CONSULTATION PAPER NO.115

ENHANCING OUR FUNDS REGIME

31 OCTOBER 2017

PREFACE

Why are we issuing this paper?

The Dubai Financial Services Authority (the DFSA) proposes changes to the current regime for regulating Collective Investment Funds ("Funds regime"). The Funds regime is mainly contained in the Collective Investment Law ("CI Law") and the Collective Investment Rules (CIR) module of the DFSA Rulebook. That regime provides for the regulation of:

a) arrangements that constitute Collective Investment Funds ("Funds");

b) persons legally accountable to investors for the management of Funds, i.e. the Fund Managers;

c) fundraising activities involving investments in Funds; and

d) activities related to the management and operation of Funds, such as those of custodians and fund administrators.

If a Fund is to be listed and traded on an Exchange, additional requirements (in the Markets Law and the Markets (MKT) module of the Rulebook apply to such Funds, including market disclosure.

The paper proposes a wide range of changes, including to:

a) remove the number-based criterion to differentiate Public Funds, Exempt Funds and Qualified Investor Funds;

b) create a regime for Exchange Traded Funds (ETFs);

c) introduce liquidity risk management controls in open-ended Funds – particularly in Public Funds;

d) address a number of discrete issues relating to Property Funds, including whether we should continue to prohibit Public Property Funds from being open-ended, and the use of the term REITs;

e) create an internal Fund Manager model; and

f) remove some anomalies and unintended consequences.

Who should read this paper?

The proposals in this paper will be of interest to:

a) Fund Managers and those applying to be Fund Managers;

b) Persons investing, or wishing to invest, in Funds;

c) Fund Administrators and other service providers to Funds;

d) those marketing or proposing to market Domestic Funds and Foreign Funds;

e) exchanges, and participants on exchanges;

f) Price Information Providers; and

g) other industry participants.

Terminology

Defined terms are identified by the capitalisation of the initial letter of a word or of each word in a phrase and are defined in the Glossary Module (GLO). Unless the context otherwise requires, where capitalisation of the initial letter is not used, the expression has its natural meaning.

What are the next steps?

All comments should be emailed to **consultation@dfsa.ae** using the table provided in Appendix A. Please refer to the CP number in the subject line. You may identify the organisation you represent when providing your comments. The DFSA reserves the right to publish, including on its website, any comments you provide. However, if you wish your comments to be kept confidential, you must expressly request at the time of making comments that this should be the case and your reasons for requesting so.

The deadline for providing comments on this consultation is **20 December 2017**.

Following public consultation, we will proceed to recommend the proposed changes to the CI Law to the President for enactment by the Ruler. If those proposed changes to the CI Law are enacted, we shall then proceed to make the relevant changes to the DFSA's Rulebook. You should not act on the proposals until the relevant changes to the laws and DFSA Rulebook are made. We shall issue a notice on our website telling you when this happens.

Structure of this CP

Preface

Introduction

i Removal of the number-based limit on investors in Funds – see paragraphs 7 – 21;

ii Liquidity risk management in open-ended Funds – see paragraphs 22 – 43;

iii Introduction of Exchange Traded Funds – see paragraphs 44 – 78;

iv Property Fund related enhancements – see paragraphs 79 – 117;

v Fund Manager related enhancements – see paragraphs 118 – 139;

vi Enhancements relating to Public Fund disclosure – see paragraphs 140 – 157;

vii Removing unintended effects and anomalies – see paragraphs 158 – 172;

viii Transitional arrangements – see paragraph 173;

xiv Annex A – Gap analysis of liquidity risk management controls;

x Appendix A – Table for providing comments;

xi Appendix 1 – Draft amendments to the Collective Investment Law 2006 (CIL);

xii Appendix 2 – Draft amendments to CIR;

xiii Appendix 3 – Draft amendments to MKT;

xiv Appendix 4 – Draft Amendments to IFR;

xv Appendix 5 – Draft amendments to GLO; and

xvi Appendix 6 – Draft amendments to FER.

INTRODUCTION

1. As the Centre's Funds sector has begun to grow steadily, particularly in the last two years, we have undertaken a review to assess whether there are areas which need further flexibility, clarity or enhancements to support continuing growth in that sector. The proposals in the paper aim to provide such support.

2. When we initially created our Funds regime in 2006, we borrowed heavily from the UK regime (as a proxy for the EU regime). We did not fully replicate the UK/EU regimes, but instead we tailored those requirements to suit the environment in the Dubai International Financial Centre (the Centre).[1]

3. Since that time, more changes have taken place in the EU/UK front. These include changes resulting from the introduction of the Alternative Investment Fund Managers Directive (AIFMD), the introduction of the point of sale key investor information disclosure document (KIID) under the Undertakings for Collective Investment in Transferable Securities (UCITS) Directive, and the increased responsibility on the depository of fund assets and enhanced remuneration-related controls for fund managers (under both UCITS and AIFMD).

4. We considered whether, and to what extent, these developments should be reflected in our regime and decided that some features can be beneficial, provided they are tailored to suit the Centre's needs. These include the proposal to introduce an 'internal' model of fund management (influenced by AIFMD), the proposal to introduce KIID-like information as part of the Prospectus of Public Funds (influenced by UCITS and the UK retail fund disclosure) and an enhancement relating to fund manager remuneration.

5. The other more significant proposals in the paper stem from our desire to keep the Funds regime up to date. For example:

   (a) our proposals to introduce an Exchange Traded Funds (ETFs) regime and adequate controls to ensure proper liquidity risk management in open-ended Funds are designed to address industry developments in line with international standard setters' requirements and expectations; and

   (b) our proposals relating to Property Funds, the proposal to remove the number-based criterion in the Fund definitions, and the clarification proposed to remove ambiguities relating to the types of Fund vehicles and their use are designed to address Centre-specific needs to provide greater flexibility and certainty to industry participants.

6. We have also identified some unintended consequences and anomalies in the current Funds regime, which we propose to remove.

[1] For example, although the UK Funds regime then accommodated three types of collective investment schemes, UCITS and non UCITS retail schemes (offered to the public) and qualified investor schemes (QIS), our initial Funds regime contained two types of Funds, Public Funds and Private Funds, both of which were open to only qualified investors, to reflect the wholesale-only nature of the Centre at that time.

I REMOVAL OF THE NUMBER-BASED LIMIT OF INVESTORS IN FUNDS

Analysis

7. Each of the current definitions of a Public Fund, Exempt Fund and Qualified Investor Fund (QIF), contains a number-based criterion.

8. A Public Fund is defined as a Fund which meets one of three criteria:

   (a) it has, or intends to have, more than 100 investors;

   (b) it offers at least some of its Units to investors by way of a public offer; or

   (c) its Unitholders include retail investors.

9. An Exempt Fund is defined as a Fund that has 100 or fewer investors each of whom meets the Professional Client criteria and who makes a minimum initial subscription of at least US$ 50,000 by way of private placement.

10. A QIF is defined as a Fund which has 50 or fewer investors each of whom meets the Professional Client criteria and who makes a minimum initial subscription of at least US$ 500,000 by way of private placement.

11. The rationale for having a number-based element to distinguish Public Funds from Exempt Funds and from QIFs (along with other elements) was that, with a smaller number of investors in a Fund, it is possible for such investors to interact with each other to ensure that the Fund Manager acts in their best interest and any corporate actions can be taken when not.

12. The wider the investor base, arguably, the more difficult it is to make collective decisions. The number of investors is used, at least in some jurisdictions, as a proxy for determining the level of regulation, but mainly in the context of demarcating regulation between public and private companies.

13. There are considerations that favour the removal of the number-based criterion to differentiate Public Funds, Exempt Funds and QIFs.

14. The key feature of a Public Fund (also a Public Company), in many jurisdictions, is the ability to offer its securities to the public (and also to list and trade). The securities are then potentially accessible to retail investors, warranting a higher level of regulation of such entities as opposed to entities that do not offer their securities to the public. We already have the elements of 'public offer' and 'retail access' to determine the public nature of a Fund. The requirement that a Fund with more than 100 investors must necessarily be public, even though it does not allow retail access, does not offer any overt retail protection.[2]

15. Further, we note that the number-based criterion could also force a Fund Manager to create an additional Fund with the same investment and investor profile when faced with

[2] Both Exempt Funds and QIFs are non-retail Funds. Minimum subscription thresholds act as proxies for the comparative strength and resources available to professional investors in such Funds to negotiate, with the Fund Manager, matters such as more information relating to the offer and more frequent performance reporting to suit their needs. They are also considered to have better capacity than retail investors to take action against the Fund Manager, if needed, and to absorb possible losses resulting from their investments. These considerations underpin the lower level of regulation applied to Exempt Funds and QIFs, compared to Public Funds.

a number of investors larger than 50 (for a QIF) or 100 (for an Exempt Fund). This would be an additional administrative burden to them, which could be avoided by removing the number-based criterion.

16. Another concern arises due to the number-based criterion being embedded in the way in which a Public Company is distinguished from a Private Company under the proposed DIFC Companies Law 2017 ("Companies Law", expected to be enacted in Q4 of 2017). A Public Company is defined as a company which:

(a) can have any number of shareholders;

(b) has a minimum share capital of at least US$100,000 at any time; and

(c) is not prohibited from making a public offer.

A Private Company is prohibited from making a public offer of its shares to the public, and can have only 50 or fewer shareholders. Public Companies face higher regulation[3] than Private Companies, as only a Public Company can make a public offer. While this distinction is appropriate for the companies regime, it is not necessarily so for Funds using the Investment Company structure.

17. Unless the number-based criterion in the DFSA regime is removed, an Exempt Fund or QIF using the Investment Company structure would need to be registered as a Public Company if it had 51 or more investors and, as a result, would face the more onerous requirements that apply to a Public Company. This is inconsistent with the lower and more flexible regulation designed for Exempt Funds and QIFs under the Funds regime. This unintended effect warrants removing.

Proposal 1

See the proposed amendments to Articles 16(1), (4), (5) and 54(1)(c) and the new draft Article 26(5) of the CI Law, in Appendix 1.

18. We propose to remove the number-based criterion in the Fund definitions, as we believe that the demarcation based on 'public offer' for Public Funds, and 'private placement' with Professional Clients, with the size of minimum subscription differentiating whether a Fund is an Exempt Fund or QIF, should suffice.

19. With the proposed removal of the number-based criterion:

(a) a Public Fund could have any number of investors, including retail investors, as it can offer its Units to the public, and can also be listed and traded;

(b) an Exempt Fund would be a Fund which is prohibited from making a public offer of its Units, and has only such investors who meet the Professional Client criteria and make a minimum initial subscription of at least US$ 50,000 by way of private placement; and

(c) a QIF would be much the same as an Exempt Fund, except that its investors, in addition to meeting the Professional Client criteria, make a minimum initial

[3] Some of the more onerous requirements that apply to Public Companies include: the requirement to have an annual general meeting to table its audited annual report; to have a directors' report lodged with the Registrar of Companies along with its annual returns; to appoint a company secretary; to have an obligation to offer pre-emption rights; and to be subject to some restrictions against distributions.

subscription of at least US$ 500,000 by way of private placement.

20. We also propose to remove (with the collaboration of the Dubai International Financial Centre Authority (DIFCA)) the unintended outcome of an Exempt Fund or QIF, using the Investment Company structure, having to be registered and regulated as a Public Company merely because it has 51 or more investors.

21. We also propose to provide flexibility for an Exempt Fund or QIF, if it so wishes, to be registered as a Public Company (for example, if it intends to become a Public Fund later).

Questions

1. Do you have any concerns relating to our proposals to remove the number-based criterion from the current definitions of Funds? If so, what are they, and how should they be addressed?

2. Do you have any concerns about the way in which we propose to apply the Public Company and Private Company distinction in the proposed Companies Law to Funds? If so, what are they, and how should they be addressed?

II. LIQUIDITY RISK MANAGEMENT IN OPEN-ENDED FUNDS

Background

22. Liquidity risk management is critical in open-ended Funds as they offer their investors a right to have investments redeemed at the Net Asset Value (NAV) of the Fund Property. Under the current Funds regime, redemption rights of investors in open-ended Funds are an obligation of the Fund Manager. CIR 8.6.1(2) provides that the Fund Manager must:

'*within any conditions in its Constitution and Prospectus:*

(a) *at all times during the dealing day, be willing to effect a redemption of the Units on the request of any Unitholder; and*

(b) *do so in a manner fair and reasonable as between redeeming Unitholders and continuing Unitholders*.'

