

## Link'n Learn

### AIFMD Webinar Remuneration and Delegation



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# Introductions



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# FCA Consultation Paper on AIFMD Remuneration (6<sup>th</sup> September 2013)

## Summary of key points

### Timing and Scope

- Timing - First full performance period after authorisation. So, for firms authorised in 2014, this would mean the 2015 performance year (assuming calendar year performance periods).
- 'Delegation Rules' – MiFID, CRD & similar are likely sufficient
- Identified Staff – generally pay-out process rules will not apply to those whose total remuneration is less than £500,000 and where less than 33% of this is delivered as variable remuneration.

### Deferral, retention, malus and clawback

- Quantitative AUM thresholds:
  - £4bn to £6bn - Unleveraged closed-ended funds, e.g. Private Equity
  - £500m to £1.5bn – Others, e.g. Hedge Funds, Asset Managers
- Other factors including, size, ownership, risk level, fee structures

### Payment in fund units or similar instruments

- Disapplication possible where minimum investment requirements or sufficient legal/regulatory constraints
- Alternatives, including shares in fund manager
- Also applicable for staff where there are conflicts of interest, e.g. compliance and audit functions

### Remuneration committees

- Quantitative AUM thresholds and other factors should be considered
- Listed firms with equity traded on regulated market likely to be significant

