).
 - (b) A condition or requirement imposed by the Bank under this paragraph has effect from the date specified by the Bank.

Authorisation of non-EU AIFMs intending to manage Irish AIFs or market AIFs managed by them in the European Union in accordance with Regulation 40 or 41.

38. (1) A non-EU AIFM intending to manage an Irish AIF or to market an AIF managed by it in the European Union (or to do both) in accordance with Regulation 40 or 41 shall, where the State is the Member State of reference, not

do so without the prior authorisation of the Bank in accordance with this Regulation.

(2) A non-EU AIFM intending to obtain the authorisation referred to in paragraph (1) shall comply with these Regulations, with the exception of Chapter 7. If and to the extent that compliance with a provision of these Regulations is incompatible with compliance with the law to which the non-EU AIFM or the non-EU AIF marketed in the European Union is (or both are) subject, there shall be no obligation on the AIFM to comply with that provision of these Regulations if it can demonstrate that:

- (a) it is impossible to combine such compliance with compliance with a mandatory provision in the law to which the non-EU AIFM or the non-EU AIF marketed in the European Union is (or both are) subject;
- (b) the law to which the non-EU AIFM or the non-EU AIF is (or both are) subject provides for an equivalent rule having the same regulatory purpose and offering the same level of protection to the investors of the relevant AIF; and
- (c) the non-EU AIFM or the non-EU AIF complies, or, as the case may be, both comply, with the equivalent rule referred to in subparagraph (b).

(3) A non-EU AIFM intending to obtain the authorisation referred to in paragraph (1) shall have a legal representative established in the State. The legal representative shall be the contact point of the AIFM in the European Union and any official correspondence between the competent authorities, including the Bank, and the AIFM and between the investors in the European Union of the relevant AIF and the AIFM as set out in these Regulations shall take place through that legal representative. The legal representative shall perform the compliance function relating to the management and marketing activities performed by the AIFM under these Regulations together with the AIFM.

(4) The State shall be determined to be the Member State of reference of a non-EU AIFM if:

- (a) the non-EU AIFM intends to manage only Irish alternative investment funds, and does not intend to market any AIF in accordance with Regulation 40 or 41 in the European Union;
- (b) the non-EU AIFM intends to manage several EU alternative investment funds established in different MemberStates and does not intend to market any AIF in accordance with Regulation 40 or 41 in the European Union, and either:
 - (i) most of the alternative investment funds are Irish alternative investment funds, or

- (ii) the State is the Member State where the largest amount of assets is being managed;
 - (c) the non-EU AIFM intends to market only one EU AIF in only one Member State and:
 - (i) the AIF is authorised or registered in the State or the AIFM intends to market the AIF in the State, or
 - (ii) the AIFM intends to market the AIF in the State and the AIF is not authorised or registered in a Member State;
 - (d) the non-EU AIFM intends to market only one non-EU AIF in only one Member State namely the State;
 - (e) the non-EU AIFM intends to market only one EU AIF, but in different Member States and:
 - (i) the AIF is authorised or registered in the State or the State is one of the Member States where the AIFM intends to develop effective marketing, or
 - (ii) the AIF is not authorised or registered in a Member State and the State is one of the Member States where the AIFM intends to develop effective marketing;
 - (f) the non-EU AIFM intends to market only one non-EU AIF, but in different Member States and the State is one of those Member States;
 - (g) the non-EU AIFM intends to market several EU alternative investment funds in the European Union and:
 - (i) those alternative investment funds are all registered or authorised in the State or the State is the Member State where the AIFM intends to develop effective marketing for most of those funds,
 - (ii) in so far as those alternative investment funds are not all registered or authorised in the same Member State, the State is the Member State where the AIFM intends to develop effective marketing for most of those funds;
 - (h) the non-EU AIFM intends to market several EU and non-EU alternative investment funds, or several non-EU alternative investment funds in the European Union and the State is the Member State where it intends to develop effective marketing for most of those funds.
- (5) (a) Where, by virtue of the application of the criteria set out in subparagraph (b),(c)(i), (e), (f) or (g)(i) of paragraph (4), there is, in addition to the State, one, or more than one, other possible Member

State of reference then, upon receipt of a request from a non-EU AIFM intending, in accordance with Regulation 40 or 41, to—

- (i) manage Irish alternative investment funds without marketing them,
- (ii) market alternative investment funds managed by it in the European Union, or
- (iii) do both of the foregoing things,

the Bank shall, jointly with the competent authorities of the other possible Member States of reference, determine which Member State shall be the Member State of reference for the non-EU AIFM; that determination shall be made within 1 month after receipt of the request.

- (b) Where the State is determined to be the Member State of reference in accordance with the procedures under subparagraph (a), the Bank shall, without undue delay, inform the non-EU AIFM of that determination. If the non-EU AIFM is not duly informed by the Bank of the determination made by the relevant competent authorities within 7 days after the determination or if the relevant competent authorities have not made a determination within the period referred to in subparagraph (a), the non-EU AIFM may itself choose its Member State of reference based on the criteria set out in paragraph (4).

(6) For the purposes of paragraph (4), proof by an AIFM of its intention to develop effective marketing in a particular Member State may be provided by its disclosing to the Bank its marketing strategy.

- (7) (a) A non-EU AIFM intending to manage Irish alternative investment funds without marketing them or to market alternative investment funds managed by it in the European Union (or to do both) in accordance with Regulation 40 or 41 shall submit a request for authorisation to the Bank where the State is its Member State of reference.

- (b) After receiving the application for authorisation, the Bank shall assess whether the determination by the AIFM as regards its Member State of reference complies with the criteria set out in paragraph (4). If the Bank considers that this is not the case, it shall refuse the authorisation request of the non-EU AIFM explaining the reasons for its refusal. If the Bank considers that the criteria set out in paragraph (4) have been complied with, it shall notify ESMA, requesting advice on its assessment. In its notification to ESMA, the Bank shall provide ESMA with the justification by the AIFM of its assessment regarding the Member State of reference and with information on the marketing strategy of the AIFM.

- (c) No part of the time during which ESMA deliberates on the matter referred to in subparagraph (b) shall be reckoned in calculating the period specified in Regulation 9(5).
 - (d) If the Bank proposes to grant authorisation contrary to ESMA's advice it shall inform ESMA, stating its reasons.
 - (e) If the Bank proposes to grant authorisation contrary to ESMA's advice and the AIFM intends to market units or shares of alternative investment funds managed by it in other Member States, the Bank shall also inform the competent authorities of those Member States thereof, stating their reasons. In so far as applicable, the Bank shall also inform the competent authorities of the home Member States of the alternative investment funds managed by the AIFM thereof, stating their reasons.
 - (f) Where the Bank disagrees with the determination of the Member State of reference by the AIFM, it may refer the matter to ESMA.
- (8) (a) Without prejudice to paragraph (9), no authorisation shall be granted by the Bank unless the following additional conditions are met:
- (i) the State is indicated as the Member State of reference by the AIFM in accordance with the criteria set out in paragraph (4) and supported by the disclosure of the marketing strategy, and the procedure set out in paragraph (7) has been followed by the Bank;
 - (ii) the AIFM has appointed a legal representative established in the State;
 - (iii) the legal representative shall, together with the AIFM, be the contact person of the non-EU AIFM for the investors of the relevant alternative investment funds, for ESMA and for the Bank and the competent authorities of other Member States as regards the activities for which the AIFM is authorised in the European Union and shall at least be sufficiently equipped to perform the compliance function pursuant to these Regulations;
 - (iv) appropriate cooperation arrangements are in place between the Bank, the competent authorities of the home Member State of the EU alternative investment funds concerned and the supervisory authorities of the third country where the non-EU AIFM is established in order to ensure at least an efficient exchange of information that allows the Bank to carry out its duties in accordance with these Regulations;
 - (v) the third country where the non-EU AIFM is established is not listed as a Non-Cooperative Country and Territory by FATF;

- (vi) the third country where the non-EU AIFM is established has signed an agreement with the State, which complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including any multilateral tax agreements;
 - (vii) the effective exercise by the Bank of its supervisory functions under these Regulations is neither prevented by the laws, regulations or administrative provisions of a third country governing the AIFM, nor by limitations in the supervisory and investigatory powers of that third country's supervisory authorities.
- (b) Where the State is not determined to be the Member State of reference and the Bank disagrees with the assessment made on the application of points (a) to (e) and (g) of Article 37(7) of the Directive by the competent authorities of the Member State of reference, the Bank may refer the matter to ESMA.
- (c) Where a competent authority of an EU AIF does not enter into the required cooperation arrangements referred to in subparagraph (a)(iv) within a reasonable period of time, the Bank may refer the matter to ESMA.
- (9) An authorisation by the Bank shall be given in accordance with Part 2 which shall apply with the necessary modifications and subject to the following provisions:
- (a) the information referred to in Regulation 8(2) shall be supplemented by:
 - (i) a justification by the AIFM of its assessment regarding the Member State of reference in accordance with the criteria set out in paragraph (4) with information on the marketing strategy;
 - (ii) a list of the provisions of these Regulations for which compliance by the AIFM is impossible as compliance by the AIFM with those provisions is, in accordance with paragraph (2), incompatible with compliance with a mandatory provision in the law to which the non-EU AIFM or the non-EU AIF marketed in the European Union is subject;
 - (iii) written evidence based on regulatory technical standards developed by ESMA that the relevant third country law provides for a rule equivalent to the provisions for which compliance is impossible, which has the same regulatory purpose and offers the same level of protection to the investors of the relevant alternative investment funds and that the AIFM complies with that equivalent rule; such written evidence being supported by a legal opinion on the existence of the relevant incompatible

mandatory provision in the law of the third country and including a description of the regulatory purpose and the nature of the investor protection pursued by it; and

(iv) the name of the legal representative of the AIFM and the place where it is established;

(b) the information referred to in Regulation 8(3) may be limited to the EU alternative investment funds the AIFM intends to manage and to those alternative investment funds managed by the AIFM that it intends to market in the European Union with a passport;

(c) subparagraph (a) of Regulation 9(1) shall be without prejudice to paragraph (2) of this Regulation;

(d) subparagraph (e) of Regulation 9(1) shall not apply;

(e) Regulation 9(7) shall apply as if at the end thereof there were included “and the information referred to in Regulation 38(9)(a)”.

