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Consultation on Delegate Oversight Guidance,
Markets Policy Division,
Central Bank of Ireland,
Block D,
Iveagh Court,
Harcourt Road,
Dublin 2.

Sent by email to: fundspolicy@centralbank.ie

24th July 2015

Dear Sir/Madam,

Delegate Oversight Guidance Consultation

Irish Funds¹ welcomes the opportunity to comment on this important Consultation Paper regarding Delegate Oversight (the 'Consultation Paper'). Irish Funds supports policies and guidance designed to enhance the effectiveness of fund management companies.

We have set out below our comments on the Consultation Paper.

By way of a general comment we believe the paper should be consistent in how it refers to the purpose of the paper, as currently the paper suggests it sets out "good practice", "guidance", "principles". Examples of this are;

- Para 1 -This Part sets out the Central Bank's recommendations regarding good practice for boards of directors of investment companies, UCITS management companies, alternative investment fund managers (AIFMs) and AIF management companies incorporated and authorised in Ireland (referred to in this Part as "relevant companies").
- Para 2 - The focus of this document is on the role of boards where significant tasks are delegated externally. It is not deemed necessary at this time to issue guidance on other aspects of a board's work.
- Para 10 - The principles set out in this Part are intended to assist relevant companies by providing an overview of relevant good practices.

We would suggest that to ensure consistency of guidance and rules it would be helpful if the guidance included reference to the specific rules on which the guidance is seeking to elaborate (e.g. Irish

¹ Irish Funds (IF) is the industry association for the international investment fund community in Ireland, representing custodians, administrators, managers, transfer agents and professional advisory firms. Ireland is a leading centre for the domicile and administration of investment funds. As the leading international funds centre, there is in excess of €3.8 trillion of assets in over 13,000 funds administered in Ireland. These assets are comprised of €1.9 trillion in 5,897 Irish domiciled funds (including sub-funds). Additionally, the industry services €1.9 trillion in non-Irish funds administered in Ireland.

legislation, Central Bank rulebook, etc). It would also be beneficial for the guidance to differentiate between principles and explanatory material, including examples of good practice. The proposed guidance does not appear to do either, notwithstanding paragraph 10 stating "the principles set out in this Part are intended to assist relevant companies by providing an overview of relevant good practices" or paragraph 11 "the adoption by a board of the general principles identified in this Part will not in itself achieve the objective of good governance." For an example of where principles and explanatory material are provided in an easily understandable format we would refer you to the report of the UK's [Outsourcing Working Group](#) which issued in 2013. Where it is unclear what are principles and what is explanatory material this can make it more difficult for a Fund Management Company to assess areas of compliance/non-compliance with the guidance.

Risk Appetite

The risk management framework is required to cover a broad range of risks, and while metrics like VaR can clearly be used to measure risk arising from the use of FDI, general market risk and country or regional risk are more difficult to define risk appetites against which a fund's risk levels can be assessed. The Central Bank's "Risk Appetite – A Discussion Paper" and related feedback statement provides some indications as to the types of risks which should be considered, but do not lend much assistance to fund boards tasked with assessing their risk levels against their risk appetites. We believe further clarity on what is expected in connection with the risk appetite statement would be beneficial.

Externally-Managed Investment Companies

To avoid duplicative reporting by management companies the delegate monitoring responsibilities of externally managed investment companies should be capable of being satisfied by relaying the periodic reports received by the management company to the investment company boards for their consideration. We see little benefit imposing new reporting obligations on management companies which will, in practice, result in repackaging of various delegates' reports.

Distinction between designated persons and directors

With respect to the distinction drawn in the feedback to CP86 between the role of the designated persons and the directors, we assume it is not the case that all Irish funds would need to appoint another Irish delegate (in addition to the administrator and custodian) in order to be able to meet the Central Banks requirements on managerial functions. We believe the designated persons should be capable of being drawn from the pool of resources, for example, from within the Promoter. A significant number of Irish funds are structured as self-managed investment companies or include a management company which delegates the performance of tasks to other entities and these funds should be able to rely on the expertise within, for example, the Promoter organisation to fulfil the management functions. We do not believe the use of an Irish delegate to perform management roles should be the default position.

