



Central Bank of Ireland
Administrative Sanctions Procedure

Settlement Notice

To: Waystone Fund Management (IE) Limited (WFM)

Date: 6 November 2024

Part 1. Action

- 1.1. For the reasons set out in this Settlement Notice, the Central Bank of Ireland is publishing a statement concerning WFM, pursuant to Section 33BC(2) of the Central Bank Act 1942 as amended (the **1942 Act**), for contraventions of the European Union (Alternative Investment Fund Managers) Regulations, 2013 [S.I. No.257 of 2013] (the **2013 AIFM Regulations**) between May 2018 and August 2020.
- 1.2. WFM has agreed to the facts in Part 2 (the **Undisputed Facts**) and admitted the prescribed contraventions in Part 3 of this Settlement Notice, such that further investigation is unnecessary.¹ On this basis, the Central Bank has decided that it is appropriate to impose the following sanctions:
 - A reprimand, and
 - A monetary penalty of €562,160 with the application of a 30% settlement scheme discount bringing the amount to €393,512.

¹ Section 33AR(1)(a)(ii) of the 1942 Act: “where there are undisputed facts that in the reasonable opinion of the Bank render an investigation unnecessary, suspects on reasonable grounds that a person is committing or has committed a prescribed contravention...”



- 1.3. WFM has agreed to these sanctions,² however they will not take effect unless confirmed by the High Court.³
- 1.4. Further detail on the contraventions and sanctions are set out in Parts 3 and 4 of this Settlement Notice.

Summary of Reasons for the Central Bank's Action

- 1.5. WFM is authorised as an alternative investment fund manager (**AIFM**) and is subject to the requirements of the 2013 AIFM Regulations.⁴ Investor protection is a core objective of those Regulations, which prescribe various requirements aimed at safeguarding investors.
- 1.6. WFM delegated its investment management functions to a third party investment manager (the **Investment Manager**). The delegation of certain investment management functions is common in the global funds sector but importantly, the AIFM retains ultimate responsibility and is required under law to ensure proper oversight and control of any delegates.⁵
- 1.7. The matters that form the background to the Central Bank's action relate to an alternative investment fund (**AIF**)⁶ (the **Fund**) for which WFM was the AIFM. The Fund targeted qualifying, informed investors and had a minimum subscription of €100,000 (or its foreign currency equivalent). The Fund was authorised by the Central Bank in May 2018 and launched in October 2018.

² In this case, WFM has also agreed to dispense with an Inquiry.

³ Pursuant to Section 33 AWA of the 1942 Act.

⁴ WFM is also authorised as a UCITS management company. WFM was previously Montlake Management Limited. It became part of the Waystone Group following an acquisition in November 2020, and changed its name on 1 February 2021.

⁵ Regulation 21 (1)(f) of the 2013 AIFM Regulations.

⁶ AIFs are not subject to EU rules on asset eligibility and concentration. However where authorised by the Central Bank, an AIF must comply with the Central Bank's AIF Rulebook which contains certain rules relating asset eligibility and concentration. Retail Investor AIFs are subject to more stringent rules than Qualifying Investor AIFs, which are designed for professional investors.



- 1.8. Following the Fund's authorisation in May 2018, WFM appointed an Investment Manager to the Fund. WFM had previously appointed the same Investment Manager to manage a UCITS.⁷ The investment strategy of the Fund included investing in illiquid assets. Due to the pre-existing relationship between WFM and the Investment Manager, WFM conducted limited due diligence on the Investment Manager's qualifications and capabilities when appointing it to the Fund. However, from the limited due diligence carried out, the Investment Manager's inexperience in managing illiquid assets was objectively clear and should have been identified by WFM.
- 1.9. Between the Fund's launch in October 2018 and February 2019, the Investment Manager invested €17.7 million (equating to 89% of the Fund's assets) in two Loan Notes, a type of illiquid, non-exchange traded instrument. Such investments were within the investment strategy outlined in the Fund's prospectus and were described as being difficult to value with accuracy because there are no active markets for such assets. The Loan Notes represented a new investment asset class for WFM yet WFM did not update its valuation policies and procedures to take account of these assets.
- 1.10. Following the initial investment, WFM was informed by the Investment Manager that the issuer of the Loan Notes (the **Issuer**) was also the only source of a valuation for the Loan Notes, creating a conflict of interest as the Issuer was potentially incentivised to manipulate the valuations for the Loan Notes in order to maintain or increase the Fund's investment in the Loan Notes. The valuations provided by the Issuer were in turn used to calculate the Net Asset Value (**NAV**) of the Fund, which was relied upon by investors in the Fund to inform decisions concerning their investment strategy.

⁷ UCITS are primarily designed for retail investors and are subject to rules derived from EU law on liquidity, asset eligibility and asset diversification. AIF is a broad term that encompasses all funds which are not UCITS. The Fund was a sub-fund of an ICAV umbrella fund structure.



- 1.11. Unknown to WFM, a senior executive of the Investment Manager with direct involvement in making investment decisions for the Fund was also the owner and director of the Issuer. This created an additional conflict of interest.
- 1.12. In late 2019, the ICAV's auditor identified concerns about the Loan Notes during the Fund's annual audit, including the identification of conflicts of interest and concerns in relation to the methodology and the accuracy of the valuations being provided by the Issuer. In order to address the auditor's concerns, WFM sought the return of the Fund's investment in the Loan Notes.
- 1.13. In December 2019, the Investment Manager represented to WFM that steps were in train to return the Fund's investment. In January 2020 an amount of €7.539 million was returned, representing approximately 40% of the Fund's total investment in the Loan Notes, however no further monies were ever returned.
- 1.14. On 4 August 2020, the ICAV, on the recommendation of WFM, made the decision to suspend investor dealing in the Fund, ceasing any new or additional subscriptions or investor redemptions, while the balance of the Fund's investment in the Loan Notes remained outstanding. Subsequent legal steps undertaken by WFM in an effort to recover the funds were unsuccessful. Failure to secure the return of the funds resulted in the investors in the Fund incurring a loss of €10.2m.
- 1.15. On 5 August 2020, WFM notified the Central Bank that the Fund had been suspended due to a delay in the return of the funds invested in the Loan Notes. This was the first time that the Central Bank was notified of any issues relating to the investment in the Loan Notes, contrary to the 2013 AIFM Regulations, which require that the Central Bank be notified when an AIFM becomes aware of potential breaches of the 2013 AIFM Regulations. WFM had been aware of potential breaches from the point at which they were initially identified during the 2019 audit.
- 1.16. Based on the information provided by WFM, the Central Bank had concerns that breaches of the 2013 AIFM Regulations may have occurred.