(10) Where the State is not determined to be the Member State of reference and the Bank disagrees with the authorisation granted by the competent authorities of the Member State of reference of the AIFM, the Bank may refer the matter to ESMA.

(11) Where the Bank considers that the AIFM may rely on paragraph (2) so as to be exempted from compliance with certain provisions of these Regulations, it shall, without undue delay, notify ESMA thereof. It shall support this assessment by the information provided by the AIFM in accordance with paragraph (9)(a)(ii) and (iii).

(12) (a) No part of the time during which ESMA deliberates on the matter in accordance with the second paragraph of Article 37(9) of the Directive shall be reckoned in calculating the period specified in Regulation 9(5).

(b) If the Bank proposes to grant authorisation contrary to ESMA’s advice referred to in the second paragraph of Article 37(9) of the Directive, it shall inform ESMA, stating their reasons.

(c) If the Bank proposes to grant authorisation contrary to the foregoing advice of ESMA and the AIFM intends to market units or shares of alternative investment funds managed by it in Member States other than the State, the Bank shall also inform the competent authorities of those Member States thereof, stating their reasons.

(d) Where the State is not determined to be the Member State of reference and the Bank disagrees with the assessment made on the application of paragraph (11) by the competent authorities of the Member State of reference of the AIFM, the Bank may refer the matter to the ESMA.

- (13) (a) The Bank shall, without undue delay, inform ESMA of the outcome of the initial authorisation process, about any changes in the authorisation of the AIFM and any withdrawal of authorisation.
- (b) The Bank shall inform ESMA about the applications for authorisation that it has rejected, providing data about the AIFM having asked for authorisation and the reasons for the rejection.
- (c) The Bank shall treat information obtained from the central register maintained by ESMA as confidential.
- (14) (a) The determination of the Member State of reference shall not be affected by the further business development of the AIFM in the European Union. However, where the AIFM changes its marketing strategy within 2 years of its initial authorisation, and that change would have affected the determination of the Member State of reference if the modified marketing strategy had been the initial marketing strategy, the AIFM shall, where the State is the original Member State of reference, notify the Bank of the change before implementing it and indicate its new Member State of reference in accordance with the criteria set out in paragraph (4) and based on the new strategy. The AIFM shall justify its assessment by disclosing its new marketing strategy to the Bank. At the same time the AIFM shall provide information on its new legal representative, including its name and the place where it is established. The legal representative shall be established in the new Member State of reference.
- (b) The Bank shall assess whether the determination of the AIFM in accordance with subparagraph (a) is correct and shall notify ESMA thereof.
- (c) In its notification to ESMA, the Bank shall provide the AIFM's justification of its assessment regarding the Member State of reference and information on the AIFM's new marketing strategy.
- (d) After receipt of ESMA's advice in accordance with the third subparagraph of Article 37(11) of the Directive, the Bank shall inform the non-EU AIFM, its original legal representative and ESMA of their decision.
- (e) Where the Bank agrees with the assessment made by the AIFM, it shall also inform the competent authorities of the new Member State of reference of the change. The Bank shall without undue delay, transfer a copy of the authorisation and the supervision file relating to the AIFM to the new Member State of reference. From the date of transmission of the authorisation and supervision file, the Bank shall not be competent for authorising and supervising the AIFM.
- (f) Where the State is the new Member State of reference, the Bank shall be competent for authorising and supervising the AIFM from the date

of transmission of the authorisation and supervision file in accordance with the fifth subparagraph of Article 37(11) of the Directive.

(g) Where the Bank's final assessment is contrary to advice provided by ESMA in accordance with Article 37(11) of the Directive:

(i) the Bank shall inform ESMA thereof, stating reasons,

(ii) where the AIFM markets units or shares of alternative investment funds managed by it in Member States other than the State, the Bank shall inform the competent authorities of those other Member States thereof, stating reasons. Where applicable, the Bank shall also inform the competent authorities of the home Member States of the alternative investment funds managed by the AIFM thereof, stating reasons.

(15) Where it appears from the actual course of the business development of the AIFM in the European Union within 2 years after its authorisation that the marketing strategy as presented by the AIFM at the time of its authorisation was not followed, the AIFM made false statements in relation thereto or the AIFM has failed to comply with paragraph (14) when changing its marketing strategy, the Bank shall request that the AIFM indicate the Member State of reference based on its actual marketing strategy. The procedure set out in paragraph (14) shall apply with the necessary modifications. If the AIFM does not comply with the Bank's request, it shall withdraw its authorisation.

(16) (a) Where the State is the original Member State of reference and the AIFM changes its marketing strategy after the period referred to in paragraph (14) and intends to change its Member State of reference on the basis of its new marketing strategy, it may submit a request to change its Member State of reference to the Bank. The procedure referred to in paragraph (14) shall apply with the necessary modifications.

(b) Where the Bank disagrees with the assessment made on the determination of the Member State of reference under paragraph (14), (15) or this paragraph, the Bank may refer the matter to ESMA.

(17) (a) Any disputes arising between the Bank, where the State is the Member State of reference of the AIFM, and the AIFM shall be settled in accordance with the law of and subject to the jurisdiction of the State.

(b) Any disputes between the AIFM or the AIF and EU investors of the relevant AIF shall be settled in accordance with the law of and subject to the jurisdiction of a Member State.

(18) In case a competent authority rejects a request to exchange information in accordance with the regulatory technical standards referred to in Article 37(17) of the Directive, the Bank may refer the matter to ESMA.

Peer review of authorisation and supervision of non-EU AIFMs.

39. (1) The Bank shall make every effort to comply with any guidelines and recommendations issued by ESMA following peer reviews it has performed in accordance with Article 38 of the Directive.

(2) Within 2 months after the issuance of a guideline or recommendation referred to in paragraph (1), the Bank shall confirm whether it complies or intends to comply with that guideline or recommendation. In the event that the Bank does not comply or intend to comply, it shall inform ESMA, stating its reasons.

Conditions for marketing, with a passport, in the European Union or in the State of EU AIFS managed by, respectively, a non-EU AIFM whose Member State of reference is the State and by such an AIFM whose Member State of reference is another Member State.

40. (1) A duly authorised non-EU AIFM whose Member State of reference is the State may market the units or shares of an EU AIF it manages to professional investors in the European Union with a passport as soon as the conditions specified in this Regulation are met.

(2) A duly authorised non-EU AIFM whose Member State of reference is another Member State may market the units or shares of an EU AIF it manages to professional investors in the State with a passport as soon as the conditions specified in Article 39 of the Directive are met.

(3) (a) In case the AIFM intends to market units or shares of the EU AIF in the State where the State is the AIFM's Member State of reference, the AIFM shall submit a notification to the Bank in respect of each EU AIF that it intends to market.

(b) That notification shall comprise the documentation and information set out in Schedule 3.

(4) (a) No later than 20 working days after receipt of a complete notification pursuant to paragraph (3), the Bank shall inform the AIFM whether it may start marketing the AIF identified in the notification referred to in paragraph (3) in the State. The Bank may prevent the marketing of the AIF only if the AIFM's management of the AIF does not or will not comply with these Regulations. In the case of a decision to permit such marketing, the AIFM may start marketing the AIF in State as of the date of the notification by the Bank to that effect.

(b) The Bank shall also inform ESMA and the competent authorities of the AIF of a notification in accordance with this paragraph that the AIFM may start marketing units or shares of the AIF in the State.

(5) (a) Where an AIFM whose Member State of reference is the State intends to market units or respect of each EU AIF that it intends to market.

- (b) That notification shall comprise the documentation and information set out in Schedule 4.
- (6) (a) The Bank shall, no later than 20 working days after the date of receipt of the complete notification file referred to in paragraph (5), transmit the complete notification file to the competent authorities of the Member States where the units or shares of the AIF are intended to be marketed. Such transmission shall be effected only if the AIFM's management of the AIF complies and will continue to comply with these Regulations and if the AIFM otherwise complies with these Regulations.
- (b) The Bank shall enclose a statement to the effect that the AIFM concerned is authorised to manage alternative investment funds with a particular investment strategy.
- (7) (a) Upon transmission of the notification file, the Bank shall, without delay, notify the AIFM about the transmission. The AIFM may start marketing the AIF in the relevant host Member State as of the date of notification.
- (b) The Bank shall also inform ESMA and the competent authorities of the AIF that the AIFM may start marketing the units or shares of the AIF in the other Member State of the transmission of the notification file.
- (8) An AIFM whose Member State of reference is another Member State may start marketing an AIF in the State as of the date of that the competent authorities of the Member State of reference of the AIFM notify the AIFM about the transmission made in accordance with Article 39(6) of the Directive.
- (9) Where a non-EU AIFM whose Member State of reference is another Member State markets in the State with a passport one more than one EU AIF managed by it, the arrangements referred to in point (h) of Annex IV of the Directive shall be subject to the laws and supervision of the State.
- (10) The notification letter referred to in paragraph (5) by an AIFM whose Member State of reference is the State must be provided in the English language. Where the Bank provides a statement in accordance with paragraph (6) that statement shall be provided in the English language.
- (11) Where the Bank receives a notification in accordance with Article 39(5) of the Directive from the competent authorities of another Member State which is the Member State of reference for an AIFM, the Bank shall accept the electronic transmission and filing of those documents.
- (12) (a) In the event of a material change to any of the particulars provided in accordance with paragraph (3) or (5) (or both), the AIFM shall give written notice of that change to the Bank—

- (i) in the case of any change planned by the AIFM — at least 1 month before implementing the change, or
 - (ii) in the case of where an unplanned change has occurred — immediately after its occurrence.
- (b) If, pursuant to a planned change, the AIFM's management of the AIF would no longer comply with these Regulations or the AIFM would otherwise no longer comply with these Regulations, the Bank shall inform the AIFM, without undue delay, that it is not to implement the change.
- (c) If, notwithstanding the requirements of subparagraphs (a) and (b), a planned change is implemented or if an unplanned change has taken place pursuant to which the AIFM's management of the AIF no longer complies with these Regulations or the AIFM otherwise no longer complies with these Regulations, the Bank shall take all due measures in accordance with Regulation 49, including, if necessary, the express prohibition of marketing of the AIF.
- (d) If the changes are acceptable because they do not affect compliance of the AIFM's management of the AIF with these Regulations or the compliance by the AIFM with these Regulations otherwise, the Bank shall, without delay, inform ESMA in so far as the changes concern the termination of the marketing of certain alternative investment funds or additional alternative investment funds being marketed and, in so far as applicable, the competent authorities of the host Member States of those changes.