23. Based on the above, an open-ended Fund under our regime is generally one where its investors would have:

(a) a reasonable expectation (or a right) to have their units redeemed or repurchased, upon request or at a specified frequency, by or on behalf the Fund Manager; and

(b) at a value based on the net asset value ("NAV") of the Fund Property.

24. In contrast to open-ended Funds, a closed-ended Fund is a Fund that does not offer its investors a right to have their investment realised at a price based on the NAV of the Fund Property. The exit method available to investors in a closed-ended Fund is through a secondary sale of the Units to a willing buyer, at a negotiated price, or, if the Fund is listed and traded on an exchange, based on the market value of the Unit. In each case,

the sale price may not necessarily be at the NAV of the Unit, but could be at a premium or discount to the NAV of the Unit.

25. The key advantage for an open-ended Investment Company that wishes to list and trade is being able to do so without altering its open-ended structure. This enables such a company to issue, resell or redeem its units/shares, without having to follow the more rigorous procedures that would normally apply to a closed-ended investment company (under the Companies Law).[4]

26. Although not expressly stated, the current DFSA regime does not contemplate the listing of open-ended Domestic Funds.[5] This approach is mainly due to concerns that the listing of open-ended Funds could give rise to heightened market integrity and reputational risks to the DIFC, particularly if there is a run on an open-ended listed Fund.

27. The above conservatism is reflected in our current approach to Property Funds. We require a Public Property Fund to be a closed-ended Investment Company or Investment Trust, and be listed and traded within six months of its establishment. This is to provide its investors an exit route to have their investment realised – through secondary sales on-market – which would not necessarily be at a NAV-based price.

28. We note that other regimes, such as in the UK/EU, Hong Kong and Singapore, permit an open-ended Fund to be listed and traded on an exchange.[6]

29. We have received requests for open-ended Funds to be listed and traded, so considered this issue along with the type of controls that would be needed to address risks associated with the open-ended nature of the Fund.

Benchmarking

30. To address liquidity risks arising in the open-ended structure of a Fund, we first:

    (a) identified risks to investors and markets, that could emanate from an open-ended Fund generally – based on the recent Financial Stability Board ("FSB") and International Organisation of Securities Commissions ("IOSCO") work in this area;

    (b) assessed what regulatory tools/measures are considered effective in addressing those risks – again, based on the FSB and IOSCO work; and

    (c) identified what requirements the current DFSA regime contains to address those risks.

31. The Table at Annex A sets out the results of that gap analysis. There are four types of somewhat inter-related risks identified under the FSB/IOSCO work relating to open-ended Funds. These are:

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4 Such restrictions include controls relating to the issue of new capital, pre-emption rights as an anti-dilution measure, and share buy-back controls. As such, although an open-ended Fund may choose not to continuously issue and redeem once it is listed and traded, it still has the flexibility to do so, if it so chooses, at specified intervals, subject to the procedures of the relevant exchange.

5 This inference is evident from Guidance in CIR 13.4.1.

6 For example, the UCITS Directive expressly recognises that open-ended funds can be listed and traded, by providing that 'action taken by a UCITS to ensure that the stock exchange value of the units (of an open-ended fund) does not significantly vary from their net asset value is regarded as equivalent to the repurchase or redemption of units'.

(a) liquidity risk – which is the main risk;

(b) risk of not treating all investors fairly (also known as the 'first mover' advantage related risk), which gives rise to the issue of how to treat investors in a Fund fairly and equally, when some seek redemptions ahead of others;

(c) spill-over risk – which refers to systemic concerns if counterparties are adversely affected due to illiquidity in open-ended Funds; and

(d) information asymmetry risk – due to which there could be an investor expectation gap.

32. As the gap analysis at Annex A shows, the current DFSA regime contains some measures to address risks associated with structural vulnerabilities inherent in open-ended Funds, particularly those arising from a mismatch between redemption requests and the underlying liquidity of the assets in the Fund's investment portfolio (i.e. the liquidity mismatch risk). For instance, some of the existing Fund Manager obligations could be regarded as requiring a Fund Manager of an open-ended Fund to use appropriate liquidity management tools to address liquidity risks in the Fund, but the main existing obligation is very general.[7] As a result, how that obligation, and the other fiduciary obligations of a Fund Manager, translate into specific obligations relevant to liquidity risk management in open-ended Funds may not necessarily be very clear and comprehensive.

33. We propose to enhance our regime for open-ended Funds as set out below, in line with IOSCO Principles for liquidity risk management. We believe that our regime would benefit from having more explicit measures to address risks stemming from the open-ended nature of Funds, as there is interest in open-ended funds being established in the Centre.

Analysis

Liquidity Risk[8]

34. As noted in column 2 of the Table at Annex A, there are a number of measures identified by FSB/IOSCO to address liquidity risks:

(a) prohibitions against being open-ended, based upon the lack of liquidity in underlying assets (we have one such restriction, relating to Public Property Funds, which is discussed in the paragraphs leading to Proposal 13);

(b) appropriate structural safeguards to address liquidity risks – such as matching the investment objectives of the Fund with its redemption policies; buffers of liquid assets; controls against investment in illiquid assets and diversification of the portfolio (and also matching investor profiles and redemption rights – which are noted under information asymmetry risk discussed below);

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[7] See Article 38(1) of the CI Law which requires a Fund Manager to have systems and controls including but not limited to financial and other risk controls to ensure sound management of the Fund.

[8] In addition to liquidity risks, there are other risks in open-ended Funds, such as operational risk. These are addressed through the current Funds regime.

(c) appropriate policies and procedures implemented by the Fund Manager to measure, monitor and manage liquidity effectively within the Fund to meet redemptions;

(d) independent oversight of the implementation and effectiveness of the policies and procedures noted above, and remediation of gaps/failures (which are substantially covered under the current regime); and

(e) adequate tools available to a Fund Manager to address liquidity risk in stressed scenarios.

As only some of the above measures are available in the current regime, we propose to include them in the manner set out in Proposal 2 below.

The first-mover advantage

35. As noted in the third column of the Table at Annex A, we impose overarching fiduciary duties on Fund Managers which require them to act in the best interests of investors in the Fund, and treat investors who hold interests in the same class of Units equally, and investors who hold interests in different classes of Units fairly. In addition to the overarching obligation, CIR 8.6.1(d) requires a Fund Manager to effect redemptions in a manner that is fair and reasonable as between all Unitholders and prospective Unitholders.

36. The obligation to treat incoming and outgoing investors fairly permeates the manner and extent to which a Fund Manager may, subject to its Constitution and Prospectus, have in place measures for liquidity risk management within an open-ended Fund for redemptions. We propose to highlight the importance of this obligation, particularly when creating and using liquidity control measures such as redemption gates or pockets in the manner noted in Proposal 2.

Spill-over risks (counterparty and contagion risks)

37. Spill-over risk from a liquidity mismatch in open-ended Funds is a key focus of the FSB report and IOSCO work, as it has the potential to adversely impact on counterparties, affecting systemic stability through contagion.

38. We considered whether our regime contains adequate controls to address spill-over risks emanating from such a liquidity mismatch (such as limits on borrowing noted in Column 2 of the Table at Annex A).

39. As noted in Column 3 of the Table at Annex A, other than specific restrictions relating to counterparty concentration, our regime has sufficient controls to address spill-over risks. Further, the proposed general obligation on the Fund Manager to have detailed policies and procedures to manage liquidity risks also requires proper counterparty risk management, to mitigate against contagion risk arising from concentrations and the connectivity of counterparties. Therefore, we do not consider it appropriate or necessary to introduce any further detailed requirements to address spill-over risks. We also believe that there is no prospect that systemic counterparty risks of this nature would arise in a Fund in the Centre, at least for the time being.

Information asymmetry risk – investor expectation gap

40. We already have sufficiently detailed Prospectus disclosure relating to risks associated with the Fund and its underlying investments, as noted in Column 3 of the Table at Annex

A. However, given that adequate investor information plays a critical role, we propose to enhance disclosure in the manner set out in Proposal 2.

Proposal 2

See draft CIR section 8.6A and Guidance under CIR 8.6A.1, Guidance no. 6 under CIR Rule 8.6.1 and draft CIR Rule 14.3.1(e), in Appendix 2.

41. To enhance our regime, we propose the following:

(a) retain the current prohibition against Public Property Funds being structured as open-ended Funds – for the reasons leading to Proposal 13 dealing with Property Funds;

(b) impose a general obligation on a Fund Manager of an open-ended Fund that its systems and controls must, to ensure sound management of the Fund (as required under Article 38(1) of the CI Law), include:

(i) well-documented detailed investment policies and strategies to ensure that the Fund has sufficient liquidity to meet redemption requests, as stated in the Fund's Constitution and the most recent Prospectus;

(ii) in the policies and strategies referred to in (i), adequate control mechanisms (such as appropriate buffers) to address liquidity risks within the Fund, as appropriate to the type of Fund and its investment objectives, taking in to account factors such as the underlying classes of assets, if they are traded on exchange, the liquidity in those markets, and any other factors that affect the liquidity of the classes of assets, as well as investors' redemption patterns and behaviour;

(iii) adequate mechanisms to measure, monitor, stress test and manage the controls referred to in (ii) to ensure that they are operating effectively and as intended, and procedures for addressing any gaps and failures; and

(iv) the measures available to the Fund Manager to address liquidity stresses which pose or have the potential to pose risks to its ability to effect redemptions (such as powers to impose anti-dilution levies, create side pockets to ring-fence illiquid assets and create redemption gates or suspend redemptions), as stated in its Constitution and the Prospectus, and clear triggers and procedures for exercising those measures; and

(c) set out our expectation that Fund Managers of open-ended Funds take account of the IOSCO Principles Relating to liquidity risk management – '*Recommendations of Liquidity Risk Management for Collective Investment Schemes*', which are currently being enhanced, in developing and implementing their liquidity risk management controls, as those Principles contain the full spectrum of measures that can be used by Fund Managers to address liquidity risks in open-ended Funds. This allows Fund Managers more flexibility in tailoring those measures as suited to the Funds they manage.

42. We also propose to enhance Prospectus disclosure by requiring open-ended Public Funds to include information relating to the powers available to the Fund Manager to address liquidity stresses that may arise in their Funds and the procedure, including triggers, for exercising those powers.

43. In addition to the above proposals, we also propose to:

(a) refine CIR 8.6.1, which currently contains detailed procedures for the redemption obligations of a Fund Manager of an open-ended Public Fund, by extending its application to all open-ended Funds. However, a Fund Manager of an open-ended Exempt Fund or QIF will continue to have greater flexibility to arrange its dealing days and procedures, provided they are fair and reasonable as between redeeming Unitholders and continuing Unitholders; and

(b) give Guidance containing indicators of the type of Funds which would generally lend themselves to be open-ended or closed-ended.

Question

3. Do you have any concerns relating to our proposals to address liquidity risks in open-ended Public Funds, as proposed in paragraphs 41 – 43? If so, what are they, and how should they be addressed?

III. INTRODUCTION OF EXCHANGE TRADED FUNDS (ETFs)

Background

44. ETFs have become increasingly popular among investors, particularly retail. As a result, they have also become the focus of attention among international standard setters, particularly IOSCO. We have seen some interest among market participants to establish ETFs in the DIFC.

45. IOSCO developed nine principles for regulating ETFs. While these principles are not of the same status as IOSCO Standards, we have followed those principles in developing our proposals, as this is an effective way to address risks associated with ETFs, and consistent with our approach to meeting international standard setters' expectations.

IOSCO ETF Principles 1 & 2 – Clear identification of ETFs and their features

Analysis

46. IOSCO ETF Principles 1 and 2 provide as follows:

Regulators should encourage disclosure that helps investors to clearly differentiate ETFs from other exchange traded products ("ETPs").

Regulators should seek to ensure a clear differentiation between ETFs and other collective investment schemes, as well as appropriate disclosure for index-based and non-index-based ETFs.

47. These Principles are designed to promote better understanding, particularly among retail investors, of the features that set ETFs apart from other exchange traded products, and also ETFs as a specialist class of Funds.

48. Under our current regime, although ETFs are Funds, we do not have any specific requirements that deal with the unique features of ETFs. We deal with other specialist classes of Funds by providing more detailed requirements tailored to their unique features and risks associated with them. We propose to address this gap, in line with what is envisaged under IOSCO Principles 1 and 2, through Proposals 3 to 5 below.

49. At the initial stage, we are proposing to introduce to the DFSA regime only ETFs which passively track the performance of indices or other benchmarks (i.e. passive index trackers), but not actively managed ETFs[9]. This is because passive index trackers are the more traditional form of ETFs. However, we will monitor whether there is an appetite for actively managed ETFs to be introduced in the DIFC, and if so, what additional provisions are needed to address, among other things, risks associated with such ETFs.[10]

Proposal 3

See draft CIR Rules 3.1.12, 13.9.1 and 13.9.3 and associated Guidance in Appendix 2.

