



# Central Bank of Ireland takes enforcement action against an Irish AIFM

Insights - 14/11/2024

On 6 November 2024 the Central Bank of Ireland (CBI) released a Settlement Notice issued in accordance with its Administrative Sanctions Procedure, where it had issued a reprimand and a fine to an Irish Alternative Investment Fund Manager (AIFM) for breaches of the AIFM Regulations.

The breaches concerned deficiencies on the part of the AIFM around its delegate investment manager appointed to an Irish Alternative Investment Fund (AIF) and the level of due diligence and supervision applied to the delegate. No individuals have been fined.

Fund management companies have a legally defined responsibility for their delegates to ensure a transparent and fair investment environment. The Central Bank of Ireland's focus on delegate oversight underscores the importance of continuous improvement and rigorous adherence to policies for investor protection.

## Facts in summary

The AIFM was appointed to an Irish Collective Asset-management Vehicle (ICAV) which launched in October 2018 (**the Fund**). The AIFM appointed an investment manager and delegated the investment management of the Fund to the investment manager. Between October 2018 and February 2019, the investment manager invested €17.7 million on behalf of the Fund in illiquid, hard to value private assets (**the Loan Notes**).

In November 2019, during the annual audit of the Fund, serious concerns were identified by the auditor in relation to the investment in the Loan Notes and the reliability of the valuation of the Loan Notes. In particular, the issuer of the Loan Notes was the sole source of valuations for the Loan Notes, which was a conflict of interest. In addition, there was an undisclosed relationship between the investment manager and the issuer in that the investment manager also acted as the

issuer’s investment advisor. Further, there was an individual who held the role of principal and chair of the investment manager entity at the same time as being the owner and a director of the issuer.

In order to address these concerns, the AIFM took steps to seek the return of the funds invested in the Loan Notes by the Investment Manager. Despite numerous attempts between December 2019 and July 2020 to recover the funds, the Fund was suspended in August 2020 with €10.2 million of the Fund’s assets still outstanding, resulting in a loss to the investors. The AIFM was later party to a settlement reached with the Fund’s investors relating to the loss of their investment. Pursuant to the settlement reached, investors recovered their initial investment in the Loan Notes.

## Prescribed contraventions

The CBI listed eight prescribed contraventions of the AIFM Regulations, which are set out in the table below.

Legislative reference - AIFM Regulations	Exact legislative reference	Prescribed contraventions
Regulation 21(1)(f)	<p>“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.</p> <p>“The following conditions shall be met in relation to such delegation:</p> <p>“(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.”</p>	<p>Failed to exercise due care in selecting the Investment Manager.</p> <p>Failed to demonstrate the Investment Manager’s qualifications and capabilities.</p> <p>Failed to conduct effective ongoing monitoring of the delegated activity.</p>

<p>Regulation 13(1)(d)</p>	<p>“An AIFM shall at all times...take all reasonable steps to avoid conflicts of interest and, when they cannot be avoided, to identify, manage, monitor and, where applicable, disclose those conflicts 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.”</p>	<p>Failed to identify, manage and monitor conflicts of interest.</p> <p>Failed to disclose identified conflicts of interest to investors.</p>
<p>Regulation 16(4) &amp; 16(6)</p>	<p>“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.”</p> <p>and</p> <p>“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.”</p>	<p>Failed to implement adequate risk-management systems.</p> <p>Failed to ensure the risk profile of the Fund matched its size, portfolio structure, and investment strategies.</p>

<p>Regulation 20(1) &amp; 20(15)</p>	<p>“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.”</p> <p>and</p> <p>“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.”</p>	<p>Failed to establish proper and independent valuation procedures for the Fund's assets.</p> <p>Failed to follow its own review process for asset valuation and notify the Administrator of the valuation methodology.</p>
<p>Regulation 24(1)(g)</p>	<p>"That 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...(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."</p>	<p>Failed to have in place a procedure for proper and independent valuation of the Fund's assets.</p> <p>Failed to make available a description of the Fund's valuation procedure and pricing methodology.</p>
<p>Regulation 13(1)(f)</p>	<p>“An AIFM shall at all times... (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.”</p>	<p>Failed to treat all investors in the Fund fairly during redemptions, resulting in preferential treatment of redeeming investors.</p>

<p>Regulation 6(3)</p>	<p>"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 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."</p>	<p>Failed to notify the Central Bank of potential breaches of the AIFM Regulations.</p>
<p>Regulation 13(1)(b)</p>	<p>"An AIFM shall at all times... (b) act in the best interests of each AIF or the investors of each AIF it manages and the integrity of the market."</p>	<p>Failed to act in the best interests of the Fund and its investors by:</p> <ul style="list-style-type: none"> <li>• not carrying out adequate due diligence and exercising due care in appointing the Investment Manager</li> <li>• not effectively monitoring the delegated activities</li> <li>• not withdrawing delegation despite breaches</li> <li>• not managing conflicts of interest properly</li> <li>• not implementing adequate risk management and valuation policies</li> <li>• not stopping redemptions amidst valuation concerns</li> <li>• not notifying the Central Bank of potential breaches</li> </ul>

## Key takeaways

This Settlement Notice serves as a reminder that fund management companies have legally defined responsibility for their delegates. Such responsibilities help to ensure a transparent and fair investment environment.

Failing to ensure appropriate initial and ongoing supervision of delegates can result in avoidable losses to investors. Notably, responsibility does not end with simply disclosing to investors that they are gaining exposure to a risky investment or an investment that ends up under-performing. This does not absolve service providers from their legal and contractual obligations to a fund and its investors.

Delegate oversight has been a key focus of the Central Bank of Ireland, as reflected in the extensive work involved in its Fund Management Companies Guidance. Continuous improvement and rigorous adherence to policies and processes are vital components of ensuring investor protection.

The full settlement note is available here: [Public Statement relating to Enforcement Action between the Central Bank of Ireland and Waystone Fund Management \(IE\) Limited \(WFM\)](#).

## How Ogier can help

Ogier's Funds team can provide expert guidance and support in ensuring compliance with delegate oversight responsibilities, helping to protect investor interests and adhere to regulatory requirements. Contact our team via their contact details provided below.

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Regulatory information can be found under [Legal Notice](#)

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