(13) Without prejudice to Regulation 44(1), alternative investment funds managed and marketed by the AIFM shall be marketed in the State only to professional investors.

Conditions for marketing, with a passport, in the European Union or in the State of non-EU AIFs managed by, respectively, a non-EU AIFM whose Member State of reference is the State and by such an AIFM whose Member State of reference is another Member State.

41. (1) An authorised non-EU AIFM whose Member State of reference is the State may market units or shares of a non-EU AIF it manages to professional investors in the European Union with a passport as soon as the conditions specified in this Regulation are met.

(2) An authorised non-EU AIFM whose Member State of reference is another Member State may market units or shares of a non-EU AIF it manages to professional investors in the State with a passport as soon as the conditions laid down in Article 40 of the Directive are met.

(3) In addition to the requirements of these Regulations in relation to an Irish AIFM, for a non-EU AIFM whose Member State of reference is the State the following conditions shall be met:

- (a) appropriate cooperation arrangements are in place between the Bank and the supervisory authority of the third country where the non-EU AIF is established in order to ensure at least an efficient exchange of information that allows the Bank to carry out its duties in accordance with these Regulations;
 - (b) the third country where the non-EU AIF is established is not listed as a Non-Cooperative Country and Territory by FATF;
 - (c) the third country where the non-EU AIF is established has signed an agreement with the State and with each other Member State in which the units or shares of the non-EU AIF are intended to be marketed which complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters including any multilateral tax agreements.
- (4) Where a competent authority of another Member State disagrees with the assessment made on the application of subparagraphs (a) and (b) of paragraph (3) by the Bank, the Bank may refer the matter to ESMA to act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No. 1095/2010.
- (5) Where the Bank disagrees with the assessment made on the application of points (a) and (b) of the first subparagraph of Article 40(2) of the Directive by the competent authority of another Member State, the Bank may refer the matter to ESMA to act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No. 1095/2010.
- (6) (a) Where the State is the Member State of reference the AIFM shall submit a notification to the Bank in respect of each non-EU AIF that it intends to market in the State.
 - (b) That notification shall comprise the documentation and information set out in Schedule 3.
- (7) (a) No later than 20 working days after receipt of a complete notification pursuant to paragraph (6), the Bank shall inform the AIFM whether it may start marketing the AIF identified in the notification referred to in paragraph (6) in the State. The Bank may prevent the marketing of the AIF only if the AIFM's management of the AIF does not or will not comply with these Regulations or the AIFM otherwise does not or will not comply with these Regulations. In the case of a decision to permit such marketing, the AIFM may start marketing the AIF in the State from the date of the notification by the Bank to that effect.
- (b) The Bank shall also inform ESMA that the AIFM may start marketing units or shares of the AIF in the State.

- (8) (a) If the AIFM intends to market the units or shares of a non-EU AIF also in Member States other than the State where the State is the Member State of reference, the AIFM shall submit a notification to the Bank in respect of each non-EU AIF that it intends to market.
- (b) That notification shall comprise the documentation and information set out in Schedule 4.
- (9) (a) The Bank shall, no later than 20 working days after the date of receipt of the complete notification file referred to in paragraph (8), transmit the complete notification file to the competent authorities of the Member States where the units or shares of the AIF are intended to be marketed. Such transmission shall occur only if the AIFM's management of the AIF complies and will continue to comply with these Regulations and that in general the AIFM complies with these Regulations.
- (b) The Bank shall enclose a statement to the effect that the AIFM concerned is authorised to manage alternative investment funds with a particular investment strategy.
- (c) Upon transmission of the notification file, the Bank shall, without delay, notify the AIFM of the transmission.
- (d) The Bank shall also inform ESMA of the transmission of the notification file.
- (10) An AIFM whose Member State of reference is another Member State may start marketing an AIF in the State as of the date of that the competent authorities of the Member State of reference of the AIFM notify the AIFM about the transmission made in accordance with Article 40(6) of the Directive.
- (11) (a) Where an non-EU AIFM whose Member State of reference is the State markets in the State with a passport non-EU alternative investment funds managed by it, the arrangements referred to in point (h) of Annex IV of the Directive shall be subject to the laws and supervision of the State.
- (b) Where a non-EU AIFM whose Member State of reference is another Member State markets in the State with a passport non-EU alternative investment funds managed by it, the arrangements referred to in point (h) of Annex IV of the Directive shall be subject to the laws and supervision of the State.
- (12) The notification letter referred to in paragraph (8) by an AIFM whose Member State of reference is the State shall be provided in the English language. Where the Bank provides a statement in accordance with paragraph (9) that statement shall be provided in the English language.
- (13) Where the Bank receives a notification in accordance with Article 40(6) of the Directive from the competent authorities of another Member State which

is the Member State of reference for an AIFM, the Bank shall accept the electronic transmission and filing of those documents.

(14) (a) In the event of a material change to any of the particulars provided in accordance with paragraph (6) or (8), the AIFM shall give written notice of that change to Bank—

(i) in the case of any change planned by the AIFM — at least 1 month before implementing the change, or

(ii) in the case of where an unplanned change has occurred — immediately after its occurrence.

(b) If, pursuant to a planned change, the AIFM's management of the AIF would no longer comply with these Regulations, or the AIFM would otherwise no longer comply with these Regulations, the Bank shall inform the AIFM, without undue delay, that it is not to implement the change.

(c) If, notwithstanding the requirements of subparagraphs (a) and (b), the planned change is implemented or if an unplanned change has taken place pursuant to which the AIFM's management of the AIF no longer complies with these Regulations or the AIFM otherwise no longer complies with these Regulations, the Bank shall take all due measures in accordance with Regulation 49 including, if necessary, the express prohibition of marketing of the AIF.

(d) If the changes are acceptable because they do not affect the compliance of the AIFM's management of the AIF with these Regulations or the compliance by the AIFM with these Regulations otherwise, the Bank shall without delay, inform ESMA in so far as the changes concern the termination of the marketing of certain alternative investment funds or additional alternative investment funds being marketed and, in so far as applicable, the competent authorities of the host Member States of the AIFM of those changes.

(15) Where the Bank rejects a request to exchange information in accordance with regulatory technical standards adopted by the Commission, or where the competent authority of another Member State rejects a request by the Bank to exchange information in accordance with such regulatory technical standards, the Bank may refer the matter to ESMA.

(16) Without prejudice to Regulation 44(1), alternative investment funds managed and marketed by the AIFM may be marketed in the State only to professional investors.

Conditions for managing AIFs established in other Member States and Irish AIFs by, respectively, a non-EU AIFM whose Member State of reference is the State and such an AIFM whose Member State of reference is another Member State.

42. (1) An authorised non-EU AIFM whose Member State of reference is the State may manage EU alternative investment funds established in another

Member State either directly or via the establishment of a branch, provided that the AIFM is authorised to manage that type of AIF.

(2) An authorised non-EU AIFM whose Member State of reference is another Member State may manage Irish alternative investment funds either directly or via the establishment of a branch, provided that the AIFM is authorised to manage that type of AIF.

(3) Where the State is the Member State of reference, any non-EU AIFM intending to manage EU alternative investment funds established in another Member State for the first time shall provide the following information to the Bank:

- (a) the Member State in which it intends to manage such funds directly or establish a branch;
- (b) a programme of operations stating in particular the services which it intends to perform and identifying the alternative investment funds it intends to manage.

(4) If the non-EU AIFM intends to establish a branch, it shall provide, in addition to the information referred to in paragraph (3), the following information:

- (a) the organisational structure of the branch;
- (b) the address in the home Member State of the AIF from which documents may be obtained;
- (c) the names and contact details of persons responsible for the management of the branch.

(5) (a) The Bank shall, within 1 month after receiving the complete documentation in accordance with paragraph (3) or within 2 months after receiving the complete documentation in accordance with paragraph (4), transmit that documentation to the competent authorities of the host Member States of the AIFM. Such transmission shall occur only if the AIFM's management of the AIF complies and will continue to comply with these Regulations and the AIFM otherwise complies with these Regulations.

- (b) The Bank shall enclose a statement to the effect that the AIFM concerned is authorised by it.
- (c) The Bank shall immediately notify the AIFM of the transmission. Upon receipt of such notification the AIFM may start to provide its services in the host Member States of the AIFM.
- (d) The Bank shall also inform ESMA of transmission of the notification.