ETF definition, ETF criteria and the use of the term ETF

50. We propose to introduce ETFs as a specialist class of Funds with clearly identifiable features by:

    (a) including an ETF as a new specialist class of Funds in CIR section 3; and

    (b) introducing a prohibition against the use of the term ETF, in Prospectus and other marketing material, unless it meets the prescribed criteria proposed below.[11]

51. To be able to call a Fund an ETF, the Fund needs to:

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9 At this stage, the regime will also not cover hybrid ETFs, where the main strategy is passive index tracking, but with some active element relative to that index.

10 Actively managed ETFs are considered to be different from ETFs which passively track the performance of a specified index or benchmark. Actively managed ETFs generally seek to outperform a specified index or benchmark by a specified margin, or have investment strategies which are not rule-based as passive index trackers. Risks arising in actively managed ETFs appear to stem from the lack of transparency of the underlying portfolio of assets of such ETFs. These include pricing related difficulties of the underlying portfolio (especially to establish an iNAV); the difficulty in identifying counterparties and their default risks, including how such risks are mitigated; and risks associated with any collateral used, particularly if the counterparties are, or collateral is provided by, related parties to the ETF Fund Manager.

11 This is in line with our current approach for some specialist classes of Funds (such as Real Estate Investment Trusts (REITs)), where we prohibit the Fund to be offered or marketed using a name which could be misleading to investors, unless the Fund meets specified criteria and requirements.

(a) be an open-ended Public Fund (because its Units are offered to the public and listed and traded on an exchange);

(b) have its Units available for trading throughout the day on an exchange that meets the specified criteria;[12] and

(c) have at least one market maker (called the Authorised Participant) on the relevant exchange who is prepared to buy and sell (trade) ETF Units throughout the day.

We also propose that the investment objective and strategy of an ETF to be established in the DIFC is to passively track the performance of a specified index or benchmark.

Question

4. Do you have any concerns relating to Proposal 3? If so, what are they, and how should they be addressed?

5. Do you think we should introduce actively managed ETFs to the DFSA regime? What are your reasons, and how should any additional risks associated with such ETFs be addressed?

Proposal 4

Guidance on ETF characteristics

See draft CIR Rule 13.9.6 and associated Guidance in Appendix 2.

52. We also propose to provide additional Guidance that should be included in offering and marketing material used by ETFs, ETF Fund Managers and other intermediaries, to enable potential investors to understand ETFs better, and to promote consistent usage of ETF terminology, as envisaged under IOSCO Principle 2, along the following lines:

(a) an ETF is a Collective Investment Fund (Fund) with special features, therefore, it is treated as a specialist class of Fund;

(b) an ETF differs from other Funds because investors in an ETF cannot directly buy or sell Units in the ETF from the Fund Manager. Instead they can only do so in the secondary markets through an intermediary (see (c));

(c) Units in an ETF are made available in a secondary market (i.e. on an exchange) through one or more intermediaries appointed by the ETF Fund Manager. These market makers (called Authorised Participants) provide two way market price/liquidity for ETF Units traded on the relevant exchange, based on a price as close as possible to NAV or 'indicative net asset value' (iNAV) (if available);

[12] That is, an Authorised Market Institution licensed by the DFSA to operate an Exchange, or an exchange regulated by a financial services regulator in a jurisdiction which is a signatory to the IOSCO multilateral memorandum of understanding (MMOU) for information sharing, or a jurisdiction with which the DFSA has entered into a bilateral memorandum of understanding for information sharing.

(d) Investors in an ETF may incur additional costs and fees as they have to buy and sell ETF Units through an appointed market maker (who directly buys and sells 'creation units' in the ETF from the ETF Fund Manager). These are different to the Units of the ETF which are traded on the relevant exchange, and are generally of a larger denomination than the Units available to investors on the relevant exchange; and

(e) ETFs Units are different from other exchange traded products such as exchange traded notes, which are debt instruments and do not provide equity participation rights which investors get when investing in a Unit of an ETF.

Question

6. Do you have any concerns relating to our proposed approach to provide clarity relating to ETFs, and their characteristics? If so, what are they, and how should they be addressed?

Proposal 5

Guidance on Types of ETFs and ETF terminology

See the associated Guidance to draft CIR Rule 13.9.6 in Appendix 2.

53. There are a number of other aspects that require clarification for both ETF providers and other intermediaries, and for investors who are offered ETF Units. To promote consistency in language and clearer understanding of the types of ETFs, we propose to include Guidance relating to both ETF specific terminology (terms such as Authorised Participant), and the types of ETFs that can be offered (such as physical and synthetic ETFs, active and passive index trackers), derived from similar guidance issued by IOSCO and ESMA.

Question

7. Do you have any concerns relating to our proposed clarifications on types of ETFs and ETF terminology? If so, what are they, and how should they be addressed?

IOSCO ETF Principles 3 & 4 - Disclosure regarding an ETF's portfolio

Analysis

54. IOSCO Principles 3 and 4 provide as follows:

Regulators should require appropriate disclosure with respect to the manner in which an index-based ETF will track the index it references.

Regulators should consider imposing requirements regarding the transparency of an ETF's portfolio and/or other appropriate measures in order to provide adequate information concerning:

(i) any index referenced and its composition; and

(ii) the operation of the performance tracking.

Proposal 6

Criteria for underlying indices and other benchmarks

See draft CIR Rules 13.9.4 and App 9 in Appendix 2.

55. To enhance the transparency and objectivity of the underlying index or other benchmark tracked by an ETF, we propose that an ETF Fund Manager must only use an index or other benchmark that meets the criteria set out below. The proposed criteria would also apply where the index or benchmark is custom-made for an ETF.

56. The criteria we propose are the same as those we currently use for allowing an Authorised Market Institution ("AMI") to admit to trading on its facilities Investments the value of which is determined by reference to an index or other underlying benchmark provided by a Price Information Provider ("PIP").[13] These criteria are in accordance with the IOSCO Principles relating to Price Information Providers and meet the IOSCO and ESMA ETF Guidance designed to promote transparency and objectivity of indices and other underlying benchmarks used by ETFs.[14]

57. Transparency of the underlying portfolio of an ETF is a key contributor to enable the trading of ETF Units on market close to its NAV or indicative Net Asset Value (iNAV), if available. As an additional safeguard, we also propose to require that a Fund Manager of an ETF has adequate systems and controls (including transparency of its portfolio assets) to ensure that the Authorised Participant offers to trade the Units of the ETF at a price that does not significantly vary from the most recent NAV of the ETF, or the iNAV of the ETF, if available.

Question

8. Do you have any concerns relating to our proposed criteria for indices or other benchmarks which ETFs track? If so, what are they, and how should they be addressed?

9. Do you have any concerns relating to our proposal that an ETF Fund Manager must ensure that the Units of its ETF are traded on exchange as close to its NAV (or iNAV, if available)? If so, what are they, and how should they be addressed?

[13] Our proposal substantially mirrors AMI App 2, with a few enhancements to cover ETF specific factors.

[14] Since the development of AMI App 2, containing the PIP Guidelines, IOSCO guidance has been updated, taking into account the work done by the IOSCO Task Force on Financial Benchmarks – see their report at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD409.pdf.

Proposal 7

Prospectus disclosure[15]

See draft CIR Rule 14.4.8 in Appendix 2.

58. A key source of transparency relating to the underlying portfolio of assets of an ETF is Prospectus disclosure (and on-going disclosure to markets covered in Proposal 8). We propose to require an ETF Prospectus to contain the following information:

(a) the type of ETF;

(b) the investment methodology and strategies the ETF proposes to adopt in order to track the specified index or benchmark;

(c) a clear description of the relevant index or other benchmark the ETF is designed to track, and timely information about the underlying components (including their liquidity) of the index or the benchmark;

(d) clear sign-posts to enable investors to be guided to relevant websites and information sources for up-to-date information on composition of the relevant indices;[16]

(e) information about whether iNAV is available and, if so, how this information can be accessed by investors;

(f) if the ETF is using complex strategies or techniques, such as Derivatives, details of such arrangements, including risks associated with such arrangements;

(g) to the extent an ETF is required to have a diversified portfolio, how the ETF proposes to achieve diversification of investments through its investment strategy;[17]

(h) if the ETF is a leveraged ETF, a clear description of its leverage policy, how it is to be achieved (i.e. whether the leverage is at the level of the index or arises from the way in which the ETF obtains exposure to the index), the cost of the leverage used, and the risks associated with this policy;[18]

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[15] Under the current DFSA regime, a Prospectus of a Public Fund must include investment objectives and strategies of the Fund and how they are to be achieved, including risks associated with the investment policies and strategies of the Fund. As the overarching disclosure obligation is to ensure that investors have sufficient information, relating to risks and benefits in investing in the Fund, to make an informed investment decision, the disclosure standards intended by IOSCO can be easily incorporated into our regime, as specific disclosures for ETFs (in CIR section 4).

[16] Information on index composition, its methodology and relative weightings. Index providers may also publicly announce the components and/or value of their indices, which could assist investors in understanding any tracking error and permit investors to reference the units' intra-day performance.

[17] See CIR 10.5.2 and 10.5.3 relating to spread of investment risk and CIR 10.5.4 for investment restrictions in other Funds applicable to an ETF as a Public Fund.

[18] An ETF, being a Public Fund, is subject to certain borrowing limits – see CIR 10.5.7 which limits borrowing to 20% of NAV.

(i) the ETF's policy relating to collateral, particularly if securities lending forms part of the strategy for achieving the stated investment objectives;[19]

(j) how risks arising from particular strategies are to be addressed (e.g., assessing counterparty risks where Derivatives are used or if securities lending is to be undertaken);

(k) information on how the index will be tracked and the risks for investors in terms of the exposure they have to the underlying index and any counterparty risk;

(l) if available, information about the past performance of the ETF, measured through its realised tracking difference and annual tracking error information, and the anticipated level of tracking error during normal market conditions, and how this will be effectively minimised; and

(m) a description of the key elements which may affect the ETF's ability to track fully the relevant index or benchmark, including, but not limited to, transaction costs, illiquid segments, and dividend re-investment.

Question

10. Do you have any concerns relating to our proposals for disclosure in an ETF Prospectus regarding underlying indices and benchmarks? If so, what are they, and how should they be addressed?

Proposal 8

Ongoing disclosure to markets

See draft MKT Rule 6.9.2(4) in Appendix 3.

59. As ETFs are exchange-traded products, ongoing disclosure of an ETF is as important as initial disclosure via a Prospectus. Public Funds (including those listed and traded) are required to make annual, half-yearly and quarterly disclosure. In addition, ad hoc disclosure to the markets is also required if there are material changes that affect the price at which listed securities are trading.

60. While the above on-going obligations will continue to apply to the Fund Manager of an ETF as a listed and traded Public Fund, we propose to enhance ongoing disclosure to markets by requiring the Fund Manager of an ETF to:

(a) disclose the size of the tracking error at the end of the period under review; and

(b) include a statement in its annual report explaining:

(i) any divergence between the anticipated and realised tracking error for the relevant period; and

19 See the restriction noted above.

(ii) the annual tracking difference between the performance of the ETF, and the performance of the index or other benchmark referenced.[20]

61. We also propose that any material changes to the existing arrangements of an ETF relating to the fees and costs of the Fund Manager and service providers (under Proposal 9) be disclosed to the markets as part of the Fund Manager's ongoing disclosure obligations, as they are significant factors affecting the risks and price of investments in ETFs.

Question

11. Do you have any concerns about our proposals for ongoing disclosure to markets for ETFs? If so, what are they, and how should they be addressed?

IOSCO ETF Principles 5 & 6 – Disclosure of ETF costs, expenses and offsets

Analysis

62. IOSCO Principles 5 and 6 provide as follows:

Regulators should encourage the disclosure of fees and expenses for investing in ETFs in a way that allows investors to make informed decisions about whether they wish to invest in an ETF and thereby accept a particular level of costs.

Regulators should encourage disclosure requirements that would enhance the transparency of information available with respect to the material lending and borrowing of securities (e.g. on related costs).

63. Disclosure relating to the fee structure is particularly important to enable investors to understand additional fees they may incur due to the concurrent issue and sale of ETFs in the primary market (between the Fund Manager and the Authorised Participant or AP) and the secondary market trading (between investors and AP) that occur in ETFs.

Proposal 9

See draft CIR Rule 14.4.9 in Appendix 2.

