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Date | 12 December 2014

Fund Management Company Effectiveness- Delegate Oversight Consultation- CP86
Markets Policy Division
Central Bank of Ireland
Block D, Iveagh Court
Harcourt Road
Dublin 2

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Submitted via e mail to
fundspolicy@centralbank.ie

Re: Central Bank consultation CP 86 Consultation on Fund Management Company Effectiveness-Delegate Oversight

Dear Sir/Madam,

We welcome the opportunity to respond to the Central Bank of Ireland (**Central Bank**) consultation on Fund Management Company Effectiveness-Delegate Oversight. We endorse the response of the Irish Fund Industry Association (**IFIA**) to CP86. To avoid unnecessary repetition, we do not propose to repeat the reasoning and responses set out in the IFIA response, unless we are of the view that this adds value. We have adopted the defined terms and track the numbering used in CP 86.

We fully support policies and guidance which enhance the effectiveness of fund management companies. We are glad to see that the Central Bank is not "seeking to impose a "one size fits all" solution" because we believe that one of the strengths of the Irish Funds industry is its flexibility.

We are surprised that the Central Bank has identified a need to introduce a further regime to deal with Fund Management Company Effectiveness-Delegate Oversight. In the recent past, we have assisted fund management companies in implementing new requirements under the fitness & probity regime, the IFIA Corporate Governance Code, AIFMD, UCITS IV and a myriad of other regulatory developments. Currently Directors must master each of these sources as well as company law itself in order to fulfil their duties. We suggest that serious consideration be given to consolidating, streamlining and simplifying requirements for Directors and unnecessary complexity should be avoided. In this context, we suggest that consideration of responses to CP86 should align with the Central Bank's review of the impact of the IFIA Corporate Governance Code. This might alleviate the risk that the focus of Directors duties is diluted in the papering exercises required to show that reporting and compliance requirements in respect of UCITS business plan/ AIFMD programme of activity, audit, Fitness and Probity, company law and IFIA Corporate Governance Code (and other requirements) have been attended to.

Some clients have commented, in respect of the rationalisation of the management functions, that they are reluctant to incur the cost of revising their business plan which have recently been updated and do not feel that this additional cost on investors is warranted. We therefore suggest a significant transitional period for compliance, whatever approach is chosen.

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Consultants:	J.R. Osborne	S.W. Haughey	T.V. O'Connor	Professor J.C.W. Wylie	A.F. Browne	M.A. Greene	A.V. Fanagan	J.A. O'Farrell	I.B. Moore	

We are somewhat surprised that the Central Bank appears to consider it necessary to clarify "*that where a fund management company has a contract for the provision of legal services, it does not also have to ensure that the board itself also includes legal expertise*" as in our experience the composition of the board is always about getting a right mixture of skills and personalities and while legal expertise is useful, we would never have considered it to be a prerequisite. For the avoidance of confusion the clarification might also elucidate that "*the appointment of lawyers to the board is in no way ruled out, but ...any lawyer appointed to the board should be assessed by reference to the same set of board tasks and desired competencies as any other person being considered for appointment to the board.*"

We set out below our responses to the specific questions posed in the Consultation Paper and other general comments.

1. Is publishing a delegate oversight good practice document along the attached lines a good approach to encouraging the development of the supervision of delegates by fund management companies?

We echo the IFIA response in this regard. We believe that any guidance should best be provided through a revision of the IFIA Corporate Governance Code.

CP 86 points out that Central Bank identified strong examples of good practice. We believe that there is a strong desire among boards to adopt best practice. Accordingly we would suggest that Central Bank publish actual examples of good practice and poorer practice they have encountered (ensuring anonymity), with accompanying reasoning/ analysis so that boards can consider and implement improvements, where appropriate. It would be important, in our view, that such examples of good practice would not become Central Bank requirements. We suggest that this might present a preferable approach to encouraging the development of the supervision of delegates by fund management companies.

2. Is the breakdown of revised managerial functions correct? Should other managerial functions be provided for? What are your observations about what the operational effectiveness function might entail and how this might be performed? Do you see any obstacles to the Chairperson performing the operational effectiveness function?

Again, we echo the IFIA response in this regard. We would favour the responsibility for operational/organisational effectiveness remaining with the board as a whole. The IFIA Corporate Governance Code requires the Board to review the overall Board's performance annually and in our experience this incorporates consideration of operational/organisational effectiveness (this also tends to be raised as a standing board item in reviewing delegate reports).

3. Is relaxing the two Irish resident director requirement the correct approach? Will relaxing this requirement have an adverse impact on the ability of the Central Bank to have issues with distressed investment funds resolved? If so, how could this be addressed?

Again, we echo the IFIA response in this regard.

4. What are your views on the proposed approach to measuring time spent in Ireland? Can you suggest any alternatives or any enhancements to the definition proposed by the Central Bank?

Again, we echo the IFIA response in this regard.

5. Is there a downside to requiring fund management companies to document the rationale for the board composition? Will fund management companies require a transitional period during

which they can alter their board composition to ensure they have sufficient expertise and how long do you consider would be a reasonable timeframe for such adjustments?

Again, we echo the IFIA response in this regard. We would point out that significant costs might be involved in circumstances where existing boards were required to re-engineer their composition and these costs would fall to investors. For this reason, a significant transitional period should apply to existing boards.

6. Are there any other elements which should be included by the Central Bank in a Fund Management Company Effectiveness – Delegate Oversight initiative?

Again we echo the IFIA response in this regard.

Finally, on a side-note, we note the statement on page 2 that "The Central Bank no longer makes use of a promoter regime". We would welcome if this decision was reflected in practice and clients were no longer required to satisfy the promoter approval requirements in the context of UCITS.

We trust that the above is clear and of assistance. If you require any clarification on any points made in this letter please do not hesitate to contact us at nryan@algoodbody.com or ngreene@algoodbody.com

Yours faithfully

A&L Goodbody

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