(6) An AIFM whose Member State of reference is another Member State may start to provide its services in the State as of the date that the competent authorities of the Member State of reference of the AIFM notify the AIFM about the transmission made in accordance with Article 41(4) of the Directive.

(7) (a) In the event of a change to any of the information provided in accordance with paragraph (3) and, if relevant, paragraph (4), an AIFM shall give written notice of that change to the Bank—

(i) in the case of any change planned by the AIFM — at least 1 month before implementing the change, or

(ii) in the case of where an unplanned change has occurred — immediately after its occurrence.

(b) If, pursuant to a planned change, the AIFM's management of the AIF would no longer comply with these Regulations or the AIFM would otherwise no longer comply with these Regulations, the Bank shall inform the AIFM without undue delay that it is not to implement the change.

(c) If, notwithstanding the requirements of subparagraphs (a) and (b), a planned change is implemented or if an unplanned change has taken place pursuant to which the AIFM's management of the AIF no longer complies with these Regulations or the AIFM otherwise no longer complies with these Regulations, the Bank shall take all due measures in accordance with Regulation 49, including, if necessary, the express prohibition of marketing of the AIF.

(d) If the changes are acceptable because they do not affect the compliance of the AIFM's management of the AIF with these Regulations or the compliance by the AIFM with these Regulations otherwise, the Bank shall without undue delay inform the competent authorities of the host Member States of the AIFM of those changes.

Conditions for the marketing in the State without a passport of AIFs managed by a non-EU AIFM.

43. (1) Without prejudice to Regulations 38, 40 and 41, a non-EU AIFM may market to professional investors in the State units or shares of alternative investment funds it manages subject to the following conditions being met:

(a) the non-EU AIFM complies with Regulations 23, 24 and 25 in respect of each AIF marketed by it pursuant to this Regulation and with Regulations 27 to 31 where an AIF marketed by it pursuant to this Regulation falls within the scope of Regulation 27(1);

(b) appropriate cooperation arrangements for the purpose of systemic risk oversight and in line with international standards are in place between the Bank, in so far as applicable, the competent authorities of the EU alternative investment funds concerned and the supervisory authorities of the third country where the non-EU AIFM is

established and, in so far as applicable, the supervisory authorities of the third country where the non-EU AIF is established in order to ensure an efficient exchange of information that allows the Bank to carry out its duties in accordance with these Regulations;

- (c) the third country where the non-EU AIFM or the non-EU AIF is established is not listed as a Non-Cooperative Country and Territory by FATF.

(2) Where a competent authority of an EU AIF does not enter into the required cooperation arrangements referred to in paragraph (1)(b) within a reasonable period of time, the Bank may refer the matter to ESMA.

(3) An AIFM falling with paragraph (1) shall give written notification to the Bank before marketing to professional investors in the State units or shares of an AIF managed by it that falls within paragraph (1). This notification shall include the name of the AIFM and the AIF and the identity of the jurisdiction in which the AIFM is domiciled and the jurisdiction where the AIF is domiciled.

(4) (a) Without prejudice to the power of the Bank to impose conditions or requirements under these Regulations, where the Bank considers it necessary for the proper and orderly regulation and supervision of alternative investment fund managers, the Bank may impose conditions or requirements, in addition to those specified in paragraph (1), on an AIFM that markets to professional investors in the State units or shares of one or more than one AIF it manages.

- (b) A condition or requirement imposed by the Bank under this paragraph has effect from the date specified by the Bank.

Chapter 9

Marketing To Retail Investors

Marketing of AIFs by AIFMs to retail investors.

44. (1) An AIFM may market in the State to retail investors units or shares of alternative investment funds it manages in accordance with these Regulations, irrespective of whether such funds are marketed on a domestic or cross-border basis or whether they are EU or non-EU alternative investment funds.

(2) In such cases, the Bank may impose stricter requirements on the AIFM or the AIF than the requirements applicable to the alternative investment funds marketed to professional investors. However, the Bank shall not impose stricter or additional requirements on EU alternative investment funds established in another Member State.

(3) (a) Without prejudice to the power of the Bank to impose conditions or requirements under these Regulations, where the Bank considers it necessary for the proper and orderly regulation and supervision of alternative investment fund managers, the Bank may impose conditions or requirements on such managers which market in the

State to retail investors units or shares of alternative investment funds that they manage.

- (b) A condition or requirement imposed by the Bank under this paragraph has effect from the date specified by the Bank.

PART 4

COMPETENT AUTHORITIES

Designation, Powers And Redress Procedures

Designation of competent authorities.

45. (1) The Bank is the competent authority in the State for the purposes of the Directive and any Regulation of the Commission supplementing or issued pursuant to the Directive.

(2) The Bank shall establish the appropriate methods to monitor that each AIFM complies with its obligations under these Regulations, where relevant on the basis of guidelines developed by ESMA.

Responsibility of the Bank.

46. (1) The prudential supervision of an Irish AIFM or a non-EU AIFM whose Member State of reference is the State shall be the responsibility of the Bank, whether the AIFM manages or markets alternative investment funds (or does both) in another Member State or not, but this is without prejudice to those provisions of these Regulations which confer the responsibility for supervision on the competent authorities of the host MemberState of the AIFM.

(2) The supervision of an AIFM's compliance with Regulations 13 and 15 shall be the responsibility of the Bank where the State is the host Member State of the AIFM if the AIFM manages or markets alternative investment funds (or does both) through a branch in the State.

(3) The Bank may require an AIFM managing or marketing alternative investment funds in the State, whether or not through a branch, to provide the information necessary for the supervision of the AIFM's compliance with the applicable rules for which the Bank is responsible.

(4) The requirements referred to in paragraph (3) shall not be more stringent than those imposed on an Irish AIFM for the monitoring of its compliance with the same rules.

(5) Where the Bank ascertains that an AIFM managing or marketing alternative investment funds (or doing both) in the State, whether or not through a branch, is contravening one of the rules in relation to which it has responsibility for supervising compliance, the Bank shall require the AIFM concerned to put an end to that contravention and inform the competent authorities of the home Member State thereof.

(6) If the AIFM concerned refuses to provide the Bank with information falling under its responsibility, or fails to take the necessary steps to put an end to the contravention referred to in paragraph (5), the Bank shall inform the competent authorities of its home Member State thereof.

(7) (a) Where the Bank receives a notification in accordance with Article 45(5) of the Directive from the competent authorities of the host Member State of an Irish AIFM or an AIFM whose Member State of reference is the State it shall, at the earliest opportunity:

(i) take all appropriate measures to ensure that the AIFM concerned provides the information requested by the competent authorities of its host Member State pursuant to Article 45(3) of the Directive, or puts an end to the contravention referred to in Article 45(4) of the Directive;

(ii) request the necessary information from the relevant supervisory authorities in third countries

(b) The Bank shall communicate the nature of the measures referred to in subparagraph (a)(i) to the competent authorities of the host Member State of the AIFM.

(8) (a) If, despite the measures taken by the competent authorities of the home Member State of the AIFM pursuant to Article 45(5) of the Directive or because such measures prove to be inadequate or are not available in the Member State in question, the AIFM continues to refuse to provide the information requested by the Bank pursuant to paragraph (3), or persists in contravening legal or regulatory provisions, referred to in paragraph (5), the Bank may, after informing the competent authorities of the home Member State of the AIFM, take appropriate measures, including those specified in Regulation 49 and provided under the Central Bank Act 1942, to prevent or penalise further irregularities and, in so far as necessary, to prevent that AIFM from initiating any further transactions in the State.

(b) Where the function carried out in the State is the management of alternative investment funds, the Bank may require the AIFM to cease managing those funds.

Supplemental provisions in relation to Regulation 46.

47. (1) Where the Bank has clear and demonstrable grounds for believing that the AIFM is in contravention of the obligations arising from rules in relation to which the Bank has no responsibility for supervising compliance, the Bank shall refer those findings to the competent authorities of the home Member State of the AIFM.

(2) Where the Bank receives a communication pursuant to Article 45(7) of the Directive from the competent authorities of the host Member State of an Irish AIFM or an AIFM whose Member State of reference is the State, it shall

take appropriate measures, including, if necessary, requesting additional information from the relevant supervisory authorities in third countries.

(3) If despite the measures taken by the competent authorities of the home Member State of the AIFM or because such measures prove to be inadequate, or because the home Member State of the AIFM fails to act within a reasonable timeframe, the AIFM persists in acting in a manner that is clearly prejudicial to the interests of the investors of the relevant AIF, the financial stability or the integrity of the market in the State the Bank may, after informing the competent authorities of the home Member State of the AIFM, take all appropriate measures needed in order to protect the investors of the relevant AIF, the financial stability and the integrity of the market in the State, including preventing the AIFM concerned from further marketing the units or shares of the relevant AIF in the State.

(4) The procedure specified in paragraphs (1) to (3) shall also apply in the event that Bank has clear and demonstrable grounds for disagreement with the authorisation of a non-EU AIFM by the Member State of reference.

(5) Where the Bank disagrees with the competent authorities of another Member State on any of the measures taken by the Bank pursuant to Regulation 46(5) to (8) or paragraphs (1) to (3) of this Regulation or, as the case may be, by that competent authority pursuant to Articles 45(4) to (9) of the Directive it may refer the matter to ESMA.

Powers of the Bank to request Information.