64. We propose to require a Fund Manager of an ETF to include additional disclosure in its Prospectus relating to fees and costs of the Fund Manager and associated parties, and the impact of such costs and fees on investors.

Question

12. Do you have any concerns relating to our proposed fee disclosure requirement? If so, what are they, and how should they be addressed?

[20] The Prospectus and ongoing disclosure relating to underlying indices or other benchmarks under our proposals are not a substitute for the primary obligation of a Fund Manager to reference an index or other benchmark which meets the criteria specified.

IOSCO ETF Principle 7 – Disclosure regarding ETF strategies

Analysis

65. IOSCO Principle 7 provides as follows:

> *Regulators should encourage all ETFs, in particular those that use or intend to use more complex investment strategies, to assess the accuracy and completeness of their disclosure, including whether the disclosure is presented in an understandable manner and whether it addresses the nature of risks associated with the ETFs' strategies.*

66. Our current regime specifically requires clear and easy to understand disclosure of information which a reasonable investor (and his advisers) would expect to find in a Prospectus to make an informed investment decision. That overarching obligation, complemented by the additional disclosure set out under Proposal 7, would achieve the outcome intended by Principle 7.

IOSCO ETF Principle 8 – Structural safeguards to mitigate conflict of interests

Analysis

67. IOSCO Principles 8 provides as follows:

> *Regulators should assess whether the securities laws and applicable rules of securities exchanges within their jurisdiction appropriately address potential conflicts of interests raised by ETFs.*

68. IOSCO identifies some conflicts of interests that could adversely impact on the performance of an ETF (and therefore its investors), such as where an ETF is tracking a 'custom index', i.e. an index created by a related party of the ETF Fund Manager

69. The DFSA regime contains detailed provisions dealing with conflicts of interests, particularly those addressing related-party transactions, which would apply to an ETF and its Fund Manager. There is an overarching obligation on a Fund Manager to take reasonable steps to ensure that any dealing in relation to Fund Property does not give rise to a conflict of interests. Where a conflict of interests exists, or is likely to arise, whether in dealing with Related Parties[21] or otherwise, the Fund Manager is required to make disclosure to Unitholders of the conflict and how it will be managed. Related Party transaction procedures (which deal with transactions relating to Fund Property) contain controls including that such transactions must be undertaken on an arm's length basis on commercial terms.

70. The above provisions focus on dealings and transactions relating to Fund Property. It is possible to argue that the use of a 'custom index', provided by a Related Party of the Fund Manager, may not necessarily be caught because the index referenced (whether custom made by a Related Party of the Fund Manager, or by an independent Price Information Provider) would not form part of the Fund Property.

[21] A Related Party is defined to mean, in relation to a Fund, its Fund Manager, members of its Governing Body, its Custodian, its Trustee or other person providing oversight function, any Adviser to it, a holder of 5% or more of its Units or an Associate of these persons.

Proposal 10

See draft Guidance under CIR Rules 8.3.2, 13.9.5 and 14.4.8(d), and also App 9, in Appendix 2.

71. To address the current gap, we propose to amend the definition of Related Party Transactions to include a custom index or other benchmark provided by a Related Party of the ETF Fund Manager.

72. In addition, we also propose to strengthen further the previous proposals containing controls relating to Price Information Providers (PIPs) who provide indices and other benchmarks which ETFs track (which are designed to ensure the objectivity, transparency and independence of PIPs), by requiring an ETF Fund Manager, before using an index or benchmark, to ensure that the provider of the index or other benchmark referenced:

    (a) makes publicly available all of the rules that govern the composition, inclusion and weighting of securities in each index or benchmark within a reasonable time frame as appropriate to the nature of the index and its users;

    (b) is not able to make changes to the rules for index compilation without giving advance public notice before any changes are made; and

    (c) does not employ ETF staff, particularly for the creation, development and modification of the index compilation rules and their review.

73. We also propose that the Prospectus of an ETF discloses where information relating to the composition of the referenced index or benchmark, and the PIP providing it, can be accessed by investors. If there are any changes relating to the composition and governing rules of an index or its PIP, those must be made available to the exchange as part of the ongoing disclosure obligations of the Fund Manager of an ETF.

Question

13. Do you have any concerns about our proposals to strengthen Related Party transaction provisions to include arrangements with Price Information Providers who provide custom made indices or benchmarks for ETFs? If so, what are they, and how should they be addressed?

IOSCO ETF Principle 9 – Additional safeguards to manage an ETF's counterparty and collateral risks

Analysis

74. IOSCO Principles 9 provides as follows:

> *Regulators should consider imposing requirements to ensure that ETFs appropriately address risks raised by counterparty exposure and collateral management.*

75. As noted before, counterparty risks are heightened in ETFs, particularly if they use Derivatives as part of their investment strategy. This is particularly so in the case of synthetic ETFs. For example, a synthetic ETF may use a total return swap to replicate the index or other benchmark without purchasing the underlying assets, where collateral may be used to cover the positions, warranting both counterparty and collateral risks to be addressed effectively to ensure that the ETF's performance (and returns to investors) its not adversely affected by their use.

76. The previous proposals enhance the existing general obligation of a Fund Manager to have in place systems and controls including, but not limited to, financial and other risk controls to ensure sound and prudent management of the Fund in accordance with the Fund's Constitution and its most recent Prospectus. In addition, we propose requirements for open-ended Funds, which apply to ETFs, as part of their liquidity risk management controls, to address, among other things, market counterparty risks. We also propose additional disclosure and controls where Derivatives are being used, resulting in counterparty exposures. Therefore, we do not propose any additional requirements to address this issue.

Marketing of non-DIFC ETFs in or from the DIFC

Analysis

77. All the previous proposals relating to ETFs apply to Domestic ETFs. We have a discrete regime that applies to marketing of Funds that are Foreign Funds. If a Foreign Fund is an ETF (i.e. has the characteristics of an ETF as we propose), or is marketed as an ETF, we need to ensure that there is a level playing field between domestic and foreign ETFs offered in or from the DIFC.

Proposal 11

See draft CIR Rules 15.1.5(c) and 15.1.6(c) in Appendix 2.

78. To ensure that Foreign ETFs, which are marketed or promoted by Authorised Firms in the DIFC, are properly regulated ETFs, we propose to prohibit their marketing in or from the DIFC unless such an ETF meets the same criteria as a domestic ETF, and is subject to comparable regulation to a Domestic ETF (for example, the ETF passively tracks the performance of a specified index or other benchmark). This is in line with the approach we have adopted in relation to marketing of Foreign Funds generally, and also in the case of another class of specialist Funds, i.e. foreign Property Funds.

Questions

14. Do you agree with our proposal to allow only foreign ETFs, which meet the domestic ETF criteria, to be marketed in or from the DIFC? If not, what are your reasons?

IV. PROPERTY FUND RELATED ENHANCEMENTS

79. We have considered a number of inter-related issues regarding Property Funds, some of which have been raised by market participants. These are:

(a) when should a property company be regarded as a Fund?

(b) Why should a Property Fund be required to be closed-ended?

(c) How long should a Public Property Fund be allowed to operate for before it must be listed and traded?

(d) REIT-specific issues.

When should a 'property company' be regarded a Fund?

Analysis

80. We have identified the need for more clarity on this question as it has not always been easy to distinguish property related activities which are investment activities, as opposed to commercial activities.[22]

Proposal 12

See draft Guidance under CIR Rule 3.1.7 in Appendix 2.

81. To provide greater clarity relating to the distinction between property companies which are commercial companies, and those which are investment companies, we propose to include additional Guidance, under the definition of Property Funds.

82. While such Guidance is not definitive or exhaustive, we propose to indicate that the DFSA would consider the following type of closed-ended property companies to be commercial companies, rather than Investment Companies:

(a) a property developer or a property construction company, which is in the business of developing and constructing the property;

(b) a real estate company which operates a business of selling or leasing real estate for its customers;

(c) a property management or maintenance company, which generates profits through fees charged for those services; and

(d) a property valuer, which is a property-related service provider.

83. In contrast, we would consider the following type of closed-ended property companies to be clearly Investment Companies:

(a) A company which raises capital from investors to invest in real estate, on the basis that the investments will be selected/bought and sold on the basis of specified criteria, to generate profits for investors by way of capital appreciation/market conditions, which

[22] The UK regime recognises the lack of clarity between real estate companies that are conducting commercial businesses, as opposed to collective investment businesses involving real property. The former is regulated as a normal commercial company and the latter as a fund. Our search for clarity has led us to various materials in the UK to distinguish between real estate companies that are commercial operations, and those that are funds, from which we have derived the stated indicators.

will be distributed at specified intervals or in a specified manner; and

(b) a company investing in shares/units of other real estate funds to generate profits through returns on such investments.

84. We would also generally regard all open-ended property companies to be Investment Companies, as commercial companies are not operations which can offer redemption and reissue of the shares at NAV.

Question

15. Do you have any concerns relating to our proposed Guidance relating to the distinction between property companies which are commercial companies and Investment Companies? If so, what are they, and how should they be addressed?

Should a Property Fund be required to be closed-ended?

Analysis

85. Under the current regime, all Property Funds must be closed-ended. This is because the underlying portfolio of assets of a Property Fund may not lend itself to be open-ended as it may not be as easy to liquidate real property as other forms of assets, such as exchange traded financial instruments in liquid markets, or 'on-demand' deposits.

86. However, a Fund Manager of a Property Fund has some flexibility in terms of the type of property and property-related assets it can invest in, as CIR 13.4.4 (1) provides that:

> *'a Fund Manager must, subject to (2), ensure that the assets of a Property Fund, except where otherwise provided in the Rules in this section, consist only of any or all of:*
>
> *(a) Real Property;*
>
> *(b) Property Related Assets; or*
>
> *(c) Units in another Property Fund; and*
>
> *(d) cash, government and public Securities, up to a maximum of 40%.'*

87. This flexibility means that a Fund Manager may be able to develop an investment mandate/strategy for a Property Fund which can be open-ended to meet redemption requests under normal circumstances by allowing it to hold highly liquid assets, such as cash (up to 40%) or units in other listed and traded Funds (in liquid markets). It is also the case that some Property Funds invest only in other listed Property Funds, which are generally liquid. This raises the question whether the current restriction should remain.

88. It was a significant concern at the inception of our regime that the region was experiencing a property bubble which was about to burst. The potential reputational risks resulting from a 'run on funds' led to our conservatism reflected in the outright prohibition against Property Funds being open-ended, regardless of the nature of the investors. However, there are a number of considerations that justify a re-evaluation of the prohibition.

89. The first is our previous proposals that all open-ended Funds be subject to more specific liquidity management controls than currently exist, to meet international standard setters' expectations in this area. These proposals are designed to ensure that open-ended Funds, regardless of the class of their portfolio assets, have in place detailed and well-documented policies and procedures, in accordance with the guidance issued by IOSCO, for the prudent and sound management of their liquidity risk.

90. Secondly, Fund Managers of Property Funds have flexible parameters within which to operate their Fund, provided their mandate permits maintaining a significant part of Fund Assets in highly liquid assets (cash, deposits – up to 40%), or the Fund itself is designed for long-term investment (such as a private equity fund where investors do not generally expect to realise their investment in the short term). Liquidity buffers, and other liquidity management controls discussed before, could effectively address liquidity issues of open-ended Funds, combined with investor profiles that match long term investment, both in normal market conditions and, to some extent, in stressed market conditions.

91. Notwithstanding the considerations in paragraphs 89 and 90 above, we are of the view that on balance, Public Property Funds, if open-ended, may still, at least in theory, pose risks to market integrity, as a run on one listed Fund could give rise to contagion where other Funds (although they remain liquid) could also be exposed to runs.

Proposal 13

See draft CIR Rules 13.4.1(1) and 12A.3.1(2)(c), and associated Guidance, in Appendix 2.

92. We propose that, in the case of Public Property Funds that must be listed and traded, the current requirement that such Funds be closed-ended and be structured as an Investment Company or an Investment Trust should remain.

93. The same rationale that applies to Public Property Funds does not apply to Exempt Funds or QIFs, where the Fund Manager of such Funds would be in a better position to tailor the redemption policy and asset classes of the Fund to suit the professional investors it targets.

94. Therefore, we propose to remove the current prohibition against a Property Fund being open-ended, so far as it applies to Exempt Funds and QIFs. As a result, a Property Exempt Fund or QIF, if it wishes to, could be structured as an open-ended Fund.

Questions

16. Do you have any concerns relating to our proposal to retain the requirement that Public Property Funds must be closed-ended? If so, what are they, and how should they be addressed?

