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Industry Information

## CP 132 – Share class feature proposals for closed-ended funds

December 2020

On 23 November 2020, in a welcome development for those considering establishing private equity funds in Ireland, the Central Bank of Ireland (the “Central Bank”) published a [consultation paper](#) entitled “Guidance on share class features of closed-ended QIAIFs” (“CP132”). The proposed guidance set out in CP132 seeks to address operational matters for closed-ended qualifying investor alternative investment funds, defined within CP132 as “CE QIAIFs”, such as:

- a. the issue of shares at a price other than net asset value (“NAV”);
- b. excuse and exclude provisions;
- c. stage investing; and
- d. management participation.

### Proposals

The proposed guidance states that it will apply to CE QIAIFs “which generally use private equity type strategies or invest in illiquid assets.”

The Central Bank proposals contemplate the establishment of differentiated share classes in a CE QIAIF (“Differentiated Share Classes”) which will allow a CE QIAIF to issue share classes which permit:

- i. the profit, loss and capital of certain assets to be allocated to certain share classes;
- ii. subject to certain conditions, investors to participate in some, but not all, of the assets of the CE QIAIF; and
- iii. management share classes to participate in the CE QIAIF and receive returns which are greater than, but subordinate to, the returns to which other share classes are entitled.

The conditions imposed by the Central Bank on, amongst others, authorised alternative investment funds including CE QIAIFs are set out in the Central Bank’s AIF rulebook (the “AIF Rulebook”) with the provisions of the AIF Rulebook being supplemented by guidance issued by the Central Bank as necessary. It is contemplated that the proposed guidance contained within CP132 will form part of this supplementary guidance.

The AIF Rulebook generally requires the capital gains/losses and income arising from the assets of a QIAIF to be distributed and/or accrue equally to each shareholder, relative to their participation in that QIAIF. Certain exceptions arise in the case of share classes, which may be differentiated by, amongst others, the basis of subscription/redemption procedures or other criteria as disclosed in the fund’s prospectus and permitted by its constitutional document.

Differentiated Share Classes may, subject to further requirements detailed in CP132, provide for the (i) allocation of the returns of specific assets to a share class; and/or (ii) participation by a share class in the CE QIAIF other than on a pro rata basis.



## Establishment of Differentiated Share Classes

In order for CE QIAIFs to provide for Differentiated Share Classes to reflect (a)-(d) in the first paragraph above and to allocate the returns of a specific asset to such a share class, the proposed guidance states that the following general conditions apply:

- a. the ability to establish Differentiated Share Classes must be provided for in the CE QIAIF's constitutional document and this must be disclosed to investors in advance;
- b. the CE QIAIF's prospectus must permit the establishment of share classes that provide for different levels of participation;
- c. the shareholder's interest in the CE QIAIF must be proportionate to:
  - the capital that shareholder has paid at a particular point in time; and/or;
  - the pre-determined flow of capital returns to the share class; and/or
  - the extent to which the share class held by the shareholder participates in the assets of the CE QIAIF;
- d. where an investor has subscribed on the basis of a capital commitment and periodic drawdowns, the CE QIAIF must maintain records on a per investor basis to enable it to clearly identify the (i) commitments paid; and (ii) commitments that are outstanding for each investor ("capital accounting"), and
- e. the capital accounting is consistent with the requirements of Commission Delegated Regulation (EU) 231/2013, that the alternative investment fund manager ("AIFM") establishes, implements and maintains accounting policies and procedures to ensure the calculation of the NAV is carried out as required by the European Union (Alternative Investment Fund Managers) Regulations 2013, as amended, and that delegated regulation.

Proposed additional conditions for: (i) shares issued at prices other than NAV; (ii) share classes enabling the exercise of excuse or exclude provisions; (iii) stage investing; and (iv) share classes providing for management participation are also detailed in CP132.

## Feedback sought

The Central Bank is seeking feedback from stakeholders on the matters proposed in CP132 with responses due by 22 December 2020. While three specific questions have been raised by the Central Bank which relate to: (i) limiting the availability of these features to certain types of CE QIAIFs; (ii) any other aspects of the AIF Rulebook to consider in terms of the operation of the proposed arrangements; and (iii) any other features that may be beneficial from an investor protection perspective, the Central Bank also invites any general observations on the matters detailed in CP132.

The finalisation of this guidance next year together with: (i) the proposed amendments to the investment limited partnership legislation currently working its way through the legislative process; and (ii) the recent amendments to the Central Bank's guidance on the regulatory status of general partners of investment limited partnerships will be of particular interest to those considering using Irish structures for private equity type strategies or to invest in illiquid assets in the future.



## Key Contacts

If you have any questions on any of the information set out in this update, please speak to your usual contact in Walkers or connect with:



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