1.17. On foot of these concerns, the Central Bank commenced an enforcement investigation in 2021. The investigation found that WFM breached requirements of the 2013 AIFM Regulations by failing to:

- Conduct adequate due diligence before appointing a delegate and effectively monitor the delegated activity.
- Identify and manage conflicts of interest.
- Ensure adequate risk management systems were in place.
- Put in place appropriate and consistent valuation procedures to allow for the proper valuation of the Fund's assets.
- Disclose a description of valuation procedures and pricing methodology to investors prior to involvement.
- Notify the Central Bank of potential breaches of the 2013 AIFM Regulations.
- Treat all investors fairly.
- Act in the best interests of investors.

1.18. WFM is no longer active having transferred its fund management business to another entity within the Waystone Group in 2022. The Investment Manager, which is not authorised or regulated by the Central Bank, went into administration in September 2020.



Part 2 Undisputed Facts

In this Settlement Notice:

2013 AIFM Regulations refer to S.I. No. 257 of 2013 - European Union (Alternative Investment Fund Managers) Regulations 2013 (as amended).

Administrator refers to the delegate fund administration company appointed by WFM to the Fund who performed the calculation of the Fund's NAV on a monthly basis.

AIF refers to an alternative investment fund, a type of collective investment where funds are raised from a number of investors with a view to investing them in accordance with a defined investment policy.

AIFM refers to an alternative investment fund manager, being a legal person whose regular business is managing one or more than one AIF.

Depository refers to the independent entity responsible for safekeeping the Fund's assets and for oversight in a fiduciary capacity on behalf of the investors in the Fund.

Fund refers to an AIF which was a sub-fund of the ICAV, to which the Investment Manager was appointed on 18 May 2018.

ICAV refers to the collective investment vehicle established with an umbrella structure of which the Fund was a sub-fund. An ICAV is a corporate entity with a board of directors who are the board for the umbrella structure and its sub-funds as a whole.

Investment Manager refers to the delegate firm appointed by WFM to manage the Fund's portfolio of investments.

Investment Management Agreement refers to an agreement dated 18 May 2018 between WFM, the Investment Manager and the ICAV pursuant to which WFM



appointed the Investment Manager to provide discretionary investment management and advisory services in relation to the investments of the Fund and delegated relevant functions to the Investment Manager in this regard. The Investment Manager was required to act in accordance with the agreed investment policy, investment restrictions, and risk profile of the Fund. Under this agreement, all activities carried out by the Investment Manager were at all times subject to the overall supervision, direction and control of WFM.

Issuer refers to the entity that issued the Loan Notes.

Loan Notes refers to the two loan note instruments issued by the Issuer - Note 1 and Note 2.

NAV refers to the Net Asset Value of a fund.

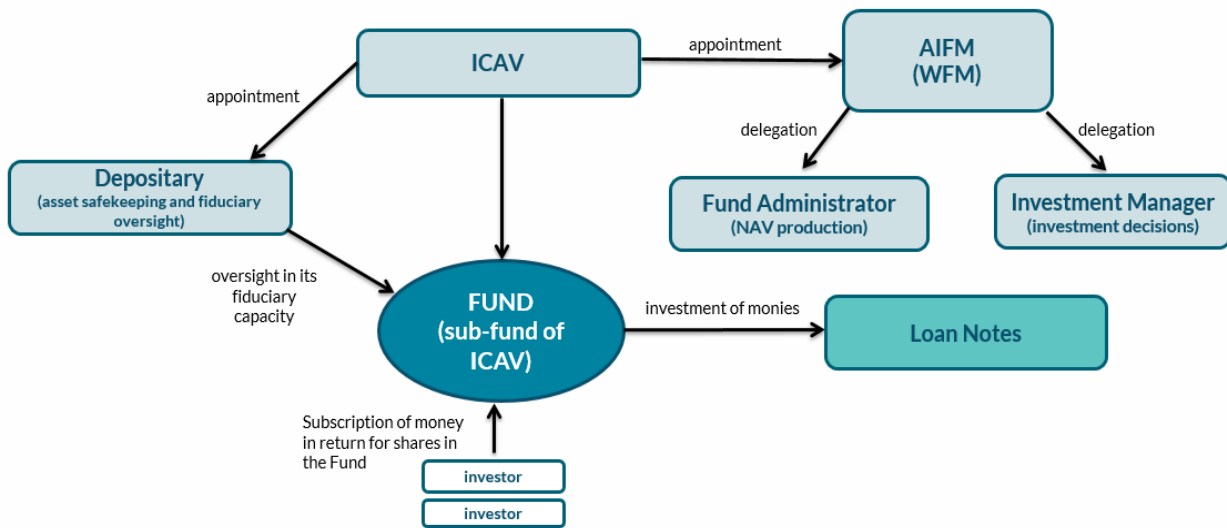
Principal refers to the individual who held roles in the Investment Manager as principal and chairman, and in the Issuer as owner and director. The Principal, together with another individual in the Investment Manager, acted as joint portfolio manager to the Fund.

UCITS refers to an investment fund, authorised as a UCITS, managed by WFM. A UCITS is an Undertaking for the Collective Investment in Transferable Securities, or in other words an investment fund which invests in transferable securities. UCITS are primarily designed for retail investors and are very prescriptive in their restrictions with respect to diversification and eligible assets for investment.

2019 Audit refers to the annual audit of the Fund's Financial Statements for the period ending 30 June 2019.



Table 1. Diagram Showing Relationship Between Relevant Entities



- 2.1. WFM has agreed to the undisputed facts as set out below, for the purposes of an undisputed facts settlement. These undisputed facts are such that, in the opinion of the Central Bank, further investigation is unnecessary and the matter is suitable for settlement.
- 2.2. In 2016, WFM, in its capacity as a fund management company of the UCITS, delegated its investment management functions to the Investment Manager.
- 2.3. In December 2017, the Investment Manager approached WFM with a proposal to launch a new AIF under WFM's existing umbrella structure, the ICAV. The process of establishing the Fund commenced in January 2018. The investment strategy for the Fund was to invest in illiquid securities, such as loan notes or other non-listed equities in a specific sector or industry. The investments were likely to be undiversified and highly concentrated.⁸ Sample loan note documents were provided to WFM on 5 February 2018 as an indicative example of the illiquid securities that the Fund would invest in.

⁸ Diversification means spreading of risk with a view to minimising the impact of being exposed to a particular sector, region, asset, etc.



- 2.4. On 14 February 2018, WFM was advised that there would be no standard market valuation source for the proposed investments owing to the fact that the Loan Notes were a non-listed security.
- 2.5. On 31 October 2018, the Fund invested €5.7 million in Note 1 and €6 million in Note 2. The Loan Notes were issued by the Issuer, a company registered in the British Virgin Islands. At the time of the investment, asset management companies registered in the British Virgin Islands, such as the Issuer, were not required to file financial statements meaning key financial information in relation to the Issuer was not available to the Investment Manager or to WFM. WFM had no prior experience of dealing with the Issuer and the investment in the Loan Notes represented a significant percentage of the Fund's overall investments.
- 2.6. In February 2019, the Fund invested a further €2 million in Note 1 and a further €4 million in Note 2 resulting in 89% of the Fund's assets being invested in the Loan Notes.