17. Do you have any concerns about our proposal to allow Exempt Property Funds and QIFs to be either closed-ended or open-ended? If so, what are they, and how should they be addressed?

How long should a Public Property Fund be allowed to operate for before it must be listed and traded?

Analysis

95. Under the current regime, a Public Property Fund must be listed and traded within six months of the date on which its Units are first offered to the public.

96. We have been asked to extend the period of six months to list and trade on a number of occasions, and we have granted relief in two instances, in which Property Funds were granted up to three years to list and trade.

97. The six month period to list and trade starts to run from the time a Property Fund first offers its Units to the public. To be able to offer its units to the public, a Property Fund needs to have in place all the structural requirements that apply to a Public Fund (such as independent oversight function, investment committee, etc., as well as a full Prospectus).

98. However, the process of raising capital through an initial offer to the public, acquiring a portfolio of assets (Real Property) suitable for listing, then seeking admission to the Official List and admission to trading on an exchange, is likely to take a significantly longer period than six months. There are due diligence and valuation requirements that apply to the acquisition of Real Property and listing procedures that would take time to be completed. The two applicants to whom we already granted relief demonstrated their inability to meet the six month deadline.

Proposal 14

See draft Guidance under CIR Rule 13.4.1(3) in Appendix 2.

99. Given this, we consider it appropriate to extend the period that a Public Property Fund has to list and trade, from the date on which it first offers its Units to the public, to three years. The period within which a Public Property Fund intends to list and trade would continue to require disclosure in the Fund's Prospectus.

100. If a Property Fund is initially set up as an Exempt Fund or QIF, with a clear intention to convert to a Public Fund at a later date, then there is some uncertainty whether such a Fund can currently have a longer period than six months to list and trade. This is because the requirement to list and trade is stated as applying to a Property Fund "which is or *intends* to be a Public Fund".

101. To ensure that an Exempt Property Fund or Property QIF, which intends to become a Public Property Fund, has sufficient time to do so, we propose to allow such a Fund also an

equivalent period of three years to list and trade, from the date on which it first offers its Units to investors by private placement.

102. Alternatively, we could leave the time unspecified on the basis that the professional investors investing in Exempt Funds and QIFs have sufficient expertise to assess risks and take appropriate action against the Fund Manager, if needed.

103. On balance, we consider the better approach is to impose the relevant time limit, if the Exempt Fund or QIF was set up with the intention of being a Public Property Fund.

Questions

18. Do you have any concerns relating to our proposal to allow Public Property Funds a period of three years to list and trade? If so, what are they, and how should they be addressed?

19. Do you have any concerns about our proposal to allow an Exempt Property Fund or Property QIF, if its Units are placed with Professional Investors on the basis that it is 'intending' to be a Public Fund, to also have three years to list and trade? If so, what are they, and how should they be addressed?

REIT-specific issues

104. There are three REIT specific issues which have arisen:

(a) should a REIT always be a Fund, and not just a commercial company?

(b) Should a REIT always be a closed-ended vehicle?

(c) Should only a Public Property Fund be permitted to use the name REIT?

Should a REIT always be a Fund?

Analysis

105. A REIT (Real Estate Investment Trust) is a type of Property Fund. They are not necessarily trusts, but are called trusts for a combination of reasons, such as the original use of trust structure, and the ability to pass-through income, as allowed in a trust structure, so that investors in such companies could get tax benefits.

106. Although a tax free jurisdiction, DIFC embraced this structure as market participants wished to use it as one that is familiar to investors looking for a steady income stream arising from collective investment in real estate properties. Our current Rules classify a REIT as a sub-set of a Property Fund.

Proposal 15

The status quo maintained – no Rule change.

107. A REIT can be either an Investment Company or an Investment Trust. If it is a Public Fund, it must be closed-ended. In the case of a REIT which uses the company form, based on the criteria proposed earlier to distinguish a property company from a company conducting collective investment in Real Property (Proposal 12), we consider a REIT to be an Investment Company. This is because it:

   (a) has a defined investment policy which is pre-determined at the time investors are invited to subscribe to it;

   (b) markets its units to potential investors looking for a certain type of benefit (i.e. a flow-through income stream), resulting from the expert selection and management of real property forming part of the company's portfolio;

   (c) would generally not have a large number of employees, such as those carrying out maintenance and management of the property, as would a property company, as these functions would generally be outsourced to service providers; and

   (d) would hold the selected properties, relying on the income generated, rather than create or build the property.

108. The above analysis, reflected in our current approach of classifying REITs as Funds:

   (a) is consistent with the treatment of such companies as collective investment vehicles in jurisdictions such as Hong Kong and Singapore;

   (b) is consistent with the IOSCO definitions, which focus on the substance of the arrangement, rather than the form of the vehicle or the underlying asset class, to determine whether an arrangement is a collective investment scheme; and

   (c) causes less disruption to the DIFC markets as we now have two REITs that are already listed and traded.

Question

20. Do you have any concerns relating to our ongoing classification of REITs as Funds? If so, what are they, and how should they be addressed?

Should a REIT always be a closed-ended vehicle?

Analysis

109. Under our current regime, REITs attract more stringent regulation than other Public Property Funds. These include a REIT, in addition to being a Public Property Fund, having to be a closed-ended Investment Company or Investment Trust.

110. We discussed earlier the case for retaining the current requirement for Public Property Funds to be closed-ended. We do not see any justification for REITs to be constituted

as open-ended Funds, given that a REIT is 'primarily aimed at investing in income generating Real Property', so that the expectation of its investors, from the outset, is to obtain a steady income stream from holding a large portfolio of real estate investments for the long-term. As such, it may generally not be commercially viable, if it were to be open-ended, to sell-off parts of a REIT portfolio to meet any redemption requests.[23]

Should a REIT always be a Public Property Fund?

Analysis

111. The requirement that a REIT must always be a Public Property Fund results from CIR 13.5.1(1), which provides that:

> '*A Fund Manager, or any Person making an Offer of a Unit of a Fund or otherwise marketing a Fund, must not include the term "Real Estate Investment Trust" or "REIT" or refer to a Fund or otherwise hold out a Fund as being a Real Estate Investment Trust or a REIT, unless it is a Public Property Fund which is constituted in accordance with (2).*'

> CIR 13.5.1(2) goes on to provide that *'a REIT is a Public Property Fund which is (a) constituted as an Investment Company or Investment Trust, (b) is primarily aimed at investing in income generating Real Property, and (c) distributes to the Unitholders at least 80% of its audited annual net income*.'

112. The terms of the above provisions do not leave any flexibility for a Property Fund, which wishes to call itself a REIT, to be constituted other than as a Public Property Fund, and be listed and traded. This is in contrast to the position for other types of Property Funds, which can be constituted as a Public Fund, or as an Exempt Fund, or as a QIF.

113. We have been asked by industry participants to allow Exempt Funds and QIFs to use the name REIT, particularly as a forerunner to becoming a Public Fund. We consider it appropriate to allow the use of the name REIT by an Exempt Fund or a QIF, provided it:

    (a) meets the key REIT criteria in CIR 13.5.1(2) from the inception (i.e., it is structured as a closed-ended Investment Company, is primarily aimed at investing in income-generating Real Property and distributes at least 80% of its audited net annual income to unitholders); and

    (b) complies with all the requirements that would normally apply to a Public Property Fund, except the independent oversight function, and a 'full Prospectus' (instead, have an Information Memorandum).

114. The rationale for the proposal is that investors in Exempt Funds and QIFs, being professional investors, are unlikely to be misled by the use of the term REIT, especially as the Fund would meet the key REIT criteria, including the nature of its underlying investments and distribution of its income. Similarly, they should also be able to appreciate the risk that there would be no access to a secondary market to realise their

[23] Although a REIT could maintain cash reserves as a buffer to meet redemption requests, we do not consider that this alone would justify REITs being structured as open-ended Funds. Other jurisdictions such as Singapore, Hong Kong and the UK also require the closed-ended model for REITs.

investment for a period of three years (and also the risk that this may not happen at all and, therefore, the Fund may have to be wound-up).

115. However, there is a residual risk. If a REIT were to be established as a QIF with the intention of converting to a Public REIT, it could be used as a vehicle to dump illiquid or hard to value assets. We believe the proposed requirements that a QIF or Exempt Fund, which intends to become a Public REIT, comply with all the requirements that normally apply to a Public Fund (other than a full Prospectus and independent oversight function), mitigates this risk. The valuation-related requirements, and particularly the information relating to the value of assets which must be disclosed in a listing Prospectus, also act as mitigants against this risk.

Proposal 16

See proposed amendments to CIR Rule 13.5.1(1) and (2) in Appendix 2.

116. We propose to provide greater flexibility for Exempt Funds and QIFs to use the name REIT, provided such a Fund:

(a) is primarily aimed at investments in income-generating Real Property;

(b) distributes to Unitholders at least 80% of its audited net annual income; and

(c) if it is to be listed and traded as a Public REIT within three years of its units first being placed with professional clients, complies with all the requirements that would otherwise apply to a Public REIT, except the requirement to have a full Prospectus and the independent oversight function, for the reasons set out in paragraph 114 above.

117. An Exempt Fund or QIF, which does not intend to become a Public REIT, should also be able to use that name (subject to the main qualifying criteria) without the additional safeguards in paragraph 116(c). This is proportionate to the nature of the activities of the two types of Funds, and reflects a risk-based approach to regulation.

Question

21. Do you have any concerns relating to our proposal to allow Exempt Funds and QIFs to use the name REIT if they meet certain requirements? If so, what are they, and how should they be addressed?

V. FUND MANAGER-RELATED ENHANCEMENTS

Proposal to introduce the 'internally managed' model of investment companies

Analysis

118. The UK/EU regimes contain the 'internal' model of management, introduced by the AIFMD, for collective investment undertakings which use the investment company structure. While the proposals below are influenced by that internal model of fund management, we have tailored the proposals to suit DIFC markets, as is our usual practice when we incorporate changes to our regime.

119. The internally managed model means an investment company being managed by its own board of directors, much like any other commercial company. The current DFSA Funds regime allows the 'externally' managed model of Funds, i.e. a Fund being managed by a Fund Manager that is a separate legal entity, which is licensed and supervised by the DFSA.

120. Under AIFMD, a number of controls apply to an internally managed investment company. Each AIF, whether it is internally managed or externally managed, must have a single AIFM. That AIFM must be authorised and meet the authorisation conditions under AIFMD.

121. In an 'internally managed' AIF, as it becomes its own AIFM, the AIF is required to be authorised by the regulator, much the same way as a third party (i.e. external) Fund Manager. The authorisation conditions under AIFMD cover requirements such as adequate resources (financial, human and IT), competencies (fitness and propriety), and systems and controls. AIFMD does not differentiate internally managed AIFs from external AIFMs for authorisation purposes, except in some areas:

    (a) an internally managed AIF (i.e. the AIF itself) is prohibited from managing any AIF other than itself. An external AIFM is permitted to manage other AIFs, subject to some controls;[24] and

    (b) the initial capital requirement for an internally managed AIF is set at EUR 300,000, whereas an external AIFM is required to have initial capital of EUR 125,000, plus an additional capital requirement if the total value of assets under management exceeds EUR 250 million. This is set at 0.02% of the amount of the assets under management which exceed EUR 250 million, and is capped at EUR 10 million.

122. The DFSA regime currently allows an Investment Company to be managed by one director, which may be a body corporate, i.e. a sole Corporate Director (see Companies Regulation 13.2.1). However, we have not yet expressly accommodated the internal management model by providing that such a Corporate Director can be the Fund Manager of an Investment Company where the company chooses, and its Articles of Associations permit it, to do so.

123. We expect benefits in allowing the internal management model for Investment Companies, tailored to the DIFC regime, because it:

    (a) produces a familiar model for collective investment management, as available in the EU;

    (b) does not dilute the level of regulation applicable to a Fund Manager under our proposals, as it gives clear accountability for the management of the Investment Company to the sole Corporate Director, who will be licensed and supervised with regard to its activities in managing the Investment Company;

    (c) has the added advantage of an Investment Company that chooses to be internally managed not having to wind up due to the insolvency or other failure of its sole Corporate Director, allowing the company to continue its business by having a replacement for its Corporate Director;

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[24] Such as restrictions relating to investment of assets/funds of the AIF in other Funds which the external AIFM manages.

(d) provides consistent regulation of collective investment vehicles, regardless of their form; and

(e) is not a great step from what we already have in the Investment Company Regulations that contain the sole Corporate Director model (although the Corporate Director is not expressly given the option of being the licensed Fund Manager of the company).