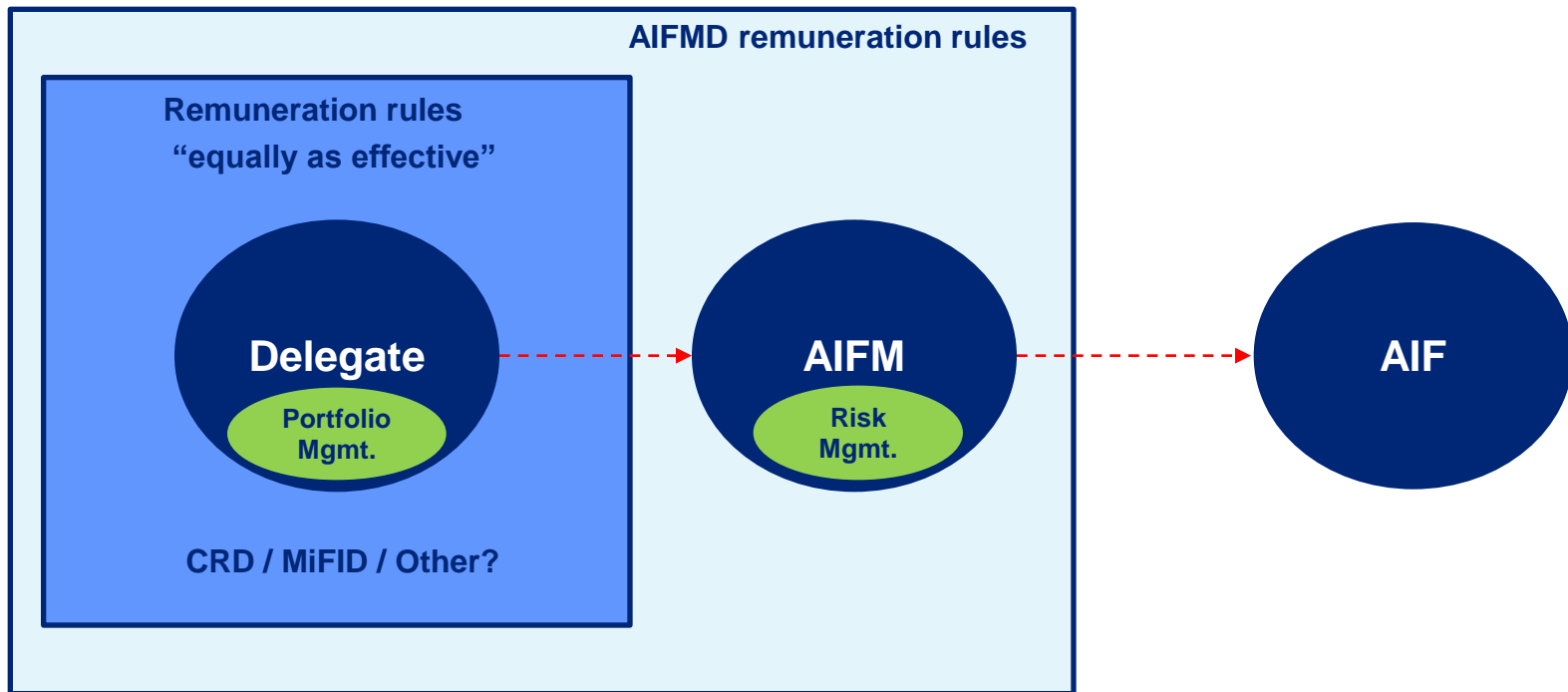
### Partnerships

- Determine proportion of profits that is "remuneration" – both "fixed" and "variable"
  - Refer to existing payments
  - Refer to benchmark – services performed and/or return on equity invested
- FCA in discussions with HMT on tax

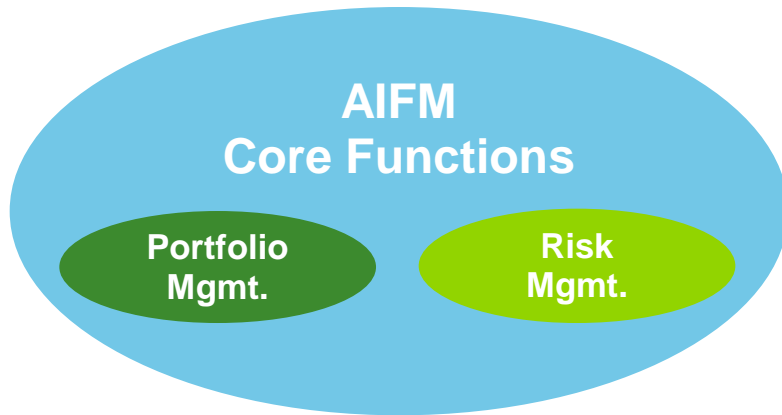
### General requirements

- These still apply, including:
  - Reporting remuneration in annual reports of funds
  - Remuneration policy subject to review at least annually

# AIFMD remuneration – The ESMA “delegation” rule



# AIFMD delegation framework and letter box rules







AIFM has to perform functions relating to **either** PM or RM and must be “closely involved in the decision making of its delegates”