Delegation Management

- 2.7. Under the Investment Management Agreement, WFM delegated investment management functions to the Investment Manager. WFM's Business Plan set out how it would manage its delegates, including the Investment Manager. The Investment Manager's role included (among other things):
- Investing on behalf of the Fund in accordance with the parameters set out in the Fund's offering documents.
 - Conducting due diligence in relation to the Fund's investments.
 - Establishing and operating arrangements, including the development of appropriate policies and procedures, to identify, manage and avoid conflicts of interest.



- Providing monthly due diligence reports⁹ and Investment Manager reports outlining all relevant risk information in relation to the Fund and its investments.

2.8. From the date of the Investment Manager’s appointment in May 2018 to the suspension of the Fund in August 2020, WFM did not receive any Investment Manager reports. The monthly due diligence reports submitted by the Investment Manager did not include accurate information relating to the Fund or the investment in the Loan Notes. WFM failed to take any action to address the failure by the Investment Manager to comply with these reporting obligations.

Due Diligence

2.9. In appointing the Investment Manager to the Fund, WFM relied on due diligence conducted in 2015 in relation to the UCITS, notwithstanding that the Fund was an AIF, with a different risk profile, and subject to different regulatory requirements than that of a UCITS. For example, WFM relied on the Investment Manager’s “Business Overview Presentation” dated December 2015 (prepared for the due diligence in respect of the UCITS) which provided information about the Investment Manager’s investment strategy, risk management processes and investment offerings for exchange traded instruments in “*highly-liquid*” markets only.¹⁰

2.10. Limited additional due diligence was conducted by WFM. In March 2018, WFM carried out an onsite due diligence review and a desktop operational due diligence review. The findings of WFM’s onsite due diligence review were set out in WFM’s “Operational Due Diligence Report”. The report noted under the heading “Firm Weaknesses”, that compliance was “*somewhat of an after-thought in the business*”. In addition, the report identified the following issues which should have raised red flags in relation to the Investment Manager’s lack of relevant experience to act as investment manager for the Fund, the investment strategy for which was to invest in highly illiquid, hard to value assets:

⁹ This reporting took the form of the Investment Manager responding to a questionnaire issued by WFM.

¹⁰ Highly-liquid exchange traded instruments can be readily valued and traded without difficulty.



- *“Liquidity is mainly dealt with by selecting futures markets that are extremely liquid”.*
- *“All assets in the fund are exchange listed and easily priced and as a result there is no in-house valued assets”.*

2.11. WFM also requested that the Investment Manager complete an Alternative Investment Management Association’s Questionnaire for Due Diligence (the **AIMA Questionnaire**). The Investment Manager’s responses to the AIMA Questionnaire only described the Investment Manager’s experience in trading in highly liquid, exchange listed securities.

2.12. Based on the Investment Manager’s completed AIMA Questionnaire and the 2018 Due Diligence Report, WFM was on notice, prior to launch of the Fund, that the Investment Manager did not have sufficient investment management experience to manage the type of investments proposed for the Fund.

2.13. When investing on behalf of the Fund, WFM’s Business Plan required WFM to implement an *“appropriate, documented and regularly updated due diligence process when investing the assets of each Fund, according to its investment strategy, objectives and risk profile”*. WFM failed to implement such a due diligence process with respect to the Loan Notes.

Conflicts of Interest Policies and Procedures

2.14. During the period of the prescribed contraventions, WFM had policies and procedures in relation to managing conflicts of interest. WFM’s Business Plan dated June 2018 required WFM to ensure that the Investment Manager had taken all reasonable steps to identify, manage and monitor potential conflicts of interest. In addition, WFM’s Conflicts of Interest Policy provided that *“the Board should ensure that all investment transactions undertaken for the Company are conducted at arm’s length by the investment manager and with unrelated third parties as counterparties”*.



2.15. Notwithstanding the policies and procedures in place, WFM failed to ensure that the Investment Manager was managing conflicts of interest appropriately and instead relied solely on the limited information provided by the Investment Manager in monthly due diligence reports. These reports were not accurate in respect of the Fund, as the Investment Manager answered “N/A” to the question regarding conflicts of interest in each of the monthly reports provided between April 2018 and June 2020.

Valuation Issues

2.16. In relation to the valuation of investments, WFM’s Business Plan provided that its valuation policy was to be reviewed at least on an annual basis and updated “*before the Company engages with a new investment strategy or a new asset class not covered by the existing valuation policy.*” The Loan Notes presented an increased risk of an inaccurate overall valuation for the Fund given the Fund’s concentrated exposure to the Loan Notes however WFM failed to take any steps to update its valuation policy or procedures to take account of illiquid hard to value non-listed assets.

2.17. WFM’s Business Plan provided for a review process for the valuation of assets based on prices given by the counterparty who originated an instrument. This applied in the case of the Loan Notes which were being valued by the Issuer.

2.18. In March 2018, WFM informed the Administrator that the Loan Notes were unlisted securities and that there would be no valuations available until maturity, meaning that it was highly likely that there would be no change in the valuation for the period prescribed by the Loan Note documentation.¹¹

2.19. On 1 November 2018, the Investment Manager informed WFM that valuations for the Loan Notes would be provided weekly by the Issuer, a different position to that

¹¹ The loan note documentation for Note 1 provided for zero interest to be earned with no further entitlement beyond the repayment of the nominal value on the redemption date (i.e. the Fund was only entitled to redemption of the amount originally invested). The loan note documentation for Note 2 provided for compound interest of 10% to be payable on redemption of Note 2.



understood to be the case by WFM in March 2018. This also triggered the need for a review process, as provided for under the Business Plan. WFM failed to do this.

2.20. The Issuer's role in issuing the Loan Notes and separately providing valuations created a conflict of interest for the Issuer in that it gave rise to a risk that the Issuer would provide favourable valuations to maintain or increase investment in the Loan Notes. This was not identified by WFM.

2.21. In May and June 2019, in response to queries from WFM regarding the valuation methodology for the Loan Notes, the Investment Manager advised that the valuations being provided by the Issuer were based on the assumption that interest would be accrued, a different valuation basis than it conveyed in November 2018. Specifically, in an email to WFM, the Investment Manager advised that Note 1 had a variable rate of interest calculated on the performance of a basket of assets and Note 2 accrued interest at a fixed interest rate, as per the terms in the Loan Note documentation for Note 2. The loan note documentation for Note 1 did not refer to an underlying portfolio of assets.