124. We believe that this model could deliver cost efficiencies for an Investment Company as it would not be required to have a dual management structure as such a company currently does, one at its board level, and one through the external Fund Manager. There would be additional cost savings in the case of a company offering Shari'a compliant investments, where the need to appoint a Shari'a board both at the level of the Fund and the Fund Manager would be avoided.

125. We also believe that a Corporate Director of an internally managed Investment Company, being permitted under our proposals to manage no Fund other than the Investment Company in which it is the Corporate Director, should face a fee of US$ 5000, both for application and as an annual fees. This is on the basis that its business model would be less complex than that of a Fund Manager which is free to manage under its Licence any number of Funds (or as an Asset Manager appointed by a Fund Manager of an external Fund).

Proposal 17

See draft CIR Rules in section 8.1A in Appendix 2; draft amendments to Related Party Transactions in GLO in Appendix 5; and draft FER Rules 2.1.1(2) and 3.2.1(3) in Appendix 6.

126. We propose to incorporate into our regime the internally managed model for investment companies to provide greater flexibility in terms of choices available to Funds which are Investment Companies, and their Fund Managers. To do so, we propose to:

(a) adopt criteria specifying when an Investment Company can be internally managed; and

(b) introduce requirements that are applicable to such an internal Fund Manager, as set out below.

127. If an Investment Company chooses to be internally managed, the following requirements need to be met:

(a) the constituent documents (e.g. Articles of Association) must not prohibit it from doing so;

(b) it must have a single (sole) corporate director (Corporate Director);

(c) the Corporate Director referred to in (b) must:

(i) have at least two individuals, who are directors of it, who meet the fitness and propriety criteria to be an Authorised Individual;

(ii) be licensed as a Fund Manager;

(iii) be prohibited from managing, or acting as the Asset Manager of, any Fund other than the Investment Company in which it is the Corporate Director; and

(iv) be subject to normal authorisation requirements applicable to Fund Managers.[25]

128. To ensure Related Party Transaction provisions apply not only to the Corporate Director, but also to the individual directors of the Corporate Director, we propose to expand the definition of Related Party in GLO to include such individuals. This is because such transactions form the core of conflicted transactions that could adversely impact on the interests of investors.

129. We propose to charge an application fee of US$ 5000, and an annual fee of US$5000, for a Corporate Director licence (similar to the application and annual fees for a QIF Fund Manager). However, we do not propose any changes to the capital requirements applicable to a Corporate Director, which would remain the same as for all Fund Managers.[26]

Questions

22. Do you have any concerns relating to our proposals to introduce the internal model of management for Investment Companies which choose to do so? If so, what are they, and how should they be addressed?

23. Do you have any concerns relating to the proposed fees and capital requirements for Corporate Directors in paragraph 129? If so, what are they, and how should they be addressed?

Proposals relating to the Fund Manager's remuneration strategies and practices

Analysis

130. Both AIFMD and UCITS contain detailed remuneration related requirements, which are based on an overarching obligation placed on the fund manager that it establishes and applies remuneration policies and practices that are:

> '*consistent with, and promote, sound and effective risk management which do not encourage risk-taking which is inconsistent with the risk profile, rules or constituent documents of the fund/s it manages*'.

131. The above overarching obligation stems from the FSB's sound remuneration principles implemented after the last financial crisis, and embedded in the international standard setters' principles.

[25] The systems and controls required by a Corporate Director of an Investment Company are likely to be less onerous than required by an external Fund Manager, which would have more extensive systems and controls, including human and IT resources, to manage its business as it would generally include multiple Funds.

[26] All Fund Managers (including QIF managers) are classified under the Prudential (PIB) module of the DFSA Rulebook as Category 3C firms. Corporate Directors would also fall into this category and be subject to the same capital requirements as all Fund Managers.

132. The DFSA regime for Authorised Persons incorporates a similar principle (Core Principle 12) and there are detailed remuneration related requirements that firms are required to follow in order to meet that overarching Core Principle (see GEN 5.3.31).

133. However, our current remuneration-related requirements applicable to Fund Managers relate to the business of the Fund Manager. Strictly speaking, a Fund Manager is required to comply with them with regard to its 'own' business, and not necessarily with regard to the business of each Fund it manages.[27]

134. This is so because the Fund Manager is not the same legal entity as the form of the Fund, i.e. the Investment Company, Trust or Partnership (except for Investment Companies, if we adopt the proposal for internal management). We also have Prospectus disclosure requirements relating to the Fund Manager's fees and charges, and conflicts of interest related provisions. However, these requirements do not necessarily and clearly require a Fund Manager to have in place 'sound policies and practices' that are consistent with, and promote, sound and effective risk management without encouraging inappropriate risk-taking within Funds it manages.

Proposal 18

See draft CIR 8.3.1(3) and associated Guidance in Appendix 2

135. We propose to put beyond doubt that the obligations applicable to a Fund Manager as a regulated firm, to have sound remuneration structures and policies, extend to the investment activities of the Funds it manages. Fund Managers would continue to have the flexibility to structure their remuneration policies and practices relating to the Funds they manage, taking into account the nature and complexity of the investment activities of the relevant Funds.

Question

24. Do you have any concerns relating to our proposals on remuneration? If so, what are they, and how should they be addressed?

Fund Manager's obligations relating to the custody of Fund Property

Analysis

136. We are aware that firms in the Centre experience significant difficulty in finding suitable custodians, as there is only a limited pool of suitably qualified persons who could carry out custody functions. Although our regime permits the oversight function in a Public Fund to be performed by its custodian, we believe finding custodians who could be willing to perform both functions would be more difficult, and the costs associated may also be significantly higher.[28]

137. Our current requirements relating to custody of Fund Property are not out of alignment with the IOSCO Standards, which provide that the regulatory regimes should ensure that

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[27] Although it may be argued that having a compensation structure that is not well aligned with the risk profile and investment objectives of a fund it manages could have an adverse impact on the long term viability of the fund manager's own business, and hence would need to be addressed by the fund manager.

[28] The requirements relating to the custody of the assets of collective investment undertakings (i.e. the depository requirements) under the UK/EU regimes are somewhat different to those applicable under the DFSA Funds regime. Broadly speaking, while the DFSA Funds regime separates the 'custody' function and the 'independent oversight' function (applicable only to Public Funds), the UK/EU regimes require an authorised depository to carry out both those functions in all collective investment undertakings.

effective mechanisms are in place to protect client assets from the risk of loss and insolvency of the CIS operator. Where third party custodians are used, client assets are identified as such by the third party custodian, and equivalent protection is afforded to client assets.

138. However, taking into account Centre-specific factors, we already permit a Fund Manager to use alternative custody arrangements (i.e. not entrusting Fund Property to an Eligible Custodian) in limited circumstances. Where a Fund does so, the Fund Manager is still required to ensure that the Fund Property is clearly identified as Fund Property and held separately from the property of the Fund Manager and of any other Funds the Fund Manager manages.[29]

Proposal 19

See draft CIR Rule 8.2.2(3)(c) at Appendix 2

139. In keeping with our risk-based approach to regulation, and taking into account DIFC-specific factors, we propose to allow, in the case of Exempt Funds, further flexibility for their Fund Managers, where the nature of the underlying Fund Property is highly illiquid (such as investment in infrastructure projects), to adopt self-custody, provided that the assets can be clearly identified as belonging to the Fund to mitigate the commingling risk. (Note – Fund Managers of QIF already have such flexibility.)

Question

25. Do you agree with our proposal to allow Exempt Funds and QIFs to have flexible alternative custody arrangements where the requirements proposed in paragraph 139 are met? If not, what are your reasons?

VII. ENHANCEMENTS RELATING TO PUBLIC FUND DISCLOSURE

Prospectus disclosure for Public Funds

Analysis

140. Through the listing of two Funds on Nasdaq Dubai, we became aware that:

(a) there is no ‘one-stop’ source document setting out the content of disclosure required in a Public Fund Prospectus, as under the MKT regime for Public Company Prospectuses; and

(b) there is insufficient harmonisation with the MKT Prospectus disclosure.

141. The concern under (a) arises due to the current CIR Appendix 7 (which sets out the content of Public Fund Prospectus Disclosure) not being comprehensive, with additional parts of Prospectus disclosure (such as those relating to specialist classes of Funds)

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[29] The permitted alternative custody arrangements are limited. For example, in the case of Property Funds, to meet ownership restrictions, or where the title deeds to Real Property can be held in the name of the Fund, thereby mitigating commingling risks; and in the case of Private Equity Funds, which are generally Exempt Funds or QIFs, because the underlying assets are illiquid and held by the Fund for the long term.

being found in various CIR Rules. This contrasts with the MKT content of prospectus disclosure, which provides a one-stop source.

142. The second concern arises because the format of the prospectus disclosure for Public Funds under CIR does not resemble the format used under MKT for Public Companies. While this is understandable, we could benefit from better alignment in terms of the format of disclosure between the Prospectuses for Funds and Public Companies.

143. The proposals below do not introduce additional disclosure content for Public Funds. Rather, they enhance the way in which the current content of Prospectus disclosure is presented in the Rulebook. They aim to provide better assistance to market participants (e.g. issuers) when preparing a listing Prospectus for a Public Fund, and for the exchange that provides the front-line oversight of listed companies, including listed Funds.

Proposal 20

As the enhancements proposed to CIR App 7 do not involve any substantial change to the current disclosure content, we have not included a draft of it for public comment.

144. We propose to:

(a) create a more comprehensive source document setting out the content of Public Fund Prospectus disclosure by incorporating additional disclosure required for specialist Fund classes, currently found in other CIR Rules, in CIR App 7;

(b) harmonising, as far as practicable, the format of disclosure for Public Funds in CIR App 7 with the headings and categories of disclosure required for Public Companies under MKT; and

(c) placing in the MKT module the source document referred to in (a) for a listing Prospectus for a Public Fund.

145. We also propose to align on-going disclosure relating to a Listed Fund, with these proposals, where needed.

Question

26. Do you have any concerns relating to our proposals on disclosure for Public Funds? If so, what are they, and how should they be addressed?

Legal accountability for prospectus and on-going disclosure of a Listed Fund

Analysis

146. The current Prospectus and on-going disclosure regime for Funds is based on the Fund Manager’s fundamental legal accountability to investors in the Fund for the management of the property held for or within the Funds. The Prospectus regime allows a Fund Manager to include in the Prospectus statements and opinions from third parties with their prior approval (and to which legal liability attaches), but regardless of the type or class of a Fund, a Prospectus must be issued, under our regime, by the Fund Manager.

147. We carry the above approach through to the listing regime for Funds, including for an Investment Company, where the Fund Manager remains the main entity responsible for

a listing Prospectus. Once the Fund is admitted to listing and trading, the Fund Manager is responsible for the listed entity's on-going disclosure to markets. We do so by making the Fund Manager the Reporting Entity of a Listed Fund.

148. We apply additional safeguards to Funds, through its Fund Manager, compared to normal commercial companies which are primarily regulated under the Companies Law. We consider this differentiation to be necessary and warranted, and in line with the IOSCO principles, under which the fund manager is entrusted with the obligations for the proper management of the fund and its underlying property.

149. We note that under the UK/EU regimes, an investment company:

(a) can be the issuer of a prospectus; and

(b) can, if it chooses to be 'internally managed', perform the investment management function which forms the core activity of a fund manager[30] either:

(i) by itself performing it; or

(ii) by appointing a delegate to carry out that function, which needs to be appropriately authorised to carry out the investment management function. The board retains the accountability for the determination of the investment objectives and policy, and the oversight of its effective implementation by the delegate;[31] and

(c) can appoint a designated external fund manager, which needs to be appropriately authorised to carry out the investment management function, who will be responsible for the investment portfolio management and risk management. In this case, the board does not itself have to be authorised as a fund manager of the investment company.

Proposal 21

See draft CIR Rules 14.1.1(1) and 14.2.1(5) in Appendix 2.

150. We believe that while there is merit in allowing an Investment Company (closed-ended or open-ended) to be the 'issuer' of a Prospectus, there is little justification to move away from the current position that ultimate legal accountability for the content of disclosure rests with the licensed Fund Manager. Accordingly, we propose that:

(a) if an Investment Company chooses to be 'internally managed' by its Corporate Director which is licensed and supervised (see Proposal 4), the issuer of the Prospectus will be the Investment Company. Its Corporate Director, as the licensed Fund Manager, would be responsible for the content of the Prospectus

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[30] Both UCITS and AIFMD define investment management as the 'core' function of a fund manager of a collective investment undertakings, with other activities related to fund management falling under administration functions.