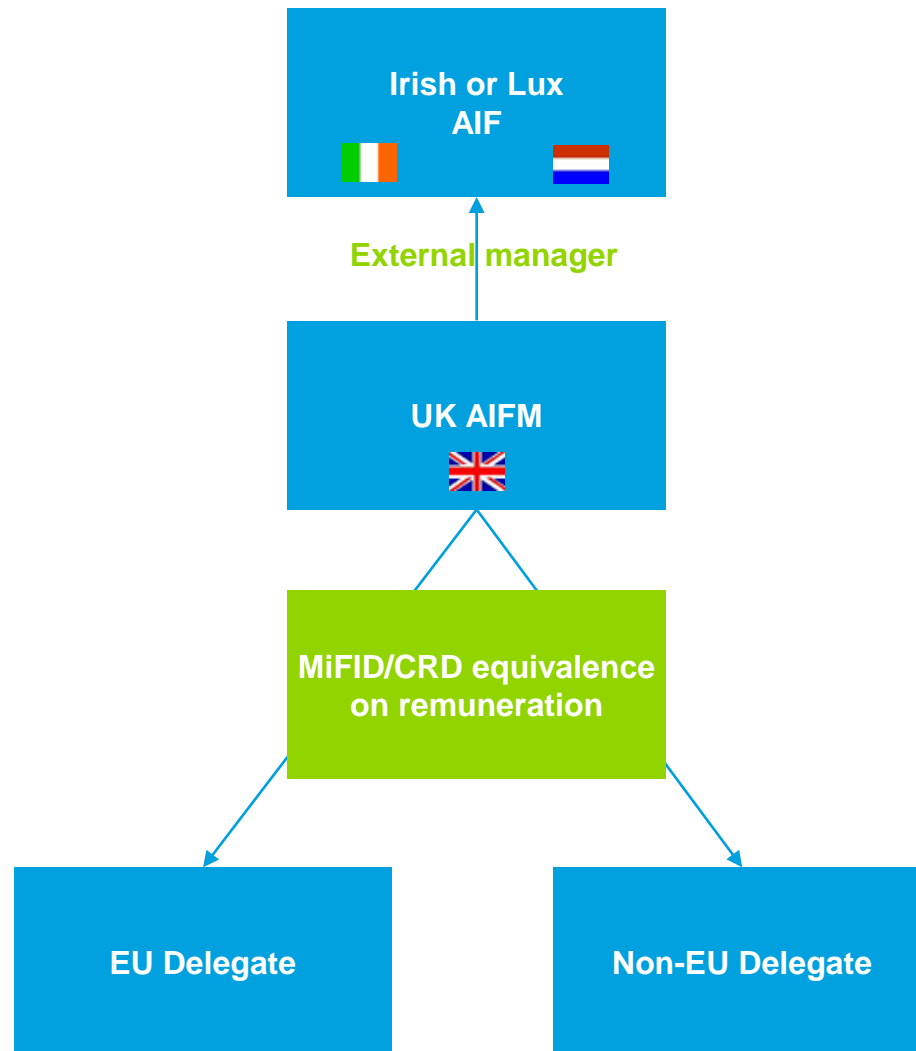


- Delegation of the core and other investment management (IM) functions is possible
- But an AIFM may not delegate IM functions to the extent that it becomes a “**letter-box entity**”
- IM functions cannot be delegated “to an extent that **exceeds by a substantial margin** the investment management functions performed by the AIFM itself”

Key factors to determine if AIFM is a letter-box entity

- Does not have the necessary resources and expertise to supervise delegates 
- Loss of contractual rights over delegates 
- Cannot mitigate risks of delegation 
- Balance of investment management (portfolio management & risk management) functions delegated compared to those performed by the AIFM 

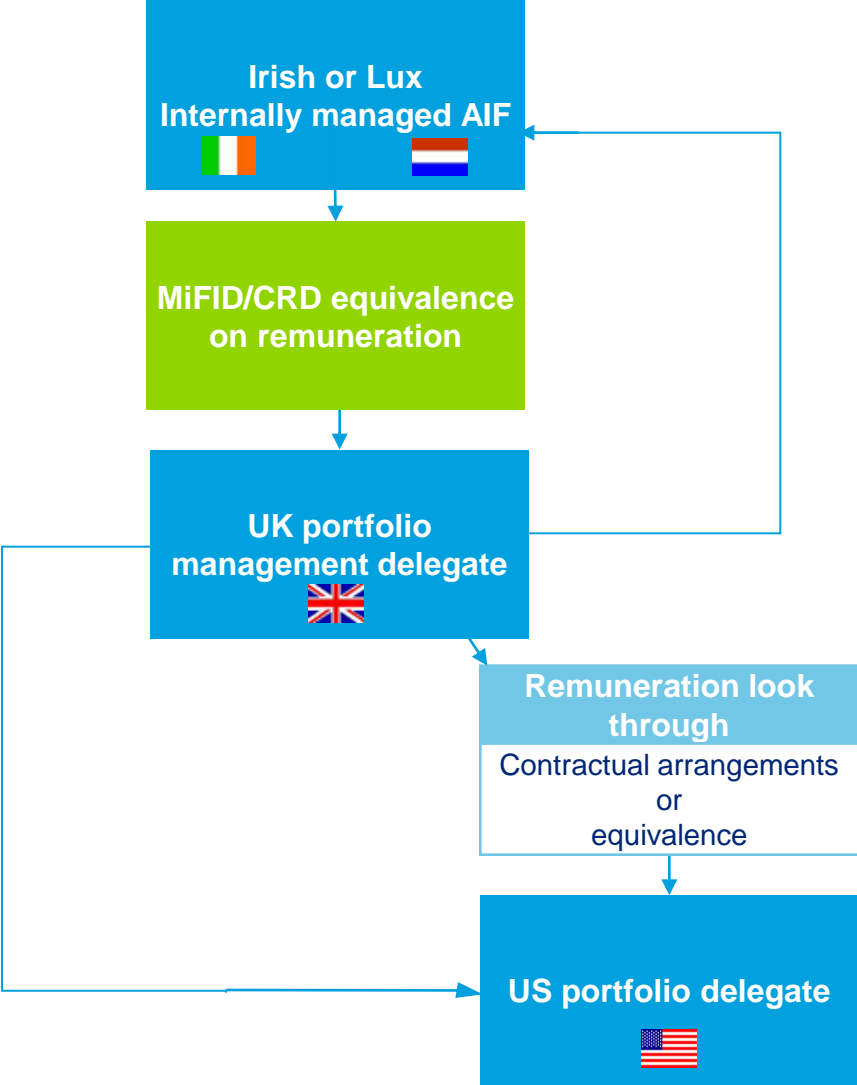
# Case 1: UK AIFM managing an Irish/Lux AIF