48. (1) The following are persons to whom this Regulation applies (whether they are within or outside the State):

- (a) an AIFM, AIF or depositary;
- (b) a person who has applied for an authorisation as an AIFM or, where relevant, an AIF but whose application has not been determined;
- (c) a person whom the Bank reasonably believes is or has been an AIFM, AIF or depositary or is or has been acting as, or claiming or holding himself or herself out to be, an AIFM, AIF or depositary;
- (d) a person who is or has been, or whom the Bank reasonably believes is or has been, without an authorisation, providing a service in respect of which an authorisation is required under these Regulations;
- (e) a related undertaking of any of the persons referred to in any of the preceding subparagraphs;
- (f) any other person whom the Bank reasonably believes may possess information about a person referred to in any of the preceding paragraphs;
- (g) a person who is, in relation to a person referred to in any of the preceding paragraphs, a person mentioned in paragraph (2);

(h) a person who is or has been an officer or employee or agent of a person referred to in any of the preceding paragraphs or is, in relation to a person who is or has been such an officer, employee or agent, a person mentioned in paragraph (2).

(2) The persons referred to in paragraph (1)(g) and (h) are—

(a) an administrator, examiner, liquidator, receiver or official assignee, and

(b) a person with functions corresponding to those of any of the persons within the preceding paragraphs under the law of a territory other than the State.

(3) In paragraph (1)(h) “agent”, in relation to a person referred to in paragraph (1)(a) to (g), includes a past (as well as a present) agent and includes the person’s banker, accountant, solicitor, auditor and financial or other adviser.

(4) Where it is necessary to do so for the purpose of the performance of the Bank’s functions under these Regulations or any other enactment relating to the proper and effective regulation of an AIFM, AIF or depositary, the Bank may, by notice in writing given to a person to whom this Regulation applies, require the person—

(a) to provide to the Bank the information specified in the notice,

(b) to provide to the Bank the records (including phone and data traffic records) so specified,

(c) to prepare and provide to the Bank the forecasts, plans, accounts or other documents so specified,

(d) to appear before the Bank and

(i) to give such information as the Bank may reasonably require,

(ii) to provide the Bank any information or records which the person has control of, or access to, and which the Bank may reasonably require, or

(iii) to provide an explanation of a decision, course of action, system or practice or the nature or content of any records or information provided to the Bank under any these Regulations or any other enactment.

(5) A person on whom a requirement is imposed under paragraph (4) shall comply with the requirement—

(a) at such time or times, or within such period, as may be specified in the notice or in a further notice given by the Bank, and

(b) at such place as may be so specified.

(6) The Bank may require that information, records or other documents provided in compliance with a requirement under paragraph (4) be certified or attested as to their authenticity or correctness in such manner as the Bank may reasonably require, including by statutory declaration.

(7) The Bank may take copies of, or extracts from, any records or other documents provided in compliance with a requirement under paragraph (4).

(8) This Regulation does not limit any other power of the Bank to require the provision of information or records or the preparation and provision of documents.

(9) The Bank may require that information, records or other documents provided in response to a requirement under paragraph (4) be provided in such form and manner as the Bank may reasonably require.

(10) A person who fails to provide any information, records or other documents in the form reasonably required by the Bank shall be treated as not having provided it or them in compliance with the requirement.

Power to issue directions.

49. (1) Where the Bank is satisfied that one or more of the circumstances specified in paragraph (2) exist in relation to an AIFM, AIF or depositary, or a related undertaking of those persons, the Bank may, in the interests of the proper and effective regulation of the markets, give a direction in writing to the AIFM, AIF or depositary or related undertaking to take such of the actions specified in paragraph (3) as are mentioned in the direction.

(2) The circumstances referred to in paragraph (1) are as follows:

- (a) that the AIFM, AIF or depositary, or related undertaking, has become or is likely to become unable to meet its obligations to its creditors or professional or retail investors;
- (b) that the AIFM, AIF or depositary, or related undertaking, is not maintaining or is unlikely to be in a position to maintain adequate capital or other financial resources having regard to the volume and nature of its business;
- (c) that the AIFM, AIF or depositary, or related undertaking, has failed to comply with, is failing to comply with or is likely to fail to comply with any condition or requirement imposed by, or by virtue of, these Regulations or any other enactment;
- (d) that the AIFM, AIF or depositary, or related undertaking, is conducting business in such a manner as to jeopardise or prejudice—
 - (i) monies, securities or other investment instruments or other property held by or controlled by it on behalf of a professional or retail investor,

- (ii) the rights and interests of a professional or retail investor or;
 - (iii) in a market for a financial instrument, the orderly functioning of that market.
- (e) that there may be grounds for revoking the authorisation or approval of an AIFM, AIF or depositary under these Regulations or any other enactment.
- (3) The actions referred to in paragraph (1) are as follows:
- (a) to suspend, for such period not exceeding 12 months as is specified in the direction, any one or more of the following:
 - (i) the provision of any financial service, or description of financial service, specified in the direction;
 - (ii) the making of payments to which clause (i) does not relate or any such payments or description of such payments specified in the direction;
 - (iii) the acquisition or disposal of any assets or liabilities, or description of assets or liabilities, specified in the direction;
 - (iv) entering into transactions or agreements, or description of transactions or agreements, specified in the direction, or entering into them except in specified circumstances or to a specified extent;
 - (v) soliciting business from persons of a class specified in the direction;
 - (vi) carrying on business in a manner specified in the direction or otherwise than in a manner so specified;
 - (b) to dispose of, on terms specified in the direction, assets or liabilities so specified, or a part or parts of its business so specified, within such period as may be so specified;
 - (c) to raise and maintain such capital or other financial resources as may be specified in the direction;
 - (d) to make such modifications to its systems and controls as may be specified in the direction;
 - (e) to make such modifications to its business practices and dealings with third parties as may be specified in the direction;
 - (f) to comply with the condition or requirement referred to in paragraph (2)(c);

(g) to notify third parties of any such actions within subparagraphs (a) to (f) as may be specified in the direction.

(4) Where the Bank gives a direction under paragraph (1) to an AIFM, AIF or depositary or a related undertaking (in this paragraph referred to as the “principal provider”), the Bank may, where it considers it necessary for the purpose of securing compliance with that direction, give a direction in writing to any regulated financial service provider at which the principal provider holds an account of any description to cease making payments from, or entering into or performing other transactions in respect of, such account without the prior authorisation of the Bank.

(5) The provisions of a direction under paragraph (1) or (4) have effect from the date specified in the direction in relation to them.

(6) A direction under paragraph (1) or (4) shall set out—

(a) all terms of the direction, including any specification of a date by which, or a period within which, any provision made by it is to be complied with, and

(b) any incidental, consequential or supplemental provisions for implementing the direction and securing that it is fully and effectively carried out.

(7) The Bank may publish a direction under paragraph (1) or (4) in any such manner as the Bank considers appropriate.

(8) An AIFM, AIF or depositary, or a related undertaking, to whom a direction is given under subparagraph (a) or (b) of paragraph (3) may apply to the High Court for an order setting aside the direction.

(9) An AIFM, AIF or depositary to whom a direction is given under paragraph (4) may apply to the High Court for an order setting aside the direction.

(10) An application under paragraph (8) shall be made to the High Court within 14 days beginning on the date of receipt of the direction by the person concerned, or the related undertaking, or such further period as the High Court considers just and equitable in the circumstances, and the High Court may make any such interim or interlocutory order as it considers appropriate.

(11) An application under paragraph (9) shall be made to the High Court within 14 days beginning on the date of receipt of the direction by the person concerned or such further period as the High Court considers just and equitable in the circumstances, and the High Court may make any interim or interlocutory order as it considers appropriate.

(12) Where the High Court is satisfied, because of the nature or the circumstances of the case or otherwise in the interests of justice that it is

desirable, the whole or any part of proceedings relating to an application under paragraph (8) or (9) may be heard otherwise than in public.

(13) A decision by the Bank to issue a direction under any of subparagraphs (c) to (g) of paragraph (3) is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.

Restrictions on certain proceedings or certain other action being taken where direction given.

50. (1) Where a direction given under paragraph (1) or (4) of Regulation 49 in respect of an AIFM, AIF or depositary or related undertaking so provides—

- (a) no relevant proceedings may be commenced or continued, and
- (b) no assets of the regulated financial service provider or related undertaking may be attached, sequestered or otherwise distrained,

except with the prior approval of the High Court while the direction remains to be complied with.

(2) For the purposes of paragraph (1) “relevant proceedings”, in relation to a regulated financial service provider or related undertaking, means—

- (a) proceedings relating to the winding-up or dissolution of the regulated financial service provider or related undertaking,
- (b) receivership or bankruptcy proceedings of which the regulated financial service provider or related undertaking is the subject, or
- (c) any other proceedings under which an assignee or other person becomes responsible for the affairs of the regulated financial service provider or related undertaking pending the regulated financial service provider or related undertaking ceasing to carry on business.

Power of High Court to compel compliance with direction.

51. (1) If the Bank is of the opinion that a direction given under paragraph (1) or (4) of Regulation 49 has not been or is not being complied with, the Bank may apply to the High Court for an order requiring a person to comply with the direction.

(2) If the High Court is satisfied that a person has refused or failed or is refusing or failing to take an action the person is required to take by or under a direction given under paragraph (1) or (4) of Regulation 49, the High Court may make an order requiring the person to take that action.

(3) On an application to it under paragraph (1), the High Court may make any such interim or interlocutory order as it considers appropriate.

(4) An order under paragraph (2) may include an order to take such ancillary or incidental steps as the High Court may consider appropriate to give full effect to the order.

(5) Where the High Court is satisfied, because of the nature or the circumstances of the case or otherwise in the interests of justice that it is desirable, the whole or any part of proceedings under this paragraph may be heard otherwise than in public.

Information exchanged to be confidential.