[31] There is an overriding obligation under UCITS and AIFMD (and also in IOSCO principles) that the fund manager cannot be a 'letter box' entity. We believe that, for an investment company that appoints a designated external fund manager, that obligation applies to the designated fund manager. In the case of an internally managed investment company, provided its board remains accountable for the determination of the investment objective and policy and its effective implementation by a delegate, the board will not be deemed a letter box entity.

disclosure (subject to any opinions attributed to third parties with their consent)[32] and, similarly, for the on-going disclosure of material information to the markets, if the Investment Company is listed and traded; and

(b) if an Investment Company has an external Fund Manager, the company itself could issue the Prospectus, but the Fund Manager will continue to be legally responsible for the content of Prospectus disclosure and, if the Investment Company is listed and traded, for on-going disclosure to the markets.

151. In both (a) and (b), the Reporting Entity will be the licensed Fund Manager of the Investment Company (which is the Fund vehicle).

152. The above proposal:

(a) retains the important distinction which we draw between the Financial Services of:

(i) ‘Managing a Fund’ – where the Fund Manager remains legally responsible to investors in Funds; and

(ii) ‘Managing Assets’ – where the firm manages discrete portfolios belonging to discrete clients, including a Fund Manager, without pooling the assets of those clients, as Fund Managers do; [33]

(b) does not require any fundamental changes to the current Funds regime and the MKT regime, so far as they apply to a listed Fund.

Question

27. Do you have any concerns relating to our proposals on legal accountability? If so, what are they, and how should they be addressed?

Key investor disclosure

Analysis

153. Under the UCITS regime, the requirement for concise information to be included in a Key Investor Information Document (KIID) was introduced in 2011. This document provides concise information to investors, in what is intended to be a more understandable format than previous disclosure documents. We do not have a current

32 A Prospectus can contain opinions and statements provided by experts and other third parties. They are legally accountable to investors for those statements and opinions, if they have expressly agreed to the publication of their statements and opinions.

33 An Asset Manager can be appointed under a delegation by a Fund Manager to manage some or all assets of a Fund. In such a scenario, the Fund Manager remains legally accountable to investors in the Fund for the proper management of the Fund in accordance with the Constitution and the most recent prospectus of the Fund. The Fund Manager’s accountability to investors in the Fund includes accountability for any loss or damage resulting from an Asset Manager’s failure to carry out properly those functions which the Fund Manager delegated to the Asset Manager.

requirement for a Public Fund Prospectus to have a Summary as under MKT, or KIID as required under UCITS.

154. We believe that retail investors in Public Funds could benefit from having key information upfront in a summary form. This would also better harmonise the Fund Prospectus regime with the MKT Prospectus regime.

155. An EU KIID must contain essential disclosure relating to the Fund, in a clear, concise and easy to understand manner, without reference to other documents, namely:

(a) information to clearly identify the Fund and its classification;

(b) a short description of the Fund's investment objectives and investment policy for achieving those objectives;

(c) past-performance presentation or, where relevant, performance scenarios;

(d) costs and associated charges; and

(e) risk/reward profile of the investment, including appropriate guidance and warnings in relation to the risks associated with investments in the relevant Fund.

Proposal 22

See draft CIR Rule 14.3.1(d) in Appendix 2.

156. We propose to require a Summary, containing similar information to a KIID, to be included in a Public Fund Prospectus.

157. We propose to use the term Summary to retain consistency with the MKT Prospectus regime. As part of the Prospectus, the Summary information will be subject to the legal accountability structure applicable to the Prospectus as a whole. If the information in a Summary becomes misleading or deceptive, the requirement to issue a supplementary or replacement Prospectus arises.

Question

28. Do you have any concerns relating to our proposal to introduce an information Summary as part of a Public Fund Prospectus? If so, what are they, and how should they be addressed?

VIII. REMOVING UNINTENDED EFFECTS AND ANOMALIES

Background

158. We found some unintended effects and ambiguities, which are discussed below.

The extent to which a Public Fund is required to achieve a spread of risk

Analysis

159. The common objective of investors, especially retail, in participating in collective investment arrangements is to have access to a diversified portfolio of assets – thereby spreading risks associated with such investments, as recognised under IOSCO.[34]

160. The Funds regime currently deals with the risk spreading element through requirements applicable to Fund Managers. CIR 10.5.2 provides that:

'… a Fund Manager must take reasonable steps to ensure that the Fund Property of a Public Fund provides a 'spread of risk' that is consistent with the investment objectives and policy of the Fund as stated in its most recently published Prospectus, and in particular, any investment objectives as regards return to the Unitholders whether through capital appreciation or income or both.'

161. The above requirement applies to all Public Funds, regardless of their form (i.e. an Investment Company, Investment Partnership or Investment Trust). However, if a Public Fund takes the form of an Investment Company, there is an overlapping, more detailed, requirement relating to 'risk-spreading' under Companies Regulation 13.3.6, which requires an Investment Company (i.e. either open-ended or closed-ended) to have in its Articles of Association provision as to the following:

The objects of the Investment Company, including:

(i) detail as to the kind of property in which the Investment Company is to invest; and

(ii) a statement that the object of the Investment Company is to invest in property of that kind with the aim of 'spreading investment risk' or with the aim of investing in a single property, as the case may be, and of giving its shareholders the benefit of the results of the management of that property.

162. There is some inconsistency between CIR 10.5.2 and Companies Regulation 13.3.6. The latter unequivocally requires an Investment Company to spread investment risk, unless the Fund is investing in a single property, whereas CIR 10.5.2 appears to be more ambiguous as to:

(a) the extent to which a Fund Manager of a Public Fund should take reasonable steps to ensure that the Fund Property provides a spread of risk consistent with the investment objectives and policy of the Fund; and similarly

(b) the extent to which such a Fund could be constituted as a single property Fund.

Proposal 23

See draft Guidance under CIR Rule 10.5.2 in Appendix 2

163. We propose to remove the above ambiguity by:

(a) seeking the removal of the Companies Regulation provision, referred to in paragraph 160, dealing with spreading investment risk; and

[34] Funds are broadly described by IOSCO standards as including (a) open-ended schemes that redeem shares/units on a continuous or periodic basis, and (b) closed-ended schemes whose shares/units are traded on an exchange/market, to provide a means for investors to achieve a diversified exposure to investment opportunities.

(b) incorporating Guidance under CIR 10.5.2 to clarify that the DFSA regime provides a broad scope, within which a Fund Manager of a Public Fund can achieve a prudent spread of risk, consistent with its investment objectives and policy as stated in its Prospectus.

Question

29. Do you have any concerns relating to prudent spread of risk in Public Funds? If so, what are they and how should they be addressed?

The current exclusion for closed-ended investment companies and partnerships

Analysis

164. Under the exclusion in CIR 2.1.10, a closed-ended Investment Company or a closed-ended Partnership is not regulated as a Fund (the exclusion), unless:

(a) on reasonable grounds, the purpose or effect of the Body Corporate or Partnership appears to be investment management;

(b) investment management is undertaken in the exercise of discretion for a collective purpose; and

(c) investment activities of the Body Corporate or Partnership relate to Investments (e.g. shares, derivatives) or Real Property (i.e. leasehold or freehold real estate).

165. This exclusion was introduced in 2008 to exclude ‘ordinary commercial companies’ from being regulated as Funds, but it is no longer appropriate as it creates an uneven playing field between two types of closed-ended Investment Companies and Partnerships – based on the type of underlying assets used for collective investment purposes. If the underlying assets are Investments or Real Property, a closed-ended Investment Company or Partnership is currently regulated as a Fund. In contrast, if such a company or partnership invests in other classes of assets (such as collectibles, commodities or infrastructure projects), then it is currently not regulated as a Fund.

166. The exclusion is inconsistent with the IOSCO principles, which do not envisage any collective investment arrangement, particularly those targeting retail investors, being excluded from regulation based on the of underlying classes of assets used for collective investment purposes.[35]

167. There are also a number of technical ambiguities relating to the scope of this exclusion. For example, the only type of partnership that can be used for collective investment is an Investment Partnership, i.e. one established under the ‘Limited Partnership Act 2006’.

[35] This exclusion is also out of kilter with the UK/EU approach after the introduction of AIFMD. A collective investment undertaking which fulfils the criteria of an Alternative Investment Fund (AIF) is required to be managed by an Authorised Alternative Investment Fund Manager (AIFM), which is required to comply with extensive requirements relating to each AIF it manages. Whether the AIF is open-ended or closed-ended, and regardless of the underlying assets invested in, this does not place it beyond regulation.

Therefore, the exclusion for a closed-ended partnership is applicable only to a closed-ended 'limited partnership', and not to any other type of partnership covered under the definition of the term 'Partnership' (such as a general partnership or a partnership established under laws outside the DIFC). Similarly, to the extent the exclusion also refers to a closed-ended 'Body Corporate', it includes a Limited Liability Partnership, which cannot be used as a Fund vehicle.

Proposal 24

See draft Article 26(4) in Appendix 1 and draft CIR 2.1.10 and Guidance under that Rule in Appendix 2.

168. To address the above concerns, and to ensure that ordinary commercial companies and partnerships remain outside the reach of the Funds regime, we propose to:

(a) amend the current exclusion in CIR 2.1.10;

(b) provide greater certainty relating to the use of an Investment Company, Investment Partnership or Investment Trust structure, by requiring their use only for collective investment purposes; and

(c) give Guidance on indicators that can be used to distinguish collective investment vehicles from commercial arrangements.

Question

30. Do you have any concerns relating to our proposals to distinguish between Funds and ordinary commercial arrangements? If so, what are they, and how should they be addressed?

Other miscellaneous issues

169. Through our on-going supervisory process, we have become aware of some further anomalies, which we intend to address.

Proposal 25

See draft IFR Rule 6.1.1(3) in Appendix 4.

170. The requirements in MKT Chapter 6 seem not to apply to Islamic Funds which are listed and traded. This inference arises because IFR Rule 6.1.1, which expressly refers to the application to an Islamic Fund of the requirements in CIR for conventional Funds, is silent about the application of the Listed Fund provisions in MKT chapter 6 to Listed Islamic Funds.

171. We propose to remove this ambiguity by including an express reference in IFR that Listed Islamic Funds are required to comply with the requirements in MKT Chapter 6.

See MKT Rule 6.3.1(b) (i) in Appendix 3 and draft IFR Rule 6.5.1(h) in Appendix 4.

172. Another issue relating to Islamic Funds is that the disclaimer required in a Prospectus of an Islamic Fund does not expressly refer to the fact that the DFSA has not determined whether a Fund held out as an Islamic Public Fund is Shari'a compliant. We propose to require such a disclaimer in an Islamic Public Fund Prospectus, both for the purposes of the

offer of Units to the public (in IFR) and, for the listing and trading of its Units (in MKT).

Question

31. Do you have any concerns relating to Proposal 25? If so, what are they, and how should they be addressed?

IX. TRANSITIONAL ARRANGEMENTS

173. We have not included any transitional Rules as part of this CP because we are of the view that the proposed changes are mainly of a facilitative nature. However, if any Person is undertaking activities, either under the current Funds regime or outside it, and needs time to meet the new requirements (if they are to be adopted following public consultation), we expect to provide at least 6 months transitional relief under a general Rule, or by way of a waiver or modification of the relevant Rules under Article 25 of the Regulatory Law 2004.

Question

32. Are there any proposals which you believe could require a transitional period? If so, what are they, and what period of transition would be appropriate?

General Question

33. Are there any other issues, not included in the package of proposals in this CP, which warrant our attention? If so, what are they, and why, and how, should they be addressed?