2.22. The ultimate responsibility for valuation of the assets of the Fund rested with WFM's directors, however various functions in relation to the valuation were assigned to delegates, including the Administrator.

2.23. To allow the Administrator to calculate the overall NAV of the Fund, from November 2018 onwards the Issuer provided weekly valuations to the Administrator.

2.24. WFM did not ensure that the Administrator, who relied on the valuations provided by the Issuer, was aware that the valuation methodology for Note 1 was based on the performance of an underlying portfolio of assets and not by reference to the terms of the Loan Notes.

2.25. During the 2019 Audit, the auditor established the correct valuation methodology. However, despite WFM being on notice of the correct methodology, the NAVs



published on the following dates exceeded the amount the Fund was entitled to under the terms of Note 2 (approximately €11,500,000):

- NAV as at 30/04/2020 - €12,018,688.36
- NAV as at 29/05/2020 - €12,117,648.33.

2.26. For the investors in the Fund, the NAV calculation represented the value of their investment at the relevant time. An inaccurate NAV calculation could adversely impact investors' interests by, for example, prompting them to make investment decisions on the basis of incorrect information.

Risk Management Issues

2.27. The Supplement to the Fund's Prospectus stated that the Fund was "*an open-ended sub fund with limited liquidity*" and that only "*some of the investments may be highly illiquid*". It also stated that the risk associated with investment of this type would be mitigated by "*investing in a diversified portfolio*" with "*sufficient liquidity...to allow for daily dealing in the Fund*". However, the Fund invested the majority of its assets in the Loan Notes which were highly illiquid and therefore represented a much higher level of liquidity risk.

2.28. Despite being fully informed of the Fund's strategy regarding illiquid investments prior to and at the time of the investment in the Loan Notes, WFM did not take steps to ensure that the Investment Manager's risk management systems and WFM's own risk management systems were adequate to appropriately identify, measure, manage and monitor the risks to which the Fund was exposed as a result of the investment in the Loan Notes.

2.29. The risk management systems WFM had in place were limited to monitoring portfolios of exchange traded securities and derivatives using market data to measure risk and were not capable of identifying, measuring or monitoring the risks associated with the Fund's investment in the Loan Notes.



2.30. The weaknesses in WFM's risk management framework included the following:

- Risk Appetite Statement - WFM's risk appetite statement did not address the Fund's investment in illiquid instruments.
- Risk Register - WFM's risk register did not include any risk information relevant to the Fund.
- Risk Management Reporting - a Risk and Compliance report was provided to WFM to enable it to monitor ongoing compliance with its internal risk management policies and procedures, including WFM's risk appetite statement. Any material risks relating to the Fund should have been included in the report to WFM. The Investment Manager began investing on behalf of the Fund in October 2018, however the investment activity for the Fund was not included in the report to WFM until May 2019.
- Risk Management Software - the risk management software used by WFM relied primarily on market data to measure risk, however the nature of the Loan Notes meant that meaningful market data was not available and therefore the software was entirely ineffective in measuring the risks associated with the Fund's investment in the Loan Notes.

2.31. The Fund's concentrated investment in the Loan Notes (as set out below) meant that it had an increased exposure to the risks associated with such an investment.

- Date of first investment: 31 October 2018 - 65% of total assets.
- Date of second investment: 13 February 2019 - 89% of total assets.
- Financial year end for the Fund: 30 June 2019 - 67.19% of total assets.
- Effective date of suspension of Fund: 30 June 2020 – approx. 52% of total assets.

2.32. WFM's internal illiquidity limits for the Fund were 15% in normal market conditions and 30% in stressed market conditions. However, from the launch of the Fund to its suspension, at all times more than 50% of the Fund's assets were illiquid. A WFM board report in September 2019 incorrectly reported the "Max Counterparty



Exposure” as 10.9%, when in fact from the launch of the Fund to its suspension, the Fund had a counterparty exposure of at least 50% by virtue of its investment in the Loan Notes.

Identification of Concerns During the 2019 Audit

2.33. In November 2019, during the preparation of the 2019 Audit, the ICAV’s auditor sought information in relation to:

- The ownership of the Loan Notes.
- The methodology used to value the Loan Notes.
- The Issuer and the role of the Issuer in providing valuations for the Loan Notes.

2.34. WFM did not have the information requested by the auditor and requested that the Investment Manager provide the relevant information.

2.35. By the end of November 2019, the auditor informed WFM that they had identified concerns and warned WFM that the audit would be qualified if WFM was not in a position to satisfy the auditor as to the recoverability of the funds invested in the Loan Notes. The issues were as follows:

- There were no audited financial statements for the Issuer which meant the auditor could not confirm the assets and liabilities on the Issuer’s balance sheet and be satisfied as to the Issuer’s ability to repay to the Fund its investment in the Loan Notes.
- The Issuer was the sole source of valuations for the Loan Notes which was a conflict of interest.
- There was an undisclosed relationship between the Investment Manager and the Issuer in that the Investment Manager also acted as the Issuer’s Investment Advisor.
- A conflict of interest existed by virtue of the dual roles held by the Principal in both the Investment Manager and the Issuer.



- The Fund's lack of security for the Loan Notes.

2.36. WFM did not disclose to investors the conflicts of interest once identified by the auditor. WFM's failure to disclose these conflicts of interest meant the investors were not in a position to make fully informed decisions in their own best interests.

2.37. WFM failed to inform the Administrator of the conflict of interest relating to the relationship between the Investment Manager and the Issuer, and the Administrator continued to rely on the unverified weekly valuations provided by the Issuer.

2.38. In addition, WFM did not disclose the conflicts of interest issues to the Central Bank.

2.39. WFM did not withdraw the delegation to the Investment Manager once it became aware of the relationship between the Investment Manager and the Issuer, nor did WFM query with the Investment Manager why the relationship had not previously been disclosed. Despite concerns about the conflicts of interest and the accuracy of the NAV, the Fund remained open for investor dealing.

Steps to Restructure the Fund's Investment in the Loan Notes

2.40. On 3 December 2019, a meeting was held between WFM and the Investment Manager (attended by the Principal) to discuss the issues identified by the auditor. To address the concerns identified by the auditor, it was agreed at the meeting that the investment in the Loan Notes would be restructured in order to provide the Fund with greater security and control over the assets which, according to the Issuer, were the basis of the performance of the Loan Notes. However, it was ultimately decided that the return of the monies invested in the Loan Notes was the best way to address the concerns identified and an arrangement was reached between WFM and the Issuer whereby the Loan Notes would be liquidated and the cash transferred to the Fund's own account by 31 January 2020.