It is suggested that the document should recognise that there is an inherent conflict of interest between the role of the Fund Management Company and the role of the board of the delegate in that each must protect the interest of its shareholders.

Comments on specific paragraphs

Paragraph 9: Definition of delegate is unclear: "delegate means ...a delegate..." In theory this could mean every service provider engaged by a fund or its manager. Some funds or managers may have

dozens of service providers, and applying the requirements of the Draft Guidance to all such providers would be extremely costly and of questionable value. The original CP86 (page 2) indicates that the term covers "investment manager/administrator/distributors/paying agents". We believe the definition should be clarified, possibly by including the following suggested text, "**delegate means a third party performing a critical regulated activity of the fund or the manager on an outsourced basis, including the administrator, investment manager, risk manager, and/or distributor**".

Paragraph 9: The investment company definition references should be to Part 24 of the new Companies Act 2014.

Paragraph 9: The definition of investment fund should include the ICAV.

Paragraph 10: There appears to be a formatting error at the end of this paragraph in that it runs into the heading "General observations".

Paragraph 1 and 12: (definition of "relevant company" and "fund management company"). The definitions appear similar (although "relevant company" appears to include AIF management companies whereas "fund management company" does not). "Relevant company" seems to be used in paragraphs 1-10, whereas "fund management company" is used from paragraph 11-63. It would appear both terms are substantially interchangeable if so, then we would suggest just use one term throughout e.g. "fund management company" and not "relevant company".

Paragraph 22: "The board should identify when standards fall short of the required levels and require remedial action to be taken." We would suggest this be amended to clarify "The board should identify when **reporting** standards fall short of the required levels and require remedial action to be taken."

Paragraph 23: "principal delegates" is not a defined term. Is the expectation that this is just the investment manager; or the investment manager and administrator; or the investment manager and administrator and distributor; or something else?

Paragraph 23: Delegates are likely not to be willing/able to provide some of the information listed e.g. for a large bank acting in a particular role, it is unlikely the preparer of the report will be able to provide detailed information on developments in the business, development plans, changes in organisation, business mix or client base.

Paragraph 23: Delegates will not wish to have to provide information which is not relevant to the delegation and is unnecessary. We would suggest that this paragraph be amended to read, "In addition, boards should receive and be satisfied with reports or presentations from their principal delegates addressing significant developments in the delegate's business **which are relevant in the context of the fund management companies delegation**, including development plans or changes in organisation, business mix or client base, outcomes of regulatory inspections and external and internal audit reviews, and business continuity programmes."

Paragraph 24: The proposed requirement to provide information about the distribution strategy may not be relevant for the investment manager i.e. this may be more effectively sourced from the distributor.

Paragraph 24: The paragraph requires the board to approve the proposed investment approach which includes the investment processes, trading protocols. Is this something the board will have the expertise to do or do they approve the appointment of the Investment Manager who in turn has the expertise in these areas. We would suggest the following amendment, "**Based on the recommendations of the Investment Manager who has expertise in this regard the board should approve the proposed investment approach**".

Paragraph 26: "changes to the investment approach should be subject to approval by the board". The extent to which changes should be subject to board approval is undefined and unclear. Reading paragraph 24, it could be construed as covering all of the bullet points in that section including things such as the investment manager's trading protocols, which would seem overly broad. Additionally, where the investment manager is moving between sub-strategies in a multi-strategy fund this should not need board approval. We would suggest that it might be clarified that only material or significant changes would require board approval.

Paragraph 26: We would suggest the following amendments, "**Further to explanation / justification by the Investment Manager** changes to the investment approach at any time should be subject to approval by the board. A suitable representative of the investment manager should be available to answer questions **in advance of and at the board meeting where such changes are being agreed.**"

Paragraph 27: "breaches of the investment manager's internal policies" We would suggest that clarification be provided that this relates specifically to policies in relation to the portfolio management function relevant to the fund e.g. best execution, order allocation, etc.