Annex A: Gap analysis on liquidity risks in open-ended Funds

Type of Risk	Risk Mitigants	Current DFSA requirements
Liquidity Risk	Prohibitions against certain type of Funds being open-ended, as their portfolio does not permit redemption and repurchase.	We prohibit Public Property Funds from being open-ended, due to liquidity concerns. We do not have any other prohibitions.
Liquidity Risk	Fund Manager having an investment policy and strategy that enables it to meet redemption requests in accordance with the Fund's constitution and the offer document.	This is implicit in our regime. A Fund is required to state its investment policy and how it proposes to achieve those objectives (see CIR App 7).
Liquidity Risk	Fund Manager having adequate risk management 'processes and procedures' for liquidity management, such as regular stress testing and knowing the investor type and expectations.	We do not have detailed liquidity management related processes and procedures requirement. We have an overarching requirement that a Fund Manager must have adequate systems and controls, taking into account, amongst other things, the risks to which the Fund may be exposed due to the nature and complexity of the Fund's investments and operations (Article 38(1) of the CIL).
Liquidity Risk	Independent oversight and monitoring of the effectiveness of risk management processes and procedures adopted by a Fund Manager, and remediation where gaps are found.	We require each Public Fund to have an oversight function which can be performed by an independent oversight committee, trustee or the Eligible Custodian. The entity providing oversight must, among other things: • monitor whether the Fund Manager is managing the Fund in accordance with the investment mandate of the Fund; • assess whether the Fund Manager's systems and controls, particularly those relating to risk management and compliance, operate as intended and remain adequate; and • report to the Fund Manager of any gaps found and, if not remedied within 30 days, report to the DFSA. Article 40 of the CIL.
Liquidity Risk	Using a buffer, such as holding a minimum amount of liquid assets in the portfolio at all times (cash or near cash), or having a line of credit from a reliable source.	We do not have general requirements, or requirements specific to any Specialist Class of Fund, relating to liquidity management, with the exception of Money Market Funds (MMFs).
Liquidity Risk	Restrictions against investment in illiquid assets, including specifying what type of assets are considered illiquid.	It is implicit that a Fund must have an investment policy that matches its investment objectives, including risk spread. We do not have specific restrictions against investment in illiquid assets (except for MMFs as noted above).
Liquidity Risk	Diversification of assets (so that if a particular class of assets becomes illiquid, the fund does not have a large exposure to that class of assets)	We have an overarching requirement in CIR 10.5.2 that a Fund Manager must take reasonable steps to ensure that the Property of a Public Fund provides a spread of risk that is consistent with the investment objectives and policy of the Fund stated in its most recently published Prospectus. In particular, it must be consistent with any investment

		objectives as regards return to the Unitholders whether through capital appreciation, or income, or both.
Liquidity Risk	Fund manager having available to it liquidity risk management tools such as swing-pricing or anti-dilution levies, side pockets, redemption gates, redemption in kind, and suspension of redemptions	We have some of these risk management tools available to Fund Managers (and, if a Fund is listed and traded, to the exchange). For example, under Article 37 of the CIL, a Fund Manager can temporarily suspend redemption of Units due to exceptional circumstances if it is in the interest of Unitholders to do so, but must notify the trustee (if any) and the DFSA. The Constitution of a Fund must state the grounds on which the Fund Manager may suspend redemptions and procedures to be followed.
The 'first-mover advantage' risk	The overarching fiduciary obligation on the Fund Manager to treat investors in the same class equally, and investors in different classes fairly	We have this obligation embedded in the CIL – Article 22(2)(d). In addition, we impose an explicit obligation on Fund Managers of open-ended funds that they must effect redemptions in a manner that is fair and reasonable as between all Unitholders and prospective Unitholders (CIR 8.6.1(b)).
The 'first-mover advantage' risk	Anti-dilution levies (or swing-pricing), side pockets, gates and suspension of redemptions, which also mitigate against first mover advantage	We have requirements relating to anti-dilution levies. See CIR 8.4.1(5), which provides that a Fund Manager may make a dilution levy or dilution adjustment if it is permitted in the Fund's Prospectus. It must also be applied in a fair manner to reduce dilution and solely for that purpose. We do not provide for side-pocket arrangements.
Spill-over risks – i.e. counterparty and contagion risks	Limits on borrowing	We impose limits on borrowing for certain types of Funds. For example, Public Funds (other than Property Funds) can borrow up to 20% of the net asset value of the Fund Property (CIR 10.5.7(2)). A Fund Manager of a Property Fund may borrow up to 50% of the gross assets of the Fund Property.
Spill-over risks – i.e. counterparty and contagion risks	Restrictions relating to inter-fund investment/borrowing	We have restrictions relating to investment in other funds. For example, a Public Fund is prohibited from investing more than 20% of its value in Units of other Funds (CIR 10.5.4(c)). PCCs are prohibited from investing assets of one Cell in another Cell of the same Umbrella Fund. Such restrictions do not apply to Fund of Funds or Feeder Funds.
Spill-over risks – i.e. counterparty and contagion risks	Controls relating to the use of prime brokers	We do not permit the use of prime brokers in the case of Public Funds. CIR 13.6.3(a) allows only Exempt Funds and QIF to use prime brokers, and to do so subject to certain disclosure in the offer document, including warnings.
Spill-over risks – i.e. counterparty and contagion risks	Restrictions against concentration relating to counterparties	We do not have specific requirements relating to concentration, but risk spreading element that applies to Public Funds may mitigate this risk.

Spill-over risks – i.e. counterparty and contagion risks	Some of the liquidity management tools such as side pockets, redemption 'in kind' or in specie redemption	We have some but not all these liquidity risk management tools. For example, we do not have side pockets arrangements.
Information asymmetry/Investor expectation gap	Disclosure to investors of the risks associated with the portfolio	Our Prospectus disclosure requirements cover this aspect clearly.
Information asymmetry/Investor expectation gap	Education of investors about the liquidity management tools available to the fund manager – such as anti-dilution levies, side pockets and redemption gates and suspension of redemptions	We do not have any requirements imposed on Fund Managers to undertake investor education on these aspects.
Information asymmetry/Investor expectation gap	Matching investor profiles to redemption intervals offered	This is probably implicit in our regime.

Appendix A: Table of Comments

Name of commentator:		
Name of entity (if applicable)		
Is your response confidential?	☐ Yes	☐ No
If your response to the previous question is Yes, please state your reasons for such a request:		

Notes:

- The DFSA reserves the right to publish, including on its website, any comments you provide. However, if you wish your comments to be kept confidential, you must expressly request at the time of making comments that this should be the case. You must also provide an explanation of why you wish your comments be kept confidential.
- Your answers may require explanations. Please include those in the second column.
- If you do not wish to comment on any issue, please select the “no comments” box.

Ref.	Response	Comments on proposal	
Q1:	**Do you have any concerns relating to our proposals to remove the number-based criterion from the current definitions of Funds? If so, what are they, and how should they be addressed?**		
	☐ Yes		☐ No comments
	☐ No		
Q2:	**Do you have any concerns about the way in which we propose to apply the Public Company and Private Company distinction in the proposed Companies Law to Funds? If so, what are they, and how should they be addressed?**		
	☐ Yes		☐ No comments
	☐ No		
Q3:	**Do you have any concerns relating to our proposals to address liquidity risks in open-ended Public Funds, as proposed in paragraphs 41 – 43? If so, what are they, and how should they be addressed?**		
	☐ Yes		☐ No comments
	☐ No		
Q4:	**Do you have any concerns relating to Proposal 3? If so, what are they, and how should they be addressed?**		
	☐ Yes		☐ No comments
	☐ No		
Q5:	**Do you think we should introduce actively managed ETFs to the DFSA regime? What are your reasons, and how should any risks associated with such ETFs be addressed?**		
	☐ Yes		☐ No comments
	☐ No		
Q6:	**Do you have any concerns relating to our proposed approach to provide clarity relating to ETFs, and their characteristics? If so, what are they, and how should they be addressed?**		
	☐ Yes		☐ No comments
	☐ No		
Q7:	**Do you have any concerns relating to our proposed clarifications on types of ETFs and ETF terminology? If so, what are they, and how should they be addressed?**		
	☐ Yes		☐ No comments
	☐ No		
Q8:	**Do you have any concerns relating to our proposed criteria for indices or other benchmarks which ETFs track? If so, what are they, and how should they be addressed?**		
	☐ Yes		☐ No comments
	☐ No		
Q9:	**Do you have any concerns relating to our proposal that an ETF Fund Manager must ensure that the Units of its ETF are traded on exchange as close to its NAV (or iNAV, if available)? If so, what are they, and how should they be addressed?**		
	☐ Yes		☐ No comments
	☐ No		
Q10:	**Do you have any concerns relating to our proposals for disclosure in an ETF Prospectus regarding underlying indices and benchmarks? If so, what are they, and how should they be addressed?**		
	☐ Yes		☐ No comments
	☐ No		
Q11:	**Do you have any concerns about our proposals for ongoing disclosure to markets for ETFs? If so, what are they, and how should they be addressed?**		
	☐ Yes		☐ No comments
	☐ No		
Q12:	**Do you have any concerns relating to our proposed fee disclosure requirement? If so, what are they, and how should they be addressed?**		
	☐ Yes		☐ No comments

Ref.	Response	Comments on proposal	
	☐ No		
Q13:	**Do you have any concerns about our proposals to strengthen Related Party transaction provisions to include arrangements with Price Information Providers who provide custom made indices or benchmarks for ETFs? If so, what are they, and how should they be addressed?**		
	☐ Yes		☐ No comments
	☐ No		
Q14:	**Do you agree with our proposal to allow only foreign ETFs which meet the domestic ETF criteria to be marketed in or from the DIFC? If not, what are your reasons?**		
	☐ Yes		☐ No comments
	☐ No		
Q15:	**Do you have any concerns relating to our proposed Guidance relating to the distinction between property companies which are commercial companies and Investment Companies? If so, what are they, and how should they be addressed?**		
	☐ Yes		☐ No comments
	☐ No		
Q16:	**Do you have any concerns relating to our proposal to retain the requirement that Public Property Funds must be closed-ended? If so, what are they, and how should they be addressed?**		
	☐ Yes		☐ No comments
	☐ No		
Q17:	**Do you have any concerns about our proposal to allow Exempt Property Funds and QIFs to be either closed-ended or open-ended? If so, what are they, and how should they be addressed?**		
	☐ Yes		☐ No comments
	☐ No		
Q18:	**Do you have any concerns relating to our proposal to allow Public Property Funds a period of three years to list and trade? If so, what are they, and how should they be addressed?**		
	☐ Yes		☐ No comments
	☐ No		
Q19:	**Do you have any concerns about our proposal to allow an Exempt Property Fund or Property QIF, if its Units are placed with Professional Investors on the basis that it is 'intending' to be a Public Fund, to also have three years to list and trade? If so, what are they, and how should they be addressed?**		
	☐ Yes		☐ No comments
	☐ No		
Q20:	**Do you have any concerns relating to our ongoing classification of REITs as Funds? If so, what are they, and how should they be addressed?**		
	☐ Yes		☐ No comments
	☐ No		
Q21:	**Do you have any concerns relating to our proposal to allow Exempt Funds and QIFs to use the name REIT if they meet certain requirements? If so, what are they, and how should they be addressed?**		
	☐ Yes		☐ No comments
	☒ No		
Q22:	**Do you have any concerns relating to our proposals to introduce the internal model of management for Investment Companies which choose to do so? If so, what are they, and how should they be addressed?**		
	☐ Yes		☐ No comments
	☐ No		
Q23:	**Do you have any concerns relating to the proposed fees and capital requirements for Corporate Directors in paragraph 129? If so, what are they, and how should they be addressed?**		
	☐ Yes		☐ No comments

Ref.	Response	Comments on proposal	
	☐ No		
Q24:	**Do you have any concerns relating to our proposals on remuneration? If so, what are they, and how should they be addressed?**		
	☐ Yes ☐ No		☐ No comments
Q25:	**Do you agree with our proposal to allow Exempt Funds and QIFs to have flexible alternative custody arrangements where the requirements proposed in paragraph 139 are met? If not, what are your reasons?**		
	☐ Yes ☐ No		☐ No comments
Q26:	**Do you have any concerns relating to our proposals on disclosure for Public Funds? If so, what are they, and how should they be addressed?**		
	☐ Yes ☐ No		☐ No comments
Q27:	**Do you have any concerns relating to our proposals on legal accountability? If so, what are they, and how should they be addressed?**		
	☐ Yes ☐ No		☐ No comments
Q28:	**Do you have any concerns relating to our proposal to introduce an information Summary as part of a Public Fund Prospectus? If so, what are they, and how should they be addressed?**		
	☐ Yes ☐ No		☐ No comments
Q29:	**Do you have any concerns relating to prudent spread of risk in Public Funds? If so, what are they and how should they be addressed?**		
	☐ Yes ☐ No		☐ No comments
Q30:	**Do you have any concerns relating to our proposals to distinguish between Funds and ordinary commercial arrangements? If so, what are they, and how should they be addressed?**		
	☐ Yes ☐ No		☐ No comments
Q31:	**Do you have any concerns relating to Proposal 25? If so, what are they, and how should they be addressed?**		
	☐ Yes ☐ No		☐ No comments
Q32:	**Are there any proposals which you believe could require a transitional period? If so, what are they, and what period of transition would be appropriate?**		
	☐ Yes ☐ No		☐ No comments
Q33:	**Are there any other issues, not included in the package of proposals in this CP, which warrant our attention? If so, what are they, and why, and how, should they be addressed?**		
	☐ Yes ☐ No		☐ No comments