2.41. On 31 December 2019, the auditor signed off the Fund's Annual Report and Audited Financial Statements for the period 18 May 2018 – 30 June 2019. The Financial



Statements disclosed the Loan Notes as related party transactions, with the Issuer cited as the related party.

2.42. On 3 January 2020, the Issuer transferred the sum of €7.539 million representing the proceeds of the partial redemption of Note 1 (approximately 40% of the Fund's overall investment in the Loan Notes) to the Fund. The monies arrived in the Fund's account on 6 January 2020.

Investor Redemptions

2.43. Between February 2020 and May 2020, correspondence between the Issuer, the Investment Manager, and WFM disclosed that numerous deadlines for the return of the balance of the outstanding monies were missed. Despite the failure to recover the monies, WFM allowed a number of investor redemptions from the Fund.

2.44. On 13 February 2020 the Fund completed an investor redemption request in the amount of €611,563. On 30 April 2020 a further investor redemption request in the amount of €213,974 was processed.

2.45. On 5 May 2020, WFM became aware of two additional redemption requests – one for \$8.5m and the other for \$736,000.

2.46. In an email to senior managers of WFM on 5 May 2020, a director of WFM stated, *“Please make sure they [the redemptions] are put on hold as we need all the money back first to make fully accurate valuation”*.

2.47. On 19 May 2020, WFM instructed the Investment Manager that *“until the transfers for both notes are received we can't finalise the trading NAV for the end of the month and therefore investors will not get their cash until such time that the NAV can be finalised”*.

2.48. On 26 May 2020, on the instruction of a director of WFM, a draft suspension letter was prepared. This followed a proposal to suspend investor dealing in the Fund until such time that the proceeds from the Loan Notes were returned to the Fund.



- 2.49. On 28 May 2020, requests were received to cancel the investor redemption requests of 5 May 2020.
- 2.50. Notwithstanding the instructions that no redemptions could be processed until all monies in relation to the Loan Notes were returned, on 29 May 2020 the Fund settled the NAV and permitted a third investor to fully redeem his holding in the Fund, with that investor receiving €446,154.48.
- 2.51. The ICAV, Depositary and Administrator had important roles to play in relation to the effective administration of the Fund including safe-keeping the Fund's assets and producing the NAV on a monthly basis. However at no point during this period did WFM inform the Depositary, Administrator, or ICAV of the concerns relating to the accuracy of the valuations of the Loan Notes or the concerns in relation to allowing redemptions to proceed whilst there was uncertainty regarding the accuracy of the NAV. WFM did not have an appropriate escalation process to enable it to identify and escalate liquidity risk issues to the ICAV so that appropriate action could be taken in relation to redemptions.
- 2.52. In June 2020, the Principal advised WFM that the outstanding monies would be returned to the Fund by the end of the month, however no further monies were received.

Suspension and Freezing Order

- 2.53. On 23 July 2020, WFM instructed its solicitors to seek the return of the Fund's money from the Issuer. A formal demand was issued for the money to be returned by a deadline of 31 July 2020. This deadline was missed and on 4 August 2020, the ICAV, on the recommendation of WFM, made the decision to suspend the Fund, effective from 30 June 2020. A statement issued by the ICAV following the suspension of the Fund stated that *"it was not in the best interests of the shareholders as a whole to pay redemption proceeds from the Fund's other assets when the receipt of such a significant portion of the assets remained outstanding."*



2.54. The Central Bank was notified by the ICAV on 5 August 2020 that the Fund had been suspended due to a delay in receipt of funds from the Loan Notes. This was the first time that the Central Bank had been notified of any issues regarding the Fund. This was despite the fact that between March 2020 and August 2020 the Central Bank engaged in enhanced supervision with WFM due to the COVID-19 pandemic. During this period, WFM provided weekly updates to the Central Bank on topics such as supervision of delegates, liquidity, valuation and cybersecurity but failed to notify supervisors of the issues identified during the 2019 Audit and escalate concerns relating to the return of its investment in the Loan Notes.

2.55. On 10 August 2020, the Investment Manager informed WFM that a worldwide freezing order had been granted by the High Court of England and Wales over the assets of the Issuer and the Principal in respect of investments unrelated to the Fund. On the same date, WFM notified the Central Bank of the existence of the worldwide freezing order.

2.56. On 20 August 2020, WFM removed the Investment Manager from its role with the Fund and appointed its replacement with a mandate to wind-down the portfolio and terminate the Fund.

Following the Suspension

2.57. Between 12 August 2020 and October 2020, WFM took legal steps in an attempt to recover the outstanding monies however these were ultimately unsuccessful as the accounts held by the Issuer were frozen as a result of the High Court order.

2.58. The ICAV subsequently issued proceedings against the Issuer, the Principal, and the Investment Manager in the High Court of England and Wales in September 2020. Pursuant to those proceedings, the ICAV sought and obtained a separate freezing order against the assets of the Principal and the Issuer on 15 October 2020.



Remediation

2.59. On 27 November 2020, the Central Bank issued a risk mitigation programme (**RMP**) to WFM. WFM appointed a third party consultancy firm to carry out a review and prepare a report relating to WFM's processes, policies and procedures relating to all delegate appointments, the due diligence conducted, and the oversight and monitoring performed, focusing on the funds under WFM's management. The report, received by the Central Bank on 29 January 2021, included a series of findings and recommendations including the medium-high priority findings relating to reporting to the board of WFM, initial due diligence, delegate oversight and reporting and valuations. On 18 March 2021, the third party consultancy firm concluded that WFM had completed its implementation of all recommendations and that all actions from the recommendations could be closed. In July 2021 a further third party consultancy firm was engaged by WFM to perform an internal audit to review and report on the embedding of the recommendation outcomes arising from the RMP. A final audit report was produced on 6 September 2021.

Settlement with Investors

2.60. In December 2021, WFM was party to a settlement reached with the Fund's investors relating to the loss of their investment. Pursuant to the settlement reached, investors recovered their initial investment in the Loan Notes and received a contribution in respect of their legal costs associated with the matter.

2.61. The ICAV obtained a judgment in default against the Principal and the Issuer on 22 January 2021 in the High Court of England and Wales.



Part 3 Prescribed Contraventions

3.1. WFM has admitted to the prescribed contraventions set out below. The 2013 AIFM Regulations are listed as a designated statutory instrument within the meaning of Section 33AN of the 1942 Act.¹² Accordingly, contraventions of the 2013 AIFM Regulations are “prescribed contraventions” for the purposes of Section 33AN and Part IIIC of the 1942 Act.

Prescribed Contravention 1

3.2. Regulation 21 (1)(f) of the 2013 AIFM Regulations provides as follows:

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

(f) the AIFM shall be able to demonstrate that the delegate is qualified and capable of undertaking the functions in question, that it was selected with all due care and that the AIFM is in a position to monitor effectively at any time the delegated activity, to give at any time further instructions to the delegate and to withdraw the delegation with immediate effect when this is in the interest of investors.”