Paragraph 28: "all directors should have a good understanding of all relevant aspects of the investment manager's business and policies". Clearly this should not be read so as to indicate that the Directors have knowledge and understanding at the same level as the Investment Manager. We believe it is more appropriate that the board satisfy itself (e.g. based on reports/presentations from or meetings with the investment manager/due diligence provider/compliance officer) in relation to the investment manager's business and policies. Furthermore, we believe the paper is attempting to promote a move away from collective responsibility to designated responsibility that there are persons with expertise for each of the functions rather than requiring all of the board to have this level of expertise. As such we would suggest the following text, "**All directors should have a sufficient understanding of the relevant aspects of the Investment Managers business and policies so as to allow them to effectively supervise their delegate.**"

Paragraph 28: The last sentence should read "Such ...should be **given** positive consideration".

Paragraph 29: We would suggest the word "and" be inserted between the second last and last bullet.

Paragraph 30: We would suggest the word "and" be inserted between the second last and last bullet.

Paragraph 31: "the board should also examine such material if there is a perceived risk that its content conflicts with the prospectus" There appears to be an inference here that the Board should

be monitoring or overseeing marketing materials, which are prepared by the distributor, or in some cases, a sub-distributor with whom the board has no direct relationship. It is not clear how the Board may become aware of 'significant elaborations' in these materials. Given the large volume of marketing material that may be produced this expectation is unreasonable. The role of the board is not to monitor consistency of marketing material with the prospectus. Distributors are required to comply with applicable regulatory requirements themselves such as MiFID. In addition, there are other safeguards in place, such as the contractual arrangements that are in place with the distributor, the regulatory standing of the distributor as well as underlying oversight of the distribution network by the lead distributor. Furthermore, MiFID II will increase obligations on product manufactures to obtain M.I. from their underlying distributors and potentially these issues will be teased out in due course.

Paragraph 32: We are unsure why it is felt necessary to state that the board retains ultimate responsibility for risk management. This suggests that risk management differs from other management functions and we do not believe this to be the case (see statements in para 2, 3, 22).

Paragraph 40: "a board should satisfy itself that ... appropriate risk policies and procedures are in place and subject to regular review" at the delegate. We would ask that clarification be provided that this refers to "operational risk policies and procedures" of the delegate.

Paragraph 40: We believe clarification should be provided that delegates would only report on aspects of its business that are relevant to the delegation from the fund management company i.e. it would not be necessary to disclose all complaints or errors which do not directly affect the fund management company.

Paragraph 42: A Fund Management Company would typically receive a summary of the Business Continuity Plan and not the Business Continuity Plan programme itself, as such the board cannot be satisfied that the programme is adequate. Rather the Fund Management Company must be satisfied that the information provided demonstrates that the delegate has in place processes/procedures to ensure the tasks can be carried out where there is business interruption.

Paragraph 45: We would suggest the fifth bullet include at the end "(where relevant to services provided by a delegate)".

Paragraph 45: The depositary is appointed by the fund and is not a delegate of the fund management company. The depositary's duties are to the fund as opposed to the fund management company and so it would not seem appropriate to include the depositary reports in the list here. If there is a requirement to refer to the depositary reports it should be in a separate point and state something like, "**While the depositary is not a delegate of the investment company the board may wish to arrange to** receive direct reports from the depositary."

Paragraph 58: We would suggest the wording be amended to reflect that the depositary is not a delegate of the investment company. We would suggest the following amendment, "**While the depositary is not a delegate of the investment company the board may wish to arrange to** receive and be satisfied with regular, direct reports from the depositary."



We hope you find these comments helpful, and we remain at your disposal to discuss the issues raised in this response further.

Yours faithfully,

A handwritten signature in black ink, which appears to read 'Pat Lardner'.

Pat Lardner
Chief Executive