## Key Points

- UK FCA draft guidance on remuneration rules, including delegation rule where relevant
- Consider provision of cross-border MiFID services if seeking a variation of permission
- Local tax residence of the fund
- Equivalence on remuneration does not necessarily mean having to apply AIFMD rules
- Proportionality mitigate the remuneration look through

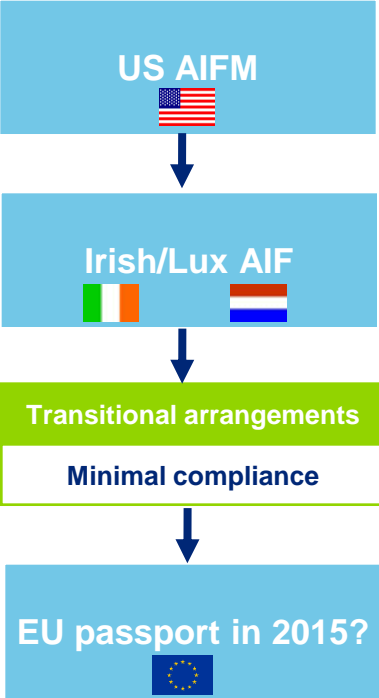
# Case 2: Irish/Lux AIFM with a UK Portfolio Manager



### Key Points

- Need to demonstrate sufficient substance to pass the letter box test
- Proportionality could be used to disapply the “Payout Process Rules”
- Less rules may then apply to the remuneration look through
- Determine appropriate contractual arrangements

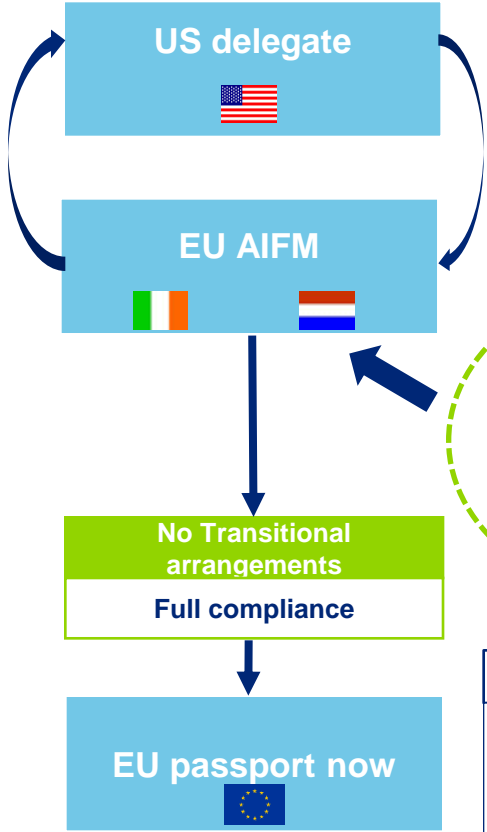
# Case 3: US Portfolio manager managing an Irish/Lux AIF



Segregate EU business?

**Key Points**

- No EU passport initially
- Reporting and disclosure requirements apply if distributed in the EU
- Option to “wait and see” until at least 2015
- Carving out EU business provides greater possibilities to apply proportionality
- Avoid challenging overlap between EU and US framework



Management company?  
Internally managed AIF?  
Third party AIFM?

**Key Points**

- EU passport
- Extra cost of substance compliance
- Proportionality may be used to disapply Pay-out Process rules
- Ready made compliance framework by partnering with a third party
- Loss of some control?



Questions



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