3.3. Between 18 May 2018 and 20 August 2020, WFM contravened Regulation 21(1)(f) of the 2013 AIFM Regulations in the following respects:

1. **WFM failed to exercise all due care in selecting the Investment Manager for the Fund:**
 - By relying on historic due diligence relating to the Investment Manager’s experience and capabilities with trading strategies for highly liquid and exchange valued assets in the context of the UCITS.

¹² See Schedule 2 Part 2 Item 71 of the 1942 Act.



- By failing to identify that the due diligence information provided by the Investment Manager only related to its qualifications and capability in relation to highly liquid, readily valued, exchange listed assets.
2. **WFM failed to be in a position to demonstrate that the Investment Manager was qualified and capable of undertaking the functions delegated to it under the Investment Management Agreement** because:
- The information provided by the Investment Manager only related to its qualifications and capabilities in relation to highly liquid, readily valued, exchange listed assets and indicated that the Investment Manager only traded “*in the most liquid markets*”.
 - WFM failed to obtain information that demonstrated that the Investment Manager had experience in managing AIFs which matched the investment strategy proposed for the Fund.
3. **WFM failed to conduct effective on-going monitoring of the activity it had delegated to the Investment Manager** because:
- The Investment Manager did not provide to WFM monthly Investment Manager Reports, as required to do under the Investment Management Agreement and WFM took no steps to address this.
 - The monthly Due Diligence Reports provided by the Investment Manager did not include accurate information relating to the Fund or the Loan Notes and WFM took no steps to address this.

Prescribed Contravention 2

- 3.4. Regulation 13 (1)(d) of the 2013 AIFM Regulations provides as follows:

“An AIFM shall at all times...

[t]ake all reasonable steps to avoid conflicts of interest and, when they cannot be avoided, to identify, manage, monitor and, where applicable, disclose those conflicts of interest in



order to prevent them from adversely affecting the interests of each AIF and its investors and to ensure that each AIF it manages is fairly treated”

3.5. Between 1 November 2018 and 20 August 2020, WFM contravened Regulation 13 (1)(d) of the 2013 AIFM Regulations in the following respects:

1. **WFM failed to identify, manage and monitor conflicts of interest** because:

- It failed to seek details of due diligence conducted by the Investment Manager in respect of the investment in the Loan Notes which led to a failure to identify the conflict of interest arising by virtue of the Principal’s dual roles in both the Investment Manager and the Issuer.
- Once identified by the auditor, WFM did not withdraw the delegation to the Investment Manager and failed to take steps to manage the conflict of interest arising, by virtue of the Principal’s dual roles.
- It failed to identify the conflict of interest arising by virtue of the fact that the Issuer of the Loan Notes was also the only source of valuations for the Loan Notes.
- It failed to manage the risks associated with the Issuer’s conflict of interest by failing to follow its own review process for the valuation of assets based on prices given by the counterparty who originated an instrument, as was the case with the Loan Notes.

2. **WFM failed to disclose to investors in the Fund the conflicts of interest that had been identified by the auditor in November 2019**, namely the conflict of interest that arose:

- In relation to the Principal’s separate roles in the Investment Manager and the Issuer.
- In relation to the Issuer being the sole source of valuation for the Loan Notes.

Prescribed Contravention 3

3.6. Regulation 16(4) of the 2013 AIFM Regulations requires an AIFM to:



“implement adequate risk-management systems in order to identify, measure, manage and monitor appropriately all risks relevant to each AIF investment strategy and to which each AIF is or may be exposed.”

3.7. Regulation 16(6) of the 2013 AIFM Regulations requires that an AIFM shall at least:

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

3.8. Between 18 May 2018 and 20 August 2020, WFM contravened Regulation 16(4) of the 2013 AIFM Regulations in the following respects:

1. **WFM failed to implement adequate risk-management systems in order to identify, measure, manage and monitor appropriately all risks to which the Fund may be exposed** because:
 - The risk management systems WFM had in place were designed for portfolios of exchange traded securities and derivatives based on traded assets and were of no useful application with regards to private, non-traded assets.
 - WFM failed to identify that, with respect to the Fund, additional risk measures would be required to deal with any private, non-traded assets which the Investment Manager might acquire for the Fund in accordance with its investment strategy, such as the Loan Notes.



- WFM failed to ensure that the risks associated with the Fund’s investment in the Loan Notes could be properly identified, measured, managed and monitored on an ongoing basis, including through the use of appropriate stress testing procedures because the risk systems WFM had in place did not adequately identify the Loan Notes as unusual assets requiring closer investigation.

3.9. Between October 2018 and 20 August 2020, WFM contravened Regulation 16(6) of the 2013 AIFM Regulations in the following respects:

1. WFM failed to ensure that the risk profile of the Fund corresponded to the size, portfolio structure and investment strategies and objectives of the Fund as laid down in the Fund’s instruments of incorporation, prospectus and offering documents, which provided that the Fund was “*an open-ended sub fund with limited liquidity*” and that only “*some of the investments may be highly illiquid.*” It also stated that the risk associated with investment of this type would be mitigated by “*investing in a diversified portfolio*” with “*sufficient liquidity...to allow for daily dealing in the Fund*”. However, from its launch in October 2018 over half of the Fund’s portfolio was undiversified and invested in the highly illiquid Loan Notes, reaching 89% at one point prior to the Fund’s suspension.

Prescribed Contravention 4

3.10. Regulation 20 (1) of the 2013 AIFM Regulations requires that AIFMs:

“ensure that, for each AIF that it manages, appropriate and consistent procedures are established so that a proper and independent valuation of the assets of the AIF can be performed in accordance with this Regulation and the AIF rules or instruments of incorporation.”

Regulation 20(15) of the 2013 AIFM Regulations requires that AIFMs:

3.11. *“shall be responsible for the proper valuation of AIF assets, the calculation of the net asset value and the publication of that net asset value. The AIFM's liability towards the AIF and*



its investors shall not be affected by the fact that the AIFM has appointed an external valuer.”Between 18 May 2018 and 20 August 2020, WFM contravened Regulation 20(1) of the 2013 AIFM Regulations in the following respect:

1. WFM failed to put in place a procedure for the proper and independent valuation of the assets of the Fund, which included a new asset class for WFM that was not covered by WFM’s pre-existing valuation policy.