52. (1) Where ESMA has delegated any task to the Bank, the obligation of professional secrecy referred to in Article 47(2) of the Directive shall apply to each person who is, or has been, employed by the Bank. Information to which that obligation of professional secrecy applies shall not be disclosed to another person or authority except where such disclosure is necessary for legal proceedings

(2) All the information exchanged under these Regulations between the Bank and ESMA, EBA, the European Supervisory Authority (European Insurance and Occupational Pensions Authority) established by Regulation (EU) No. 1094/2010 of the European Parliament and of the Council⁷ and the ESRB shall be deemed to be confidential, except where the Bank, ESMA or the other authority or body concerned states, at the time of communication, that such information may be disclosed or where such disclosure is necessary for legal proceedings.

(3) Where the Bank undertakes a measure in response to a request under Article 9 of Regulation (EU) No. 1095/2010 it shall endeavour to—

- (a) address effectively the threat to the orderly functioning and the integrity of the financial market or to the stability of the whole or a part of the financial system in the European Union or significantly improve the ability of competent authorities to monitor the threat;
- (b) not create a risk of regulatory arbitrage;
- (c) not have a detrimental effect on the efficiency of the financial markets, including reducing liquidity in those markets or creating uncertainty for market participants, in a way that is disproportionate to the benefits of the measures.

(4) Where the State is the Member State of reference, the Bank may request ESMA to reconsider its decision under Article 47(4) of the Directive. The procedure set out in the second subparagraph of Article 44(1) of Regulation (EU) No. 1095/2010 shall apply.

Reasons for decisions to be given, etc.

53. (1) The Bank shall give written reasons for any decision to refuse or withdraw authorisation of an AIFM to manage or market alternative investment funds (or do both), or for any other decision taken by it in exercise of the powers conferred by these Regulations that adversely affects an AIFM, and shall communicate them to the person or persons concerned.

⁷OJ L 331, 15.12.2010, p. 48.

(2) Without prejudice to the circumstances, under the general law, in which judicial review shall lie in respect of the exercise or non-exercise by the Bank of its powers under these Regulations, judicial review shall lie in respect of a failure by the Bank to make, or inform the applicant of the making of, (in accordance with Regulation 9) a decision to grant or refuse to grant an authorisation under these Regulations to an applicant therefor.

Cooperation between different competent authorities obligation to cooperate.

54. (1) The Bank shall cooperate with the competent authorities of other Member States and with ESMA and the ESRB whenever necessary for the purpose of carrying out their respective duties or exercising their respective powers under these Regulations or the Directive, as the case may be.

(2) The Bank shall cooperate with other competent authorities even in cases where the conduct under investigation does not constitute a contravention of any law of the State.

(3) The Bank shall immediately, upon request, provide other competent authorities with the information required for the purposes of their carrying out their duties under the Directive.

(4) In relation to an Irish AIFM or an AIFM whose Member State of reference is the State, the Bank shall forward a copy of the relevant cooperation arrangements entered into by it, in accordance with any of Regulations 36, 38 and 41, to the host Member States of the AIFM where relevant.

(5) In relation to an Irish AIFM or an AIFM whose Member State of reference is the State the Bank shall, in accordance with procedures relating to the applicable regulatory technical standards referred to in Article 35(14), Article 37(17) or Article 40(14) of the Directive, forward the information received from third-country supervisory authorities in accordance with cooperation arrangements with such supervisory authorities in respect of an AIFM, or, where relevant, pursuant to Article 45(6) or (7) of the Directive, to the competent authorities of host Member State of the AIFM concerned.

(6) Where the State is the host Member State of the AIFM and the Bank considers that the contents of the cooperation arrangement entered into by the home Member State of the AIFM concerned in accordance with any of Articles 35, 37 and 40 of the Directive do not comply with what is required pursuant to the applicable regulatory technical standards, the Bank may refer the matter to the ESMA.

(7) Where the Bank has clear and demonstrable grounds to suspect that acts in contravention of these Regulations or the Directive are being or have been carried out by an AIFM not subject to its supervision, it shall notify ESMA and the competent authorities of the home and host Member States of the AIFM concerned thereof in as specific a manner as possible.

(8) Where the Bank is in receipt of a notification under Article 50(5) of the Directive it shall take appropriate action and shall inform ESMA and the

notifying competent authorities of the outcome of that action and, to the extent possible, of significant interim developments.

(9) Where the State is the Member State of reference for an authorised non-EU AIFM and the Bank considers that that AIFM is contravening or has contravened its obligations under the Directive, the Bank shall notify ESMA, setting out full reasons as soon as possible.

Transfer and retention of personal data.

55. (1) With regard to transfer of personal data between the Bank and competent authorities, Directive 95/46/EC shall apply to such transfers.

(2) Personal data shall be retained for a maximum period of 5 years.

Disclosure of information to third countries.

56. (1) The Bank may transfer to a third country data and the analysis of data on a case-by-case basis where the conditions laid down in Article 25 or 26 of Directive 95/46/EC are met and where the Bank is satisfied that the transfer is necessary for the purpose of these Regulations.

(2) The Bank shall only disclose information received from a competent authority of another Member State to a supervisory authority of a third country where Bank has obtained express agreement of the competent authority which transmitted the information and, where applicable, the information is disclosed solely for the purposes for which that competent authority gave its agreement.

Exchange of information relating to the potential systemic consequences of AIFM activity.

57. (1) (a) In relation to Irish alternative investment fund managers and alternative investment fund managers whose Member State of reference is the State, the Bank shall communicate information to the competent authorities of other Member States where this is relevant for monitoring and responding to the potential implications of the activities of individual such fund managers or such fund managers collectively for the stability of systemically relevant financial institutions and the orderly functioning of markets on which such fund managers are active.

(b) The Bank shall inform ESMA and the ESRB of the information communicated.

(2) Subject to the conditions laid down in Article 35 of Regulation (EU) No. 1095/2010, aggregated information relating to the activities of Irish alternative investment fund managers and alternative investment fund managers whose Member State of reference is the State shall be communicated by the Bank to ESMA and the ESRB.

Cooperation in supervisory activities.

58. (1) The Bank may request the cooperation of the competent authority of another Member State, or vice versa, for the purpose of a supervisory activity or an on-the spot verification or of an investigation on the territory of the latter

within the framework of their powers pursuant to these Regulations or the Directive, as the case may be. Where the Bank receives a request with respect to an on-the-spot verification or investigation, it shall—

- (a) carry out the verification or investigation itself,
 - (b) allow the requesting authority to carry out the verification or investigation, or
 - (c) allow auditors or experts to carry out the verification or investigation.
- (2) (a) Where the verification or investigation is carried out in the State by the Bank, the Bank may, upon request from the competent authority which has requested cooperation, permit officials of that competent authority to assist the Bank's officials carrying out the verification or investigation. The verification or investigation shall, however, be subject to the overall control of the Bank.
- (b) Where the verification or investigation is carried out in the State by a competent authority of another Member State, the Bank may request that its own officials assist the officials carrying out the verification or investigation.

(3) The Bank may refuse to exchange information as provided for in Regulation 57 or to act on a request for cooperation in carrying out an investigation or on-the-spot verification as provided for in paragraph (1) or (2), only where—

- (a) such an investigation, on-the-spot verification or exchange of information might adversely affect the sovereignty, security or public policy of the State,
- (b) judicial proceedings have already been initiated in respect of the same persons and the same actions before the authorities of the State, or
- (c) final judgment in respect of the same persons and the same actions has already been delivered in the State.

(4) The Bank shall inform the requesting competent authorities of any decision taken under this paragraph (3), stating the reasons therefor.

Dispute settlement.

59. In case of disagreement between the Bank and the competent authorities of other Member States on an assessment, action or omission of one competent authority in relation to any matter as regards which these Regulations or the Directive require cooperation or coordination between competent authorities from more than one Member State, the Bank may refer the issue concerned to ESMA.

PART 5

TRANSITIONAL AND FINAL PROVISIONS

Transitional provisions.

60. (1) An Irish AIFM performing activities under these Regulations before 22 July 2013 shall, on and from that date, take all necessary measures to comply with these Regulations and shall submit an application to the Bank for authorisation under these Regulations within 1 year after that date.

(2) Regulations 32, 33 and 34 shall not apply to the marketing of units or shares of an AIF that are subject to a current offer to the public under a prospectus that has been drawn up and published in accordance with the Prospectus (Directive 2003/71/EC) Regulations 2005 (S.I. No. 324 of 2005) before 22 July 2013 for the duration of validity of that prospectus.

(3) An Irish AIFM in so far as it manages one or more than one AIF of the closed-ended type before 22 July 2013 which does not make any additional investments after that date may, however, continue to manage any such AIF without authorisation under these Regulations.

(4) An Irish AIFM in so far as it manages one or more than AIF of the closed-ended type whose subscription period for investors has closed prior to the date of entry into force of the Directive and are constituted for a period of time which expires at the latest 3 years after 22 July 2013, may, however, continue to manage any such AIF without having to comply with these Regulations except for Regulation 23 and, where relevant, Regulations 27 to 31 or to submit an application for authorisation under these Regulations.

Delegated act on the application of Article 35 and Articles 37 to 41.

61. Until the issuance of the opinion of ESMA referred to in point (a) of paragraph 1 of Article 67 of the Directive the Bank shall, on a quarterly basis, provide ESMA with information on the alternative investment fund managers that are managing or marketing alternative investment funds (or both) under its supervision, either under the application of the passport regime provided for in these Regulations or under their national regimes, and with information needed for the assessment of the elements referred to in paragraph 2 of Article 67 of the Directive.

Bank to provide certain information to ESMA.

62. Until the issuance of the opinion of ESMA referred to in point (a) of paragraph 1 of Article 68 of the Directive, the Bank shall, on a quarterly basis, provide ESMA with information on the alternative investment fund managers that are managing or marketing alternative investment funds (or both) under its supervision, either under the application of the passport regime provided for in these Regulations, or under their national regimes.

Amendments of Central Bank Act 1942.

63. (1) Section 2(2A) of the Central Bank Act 1942 (No.22 of 1942) is amended by inserting “and Commission Delegated Regulation (EU) No. 231/2013 of 19 December 2012, Commission Implementing Regulation (EU) No.

447/2013 of 15 May 2013 and Commission Implementing Regulation (EU) No. 448/2013 of 15 May 2013” after “and (EC) No. 924/2009”.

(2) Part 2 of Schedule 2 to the Central Bank Act 1942 is amended by inserting the following after item 52:

“

53	<u>S.I. No. 257 of 2013</u>	<u>European Union (Alternative Investment Fund Managers) Regulations 2013</u>	The whole instrument
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Amendments of Unit Trusts Act 1990.

64. (1) In this Regulation “Act of 1990” means the Unit Trusts Act 1990 (No. 37 of 1990).

(2) Section 4(1) of the Act of 1990 is amended by substituting the following for paragraphs (a) to (c):

“(a) where the management company under the scheme is not authorised by the Bank under Part 2 of the European Union (Alternative Investment Fund Managers) Regulations 2013 or by the competent authority in its home Member State in accordance with Chapter II of Directive 2011/61/EC of the European Parliament and of the Council of 8 June 2011 or in its Member State of reference in accordance with that Chapter II:

(i) the Bank is satisfied that the competence of the management company in respect of matters of the kind with which it would be concerned in relation to a unit trust scheme and its probity are such as to render it suitable to act as management company under the scheme, and

(ii) the management company under the scheme is a body corporate that is incorporated under the law of the State and has, in the opinion of the Bank, sufficient financial resources at its disposal to enable it to conduct its business effectively and meet its liabilities,

(b) the management company will be in a position to comply with any conditions imposed by the Bank under section 5,

(c) the trustee under the scheme is a depositary as specified in Regulation 22 (3) of the European Union (Alternative Investment Fund Managers) Regulations 2013 and will be in a position to comply with any conditions imposed by the Bank under section 5.”.

(3) Sections 9 and 10 of the Act of 1990 are repealed.

(4) Section 11 of the Act of 1990 is amended by inserting the following after subsection (1):

“(1A) The assets of a unit trust scheme shall be entrusted to a trustee for safe-keeping in accordance with the conditions imposed by the Bank under section 5 and, subject to such transitional arrangements as may be specified by the Bank, in accordance with the provisions of Regulation 22(8) of the European Union (Alternative Investment Fund Managers) Regulations 2013.”.

(5) Section 14(1) of the Act of 1990 is amended by substituting “Where the authorised unit trust scheme does not have an alternative investment fund manager which is authorised in accordance with Chapter II of Directive 2011/61/EC of the European Parliament and of the Council of 8 June 2011 or where its trustee is not otherwise subject to Articles 21(12) to (15) of that Directive, any provision in the trust deed of an authorised unit trust scheme shall be void” for “Any provision in the trust deed of an authorised unit trust scheme shall be void”.

Amendments of Companies Act 1990.

65. (1) Section 252 of the Companies Act 1990 (No. 33 of 1990) is amended by adding the following subsection:

“(3) For the avoidance of doubt, a reference in this Part to a trustee shall be construed as a reference to a depositary for the purposes of the European Union (Alternative Investment Fund Managers) Regulations 2013.”.

(2) Section 256(8) of the Companies Act 1990 is repealed.

Amendments of Investment Funds, Companies and Miscellaneous Provisions Act 2005.

66. (1) In this Regulation “Act of 2005” means the Investment Funds, Companies and Miscellaneous Provisions Act 2005 (No. 12 of 2005).

(2) Section 8(1) of the Act of 2005 is amended by substituting the following for paragraphs (a) to (d):

“(a) either—

- (i) the management company is authorised by the Bank under Part 2 of the European Union (Alternative Investment Fund Managers) Regulations 2013 or by the competent authority in its home Member State in accordance with Chapter II of Directive 2011/61/EC of the European Parliament and of the Council of 8 June 2011 or in its Member State of reference in accordance with that Chapter II, or
 - (ii) the Bank is satisfied that the competence of the management company in respect of matters of the kind with which it would be concerned in relation to a common contractual fund and its probity are such as to render it suitable to act as management company under the common contractual fund,
- (b) save where it is authorised as mentioned in paragraph (a)(i), the management company of the common contractual fund is a body

corporate that has its registered office and head office in the State, and has, in the opinion of the Bank, sufficient financial resources at its disposal to enable it to conduct its business effectively and meet its liabilities,

- (c) the custodian of the common contractual fund is a depository as specified in Regulation 22(3) of the European Union (Alternative Investment Fund Managers) Regulations 2013,
- (d) the Bank is satisfied that the common contractual fund is organised such that the effective control over the affairs of the management company and of the custodian of the common contractual fund will be exercised independently of one another.”

(3) Section 16(1) of the Act of 2005 is amended by inserting the following at the end thereof:

“and, subject to such transitional arrangements as may be specified by the Bank, in accordance with the provisions of Regulation 22(8) of the European Union (Alternative Investment Fund Managers) Regulations 2013”.

(4) Section 17(1) of the Act of 2005 is amended by substituting “Where a common contractual fund does not have an alternative investment fund manager which is authorised in accordance with Chapter II of Directive 2011/61/EC of the European Parliament and of the Council of 8 June 2011 or is not otherwise subject to Articles 21(12) to (15) of that Directive, the custodian shall exercise due care and diligence” for “The custodian shall exercise due care and diligence”.

Amendments of Investment Limited Partnerships Act 1994.

67. (1) In this Regulation “Act of 1994” means the Investment Limited Partnerships Act 1994 (No.24 of 1994).

(2) The definition of “custodian” in section 3 of the Act of 1994 is amended by substituting “eligible to act as custodian in accordance with section 8 of this Act” for “approved by the Bank under section 8 of this Act”.

(3) Paragraph (c) of section 5 of the Act of 1994 is amended—

- (a) by substituting “have appointed a custodian being a person maintaining a place of business in the State, and eligible to act as custodian in accordance with section 8 of this Act” for “have appointed a custodian or custodians being a person or persons maintaining a place of business in the State, and approved by the Bank under section 8 of this Act”; and
- (b) by inserting, at the end of that paragraph, “and in the European Union (Alternative Investment Fund Managers) Regulations 2013 where relevant”.

(4) Section 8 of the Act of 1994 is amended by substituting the following for subsection (1):

“(1) The Bank shall not authorise an investment limited partnership—

(a) unless either—

(i) the proposed general partners or any one of them under the partnership agreement is authorised by the Bank under Part 2 of the European Union (Alternative Investment Fund Managers) Regulations 2013 or by the competent authority in its home Member State in accordance with Chapter II of Directive 2011/61/EC of the European Parliament and of the Council of 8 June 2011 or in its Member State of reference in accordance with that Chapter II; or

(ii) the proposed general partners or any one of them under the partnership agreement satisfies the Bank as to their competence and probity,

(b) save where the proposed general partners or any one of them under the partnership agreement is or are authorised as mentioned in paragraph (a)(i) if, in the opinion of the Bank, they are not of sufficiently good repute or lack the experience required for the performance of their duties; and

(c) unless the proposed custodian is a depositary as specified in Regulation 22(3) of the European Union (Alternative Investment Fund Managers) Regulations 2013.”.

(5) Section 11(3) of the Act of 1994 is amended by deleting “or additional custodians be appointed”.

(6) The following section is substituted for section 24 of the Act of 1994:

“(1) (a) The custodian must enquire into the conduct of the general partners in the management of the investment limited partnership in each annual accounting period and report thereon to the limited partners.

(b) The custodian’s report shall be delivered to the general partner in good time to enable it to include a copy of the report in the Annual Report required under section 16.

(c) The custodian’s report shall state whether in the custodian’s opinion the general partner has managed the investment limited partnership in that period—

(i) in accordance with this Act or regulations made hereunder, directions of the Bank or the partnership agreement the

limitations imposed on the investment and borrowing powers of the general partner and custodian by the partnership agreement or directions of the Bank, and

- (ii) otherwise in accordance with the provisions of the partnership agreement and this Act,

and, if it has not done so, in what respect in which it has not done so and the steps which the custodian has taken in respect thereof.

(2) The custodian must carry out such additional duties as may be specified by the Bank by means of conditions imposed under section 7(2)(b).

(3) Unless the general partners or any one of them under the partnership agreement is authorised by the Bank under Part 2 of the European Union (Alternative Investment Fund Managers) Regulations 2013 or by the competent authority in its home Member State in accordance with Chapter II of Directive 2011/61/EC of the European Parliament and of the Council of 8 June 2011 or in its Member State of reference in accordance with that Chapter II, the custodian must—

- (a) carry out the instructions of the general partner unless they conflict with this Act or regulations made hereunder, directions of the Bank or the partnership agreement;
- (b) ensure that in transactions involving investment limited partnership's assets any consideration is remitted to it within the usual time limits;
- (c) ensure that an investment limited partnership's income is applied in accordance with this Act or regulations made hereunder, directions of the Bank or the partnership agreement;
- (d) ensure that the value of the interests of the partners in the investment limited partnership is calculated in accordance with this Act and the partnership agreement;
- (e) ensure that contributions and withdrawals of contributions of partners' capital are effected in accordance with the partnership agreement and the Act.

(4) Save where any of the general partners or any one of them is or are authorised as mentioned in subsection (3), any provision whether contained in the partnership agreement or in any contract with an investment limited partnership for exempting a custodian, general partner or auditor of an investment limited partnership from, or indemnifying him against any liability which would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to an investment limited partnership shall be void, so, however, that an investment limited partnership may indemnify any such custodian, general partner or auditor against any liability incurred by him in defending proceedings in which judgement is given in his favour or in which he is acquitted.