3.12. Between 18 May 2018 and 20 August 2020, WFM contravened Regulation 20(15) of the 2013 AIFM Regulations in the following respects:

1. WFM failed to follow its own review process for the valuation of assets based on prices given by the counterparty who originated an instrument, as was the case with the Loan Notes. This meant that the Administrator calculated the NAV based on the unverified weekly valuations provided by the Issuer, some of which were subsequently found to be incorrect by the Central Bank’s investigation. In particular, the NAVs published on 30/04/2020 and 29/05/2020 were incorrect in that they overstated the value of Note 2.
2. WFM failed to notify the Administrator that the valuation methodology was based on the performance of an underlying portfolio of assets.

Prescribed Contravention 5

3.13. Regulation 24 (1) (g) of the 2013 AIFM Regulations provides as follows:

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



(g) a description of the AIF’s valuation procedure and of the pricing methodology for valuing assets, including the methods used in valuing hard-to-value assets in accordance with Regulation 20.”

3.14. Between 18 May 2018 and 20 August 2020, WFM contravened Regulation 24 (1) (g) of the 2013 AIFM Regulations in the following respect:

1. WFM failed to have in place a procedure for the proper and independent valuation of the assets of the Fund and therefore it failed to make available a description of the Fund’s valuation procedure and pricing methodology.

Prescribed Contravention 6

3.15. Regulation 13(1)(f) of the 2013 AIFM Regulations provides as follows:

“an AIFM shall at all times... (f) treat all AIF investors fairly.”

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

3.16. Between 13 February 2020 and 4 August 2020, WFM contravened Regulation 13(1)(f) of the 2013 AIFM Regulations in the following respects:

1. WFM failed to ensure that all investors in the Fund were treated fairly when redemptions were paid on 13 February 2020, 30 April 2020 and 29 May 2020, in circumstances where on each of those dates WFM was aware that the overall valuation of the Fund was uncertain, as approximately 60% of the Fund’s assets were outstanding, and there was increasing uncertainty as to whether the full amount of the Fund’s assets would be recovered.
2. In permitting the redemptions on 13 February 2020, 30 April 2020 and 29 May 2020, WFM afforded redeeming investors preferential treatment to those investors who remained in the Fund in terms of their ability to redeem their investments, as WFM was aware that the valuation was uncertain, the assets



might be irrecoverable, and there was increasing likelihood that future redemption requests would not be satisfied.

Prescribed Contravention 7

3.17. Regulation 6 (3) of the 2013 AIFM Regulations provides as follows:

“In a case where an external AIFM is unable to ensure compliance with requirements of these Regulations for which an AIF or another entity on its behalf is responsible, it shall immediately notify the Bank, and, if applicable, the competent authorities of the EU AIF concerned, of that fact. The Bank shall require the AIFM to take the necessary steps to remedy the situation.”

3.18. Between 20 November 2019 and 20 August 2020, WFM contravened Regulation 6 (3) of the 2013 AIFM Regulations in the following respects:

1. WFM failed to notify the Central Bank when it became aware of the following potential breaches of the 2013 AIFM Regulations:
 - Potential breach of Regulation 13(1)(d) of the 2013 AIFM Regulations arising from the conflicts of interests identified during the 2019 Audit.
 - Potential breaches of Regulation 20(1) and Regulation 20(15) arising from the concerns about the recoverability of the Fund’s investment in the Loan Notes which called into question the appropriateness of the valuation of the Loan Notes and the proper valuation of the Fund.

Prescribed Contravention 8

3.19. Regulation 13(1)(b) of the 2013 AIFM Regulations provides as follows:

“an AIFM shall at all times...

(b) act in the best interests of each AIF or the investors of each AIF it manages and the integrity of the market.”



3.20. WFM failed to comply with certain requirements of the 2013 AIFM Regulations, the objective of which is to ensure a high level of investor protection. In so doing, WFM failed to comply with the requirement to act in the best interest of the Fund at all times.

3.21. Between 18 May 2018 and 4 August 2021, being the date of the suspension of the Fund, WFM contravened Regulation 13(1)(b) of the 2013 AIFM Regulations by failing to:

- Carry out adequate due diligence and exercise due care in appointing the Investment Manager to the Fund.
- Monitor effectively the delegated activity of the Investment Manager by failing to take steps to address the absence of reporting by the Investment Manager in relation to its delegated activities.
- Withdraw the delegation to the Investment Manager in circumstances where the Investment Manager was in breach of contractual obligations under the Investment Management Agreement.
- Take reasonable steps to avoid, identify and manage conflicts of interest and failing to disclose the conflicts of interest, once identified in the course of the 2019 Audit.
- Implement an adequate risk management system to manage the risk to which the Fund was exposed by virtue of the investment in the Loan Notes and failing to implement an appropriate, documented and regularly updated due diligence process when investing on behalf of the Fund.
- Have in place an adequate valuation policy for the Loan Notes and failing to ensure the accurate calculation and publication of the Fund's NAV.
- Disclose a description of a valuation procedure and pricing methodology to investors prior to the investment in the Loan Notes.
- Stop redemptions at a time when WFM had concerns about the timely realisation of the Loan Notes and the accuracy of the overall valuation of the Fund due to the uncertainty of the Loan Note valuations.



- Immediately notify the Central Bank of the potential breaches of the 2013 AIFM Regulations.



Part 4 Sanction

- 4.1. The Central Bank believes that the prescribed contraventions admitted by WFM warrant the imposition of a sanction.
- 4.2. The Central Bank's approach to the determination of sanctions under the ASP is set out in Part 6 of the Administrative Sanctions Procedure Guidelines 2023 (the **ASP Guidelines**). Having considered all of the available sanctions relevant to a firm as provided in section 33AQ(3) of the 1942 Act, the prescribed contraventions and the Undisputed Facts, the Central Bank has determined that a combination of a **reprimand and a monetary penalty in the amount of €562,160 (the application of a 30% settlement scheme discount will bring the monetary penalty to €393,512)** represents a proportionate sanction in the totality of the circumstances. Further details on how the monetary penalty was assessed are set out below.

Determination of the Sanction

The monetary penalty

- 4.3. The Central Bank followed the steps outlined in Part 6 of the ASP Guidelines in determining an appropriate monetary penalty.

Step 1 – Starting Point Figure

- 4.4. The Central Bank can impose a monetary penalty up to a maximum of either 10% of turnover or €10 million, whichever figure is greater. Based on the financial position of WFM, the maximum penalty that could be imposed in this case is €10 million.
- 4.5. WFM's turnover, as disclosed in its audited financial statements, is derived from its principal activity of management and distribution services for investment funds.



4.6. Given the extent of WFM’s governance failings in relation to the management of investment funds, including oversight of its delegated functions, the Central Bank has considered the most appropriate and proportionate starting point for the calculation of the monetary penalty to be the average of WFM’s total annual turnover for the 27 month period in which the breaches occurred (20 May 2018 to 20 August 2020).¹³

When rounded, the Starting Point Figure is €7,027,000.