(5) A custodian who fails to comply with subsection (1) or (2) or any of paragraphs (a) to (e) of subsection (3) shall be guilty of an offence and shall indemnify any person who thereby suffers loss.”.

SCHEDULE 1

1. Investment management functions which an AIFM shall at least perform when managing an AIF:

- (a) portfolio management;
- (b) risk management.

2. Other functions that an AIFM may additionally perform in the course of the collective management of an AIF:

(a) Administration:

- (i) legal and fund management accounting services;
- (ii) customer inquiries;
- (iii) valuation and pricing, including tax returns;
- (iv) regulatory compliance monitoring;
- (v) maintenance of unit-/shareholder register;
- (vi) distribution of income;
- (vii) unit/shares issues and redemptions;
- (viii) contract settlements, including certificate dispatch;
- (ix) record keeping;

(b) Marketing;

(c) Activities related to the assets of alternative investment funds, namely services necessary to meet the fiduciary duties of the AIFM, facilities management, real estate administration activities, advice to undertakings on capital structure, industrial strategy and related matters, advice and services relating to mergers and the purchase of undertakings and other services connected to the management of the AIF and the companies and other assets in which it has invested.

SCHEDULE 2

REMUNERATION POLICY

1. When establishing and applying the total remuneration policies, inclusive of salaries and discretionary pension benefits, for those categories of staff, including senior management, risk takers, control functions and any employee receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers, whose professional activities have a material impact on the risk profiles of the AIFM or of alternative investment funds it manages, an AIFM shall comply with the following principles in a way and to the extent that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities:

- (a) the remuneration policy is consistent with and promotes sound and effective risk management and does not encourage risk-taking which is inconsistent with the risk profiles, rules or instruments of incorporation of the alternative investment funds it manages;
- (b) the remuneration policy is in line with the business strategy, objectives, values and interests of the AIFM and the alternative investment funds it manages or the investors of such funds, and includes measures to avoid conflicts of interest;
- (c) the management body of the AIFM, in its supervisory function, adopts and periodically reviews the general principles of the remuneration policy and is responsible for its implementation;
- (d) the implementation of the remuneration policy is, at least annually, subject to central and independent internal review for compliance with policies and procedures for remuneration adopted by the management body in its supervisory function;
- (e) staff engaged in control functions are compensated in accordance with the achievement of the objectives linked to their functions, independent of the performance of the business areas they control;
- (f) the remuneration of the senior officers in the risk management and compliance functions is directly overseen by the remuneration committee;
- (g) where remuneration is performance related, the total amount of remuneration is based on a combination of the assessment of the performance of the individual and of the business unit or AIF concerned and of the overall results of the AIFM, and when assessing individual performance, financial as well as non-financial criteria are taken into account;
- (h) the assessment of performance is set in a multi-year framework appropriate to the life-cycle of the alternative investment funds managed by the AIFM in order to ensure that the assessment process

is based on longer term performance and that the actual payment of performance-based components of remuneration is spread over a period which takes account of the redemption policy of the alternative investment funds it manages and their investment risks;

- (i) guaranteed variable remuneration is exceptional, occurs only in the context of hiring new staff and is limited to the first year;
- (j) fixed and variable components of total remuneration are appropriately balanced and the fixed component represents a sufficiently high proportion of the total remuneration to allow the operation of a fully flexible policy, on variable remuneration components, including the possibility to pay no variable remuneration component;
- (k) payments related to the early termination of a contract reflect performance achieved over time and are designed in a way that does not reward failure;
- (l) the measurement of performance used to calculate variable remuneration components or pools of variable remuneration components includes a comprehensive adjustment mechanism to integrate all relevant types of current and future risks;
- (m) subject to the legal structure of the AIF and its rules or instruments of incorporation, a substantial portion, and in any event at least 50 per cent of any variable remuneration consists of units or shares of the AIF concerned, or equivalent ownership interests, or share-linked instruments or equivalent non-cash instruments, unless the management of alternative investment fund accounts for less than per cent of the total portfolio managed by the AIFM, in which case the minimum of 50 per cent does not apply.

The instruments referred to in this subparagraph shall be subject to an appropriate retention policy designed to align incentives with the interests of the AIFM and the alternative investment funds it manages and the investors of such funds. The Bank may place restrictions on the types and designs of those instruments or prohibit certain instruments as appropriate. This subparagraph shall be applied to both the portion of the variable remuneration component deferred in line with subparagraph (n) and the portion of the variable remuneration component not deferred;

- (n) at least 40 per cent, of the variable remuneration component is deferred over a period which is appropriate in view of the life cycle and redemption policy of the AIF concerned and is correctly aligned with the nature of the risks of the AIF in question.

The period referred to in this subparagraph shall be at least 3 to 5 years unless the life cycle of the AIF concerned is shorter; remuneration payable under deferral arrangements vests no faster than on a pro-rata basis; in the case of a variable remuneration

component of a particularly high amount, at least 60 per cent of the amount is deferred;

- (o) the variable remuneration, including the deferred portion, is paid or vests only if it is sustainable according to the financial situation of the AIFM as a whole, and justified according to the performance of the business unit, the AIF and the individual concerned.

The total variable remuneration shall generally be considerably contracted where subdued or negative financial performance of the AIFM or of the AIF concerned occurs, taking into account both current compensation and reductions in payouts of amounts previously earned, including through malus or clawback arrangements;

- (p) the pension policy is in line with the business strategy, objectives, values and long-term interests of the AIFM and the alternative investment funds it manages.

If the employee leaves the AIFM before retirement, discretionary pension benefits shall be held by the AIFM for a period of 5 years in the form of instruments defined in point (m). In the case of an employee reaching retirement, discretionary pension benefits shall be paid to the employee in the form of instruments defined in point (m), subject to a 5 year retention period;

- (q) staff are required to undertake not to use personal hedging strategies or remuneration- and liability-related insurance to undermine the risk alignment effects embedded in their remuneration arrangements;
- (r) variable remuneration is not paid through vehicles or methods that facilitate the avoidance of the requirements of these Regulations.

2. The principles set out in paragraph 1 shall apply to remuneration of any type paid by the AIFM, to any amount paid directly by the AIF itself, including carried interest, and to any transfer of units or shares of the AIF, made to the benefits of those categories of staff, including senior management, risk takers, control functions and any employee receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers, whose professional activities have a material impact on their risk profile or the risk profiles of the AIF that it manages.

3. An AIFM that is significant in terms of its size or the size of the alternative investment funds it manages, its internal organisation and the nature, the scope and the complexity of its activities shall establish a remuneration committee. The remuneration committee shall be constituted in a way that enables it to exercise competent and independent judgment on remuneration policies and practices and the incentives created for managing risk.

The remuneration committee shall be responsible for the preparation of decisions regarding remuneration, including those which have implications for

the risk and risk management of the AIFM or the AIF concerned and which are to be taken by the management body in its supervisory function. The remuneration committee shall be chaired by a member of the management body who does not perform any executive functions in the AIFM concerned. The members of the remuneration committee shall be members of the management body who do not perform any executive functions in the AIFM concerned.

SCHEDULE 3

DOCUMENTATION AND INFORMATION TO BE PROVIDED IN
CASE OF INTENDED MARKETING IN THE STATE BY IRISH AIFMS
OR BY AIFMS WHOSE MEMBER STATE OF REFERENCE IS THE
STATE

- (a) a notification letter, including a programme of operations identifying the alternative investment funds the AIFM intends to market and information on where those funds are established;
- (b) the AIF rules or instruments of incorporation;
- (c) identification of the depositary of the AIF;
- (d) a description of, or any information on, the AIF available to investors;
- (e) information on where the master AIF is established if the AIF is a feeder AIF;
- (f) any additional information referred to in Regulation 24(1) for each AIF the AIFM intends to market;
- (g) where relevant, information on the arrangements established to prevent units or shares of the AIF from being marketed to retail investors, including in the case where the AIFM relies on activities of independent entities to provide investment services in respect of the AIF.

SCHEDULE 4

DOCUMENTATION AND INFORMATION TO BE PROVIDED IN
THE CASE OF INTENDED MARKETING IN OTHER MEMBER
STATES BY IRISH AIFMS OR BY AIFMS WHOSE MEMBER STATE
OF REFERENCE IS THE STATE

- (a) a notification letter, including a programme of operations identifying the alternative investment funds the AIFM intends to market and information on where those funds are established;
- (b) the AIF rules or instruments of incorporation;
- (c) identification of the depositary of the AIF;
- (d) a description of, or any information on, the AIF available to investors;
- (e) information on where the master AIF is established if the AIF is a feeder AIF;
- (f) any additional information referred to in Article 23(1) for each AIF the AIFM intends to market;
- (g) the indication of the Member State in which it intends to market the units or shares of the AIF to professional investors;
- (h) information about arrangements made for the marketing of alternative investment funds and, where relevant, information on the arrangements established to prevent units or shares of the AIF from being marketed to retail investors, including in the case where the AIFM relies on activities of independent entities to provide investment services in respect of the AIF.



GIVEN under my Official Seal,
16 July 2013.

MICHAEL NOONAN,
Minister for Finance.

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nó trí aon díoltóir leabhar.

DUBLIN
PUBLISHED BY THE STATIONERY OFFICE
To be purchased from
GOVERNMENT PUBLICATIONS,
52 ST. STEPHEN'S GREEN, DUBLIN 2.
(Tel: 01 - 6476834 or 1890 213434; Fax: 01 - 6476843)
or through any bookseller.

€20.32



Wt. (B30004). 285. 7/13. Clondalkin. Gr 30-15.