Step 2 – Identification and Application of the severity level

4.7. With reference to Table 2 (Nature Seriousness and Effect Factors) of the ASP Guidelines, the Central Bank considers the following sanctioning factors as relevant in the assessment of the severity level to apply:

a) The prescribed contraventions were reckless

The prescribed contraventions committed by WFM were reckless because they amounted to WFM taking unjustifiable risks of which WFM knew or ought to have known. Specifically, in committing the prescribed contraventions, WFM acted recklessly in the following ways by:

- Ignoring red flags in relation to the Investment Manager’s qualifications and capabilities to act as investment manager for the Fund.
- Failing to seek details of any due diligence conducted by the Investment Manager in respect of the investment in the Loan Notes.
- Failing to put appropriate risk management systems in place that matched the risks associated with the investment in the Loan Notes.
- Permitting more than 50% of the Fund’s assets to be invested in illiquid assets when the internal limit was 15%.
- Failing to take the necessary action to suspend the Fund when the balance of the monies in the Fund had not been returned by 31 January 2020 and allowing certain investors to redeem from the Fund.

¹³ 2018 - 7 months; 2019 - 12 months and 2020 - 8 months



b) The prescribed contraventions each represent a serious departure from the standards to which WFM was subject:

The Central Bank has published guidance and issued communications in relation to the standards expected of AIFMs in respect of compliance with their legal obligations.

In this case, in committing each of the prescribed contraventions, WFM's failures were a serious departure from the relevant standards as outlined in Central Bank guidance. Specifically, the Central Bank's Guidance for Fund Management Companies (the **Manco Guidance**) has a number of relevant standards to which WFM failed to have regard, including the requirement that "*fund management companies are under regulatory obligations to act in the best interests of the investors in the investment funds under management*". In addition, the Manco Guidance also provides that fund management companies should:

- Exercise skill, care and diligence when identifying and approving the appointment of a delegate for any task and be satisfied as to the capacity of the prospective delegate to undertake such task to the required standard.
- Exercise skill, care and diligence in its continuing oversight of delegates. To this end the board should receive and be satisfied with periodic reports from appropriately authorised personnel of the delegate.
- Adopt and keep up to date an appropriate valuation policy, and in the case of illiquid assets, satisfy itself as to the process by which values are set.
- Obtain confirmation from an independent source that information received from delegates in relation to tasks being carried out is correct.

c) The prescribed contraventions revealed serious weaknesses in WFM:

The prescribed contraventions in this case relate to key regulatory requirements, the objective of which is investor protection. The prescribed contraventions revealed serious weaknesses in WFM's governance and oversight arrangements in relation to its delegated functions, including the failure by WFM to carry out



effective initial and on-going due diligence in respect of the appointment of the Investment Manager and the functions delegated to the Investment Manager. In addition, WFM's failure to carry out effective oversight meant that conflicts of interest were not identified and managed, thereby increasing the investors' exposure to unnecessary risk which ultimately crystallised in loss to the investors. Further, WFM's failure to ensure that there was an effective valuation methodology in place in relation to Fund demonstrated a serious weakness.

d) The duration of the prescribed contraventions:

WFM's failure to effectively oversee and monitor the activity of the Investment Manager, including its failure to ensure the Investment Manager was providing the requisite reporting, resulted in the continuation of the breaches for a period of 27 months.

e) Whether there is more than one prescribed contravention, or repeated commission of a prescribed contravention by a firm:

The commission of more than one prescribed contravention or a repeated commission of the same prescribed contravention will be viewed by the Central Bank as more serious than a one-off contravention. In this case, there are eight prescribed contraventions indicating sustained and repeated failures by WFM, thereby increasing the seriousness of the prescribed contraventions.

f) The loss and/or detriment caused to investors as a result of the prescribed contraventions:

The actions of WFM, as outlined above, exposed the Fund to significant risks and ultimately resulted in a loss of €10.2m to the Fund. The Central Bank notes WFM compensated the Fund in respect of the loss as part of a settlement agreement reached with the investors.



4.8. Having considered these factors, the Central Bank deemed that the **correct severity level to apply is 8** (on a scale of 1 to 10).

4.9. This corresponds with 8% of the Starting Point Figure i.e. 8% of €7,027,000 is €562,160.

The Base Monetary Penalty is €562,160

Step 3 – Aggravating or Mitigating Factors

4.10. The Central Bank is satisfied, having reviewed the factors set out in Tables 3 (Conduct Factors) and 4 (Previous Record Factors) of the ASP Guidelines, that there are no mitigating factors which would warrant a decrease to the Base Monetary Penalty, nor are there any aggravating factors which would warrant an increase to the Base Monetary Penalty. WFM cooperated with the Central Bank’s investigation. Providing the expected level of cooperation is treated as neutral factor that neither aggravates nor mitigates WFM’s conduct.

Step 4 – Consider any further adjustment

4.11. The Central Bank then considered if the Base Monetary Penalty should be adjusted by reference to the factors in Table 5 (Other Relevant Considerations) of the ASP Guidelines December. The Central Bank does not consider any further factor as relevant.

Step 5 – Consider whether any maximum penalty adjustment is required

4.12. The Central Bank can impose a monetary penalty up to a maximum of either 10% of turnover or €10 million, whichever figure is greater. Based on the financial position of WFM, the maximum penalty that could be imposed in this case is €10 million.

4.13. As the figure proposed at Step 4 does not exceed that maximum, no maximum penalty adjustment is required.

Step 6 – Consider the sanctions to be proposed in their totality



4.14. In its approach to determining sanctions, the Central Bank considers the overarching general principles of proportionality, deterrence, and totality. The Central Bank does not consider that the imposition of a reprimand alone would be sufficient in the circumstances of this case to satisfy these principles due to the serious nature of the prescribed contraventions.

4.15. In this regard, the Central Bank has taken into account the nature of the prescribed contraventions, the facts of the case and the circumstances of WFM, including its size and financial position. The Central Bank considers that the sanctions in this case, being a reprimand and a monetary penalty in the amount of €562,160 combined, are commensurate with the prescribed contraventions and appropriate having regard to the circumstances of WFM, therefore, no adjustment has been made in respect of the totality of the sanctions.

Step 7 – Final Monetary Penalty

4.16. The Central Bank therefore considers that a monetary penalty of €562,160 is appropriate.

The final monetary penalty is €562,160

4.17. Settlement Scheme Discount

As this settlement is agreed under the Undisputed Facts Settlement Process, the maximum percentage discount which can be applied is 30%, in line with paragraph 304 of the ASP Guidelines. In this case, the Central Bank has determined that it is appropriate to apply the maximum percentage discount of 30%. Therefore, the final monetary penalty of €562,160 has been reduced by 30% to take account of the settlement discount.

The monetary penalty being imposed is €393,512.