

Consultation Paper 86 Fund Management Company Effectiveness- Delegate Oversight

Submission by Paul Halley FCA

By way of introduction I would like to state that the views expressed herein are my own personal observations and are not offered as the opinion or observation of any of the Investment Companies or regulated entities where I serve.

Specific Questions posed by the CBI

Question1

In brief yes it is a good approach. I welcome the Central Bank of Ireland's focus on this area. Clarification of ambiguities in relation to the roles dealt with by the Paper and in particular the Central Bank's views and expectations, can only help to assure those currently involved in the sector in relation to how they conduct themselves. While most if not all the concepts and practices suggested by the Committee's paper should be being utilised by 'good' management companies and their respective boards it is not unreasonable to set them out clearly as good practice (as opposed to mandatory practice).

Question2

I do not believe that this an accurate science and no breakdown of the required functions will ever fit the structure of all funds. Broadly speaking the function split is broadly correct with one two inaccuracies.

In relation to the proposed split I would suggest that Complaints Handling and Distribution are two distinct roles. In essence the complaints in general will flow through one the delegate service providers (namely the Administrator TA function or the Investment manager/promoter). The role of oversight of this function is a different matter to the oversight of the distribution of the fund across international boundaries and oversight of its distribution network.

In most cases the record keeping functionality will be performed by an administrator (apart from secretarial duties). Perhaps this should reside in the same category as supervision of delegates.

Question 3

I do not believe relaxing the requirement for two Irish resident directors is the correct approach. There has been a suggestion of a lack of depth of persons resident in Ireland with sufficient expertise in certain areas. In my conversations with investment management houses who have promoted/developed funds in Ireland they have without exception been of the opinion that Ireland has the requisite pool of talent with the requisite skills to fill such roles. It may be that those parties making such observations were 'looking in the wrong place'.

Having been involved first hand as a service provider with 'distressed' funds I would observe that the presence of two Irish resident directors was of immense assistance in seeking to resolve issues that required board attention.

With the abolition of the fund promoter regime (with which I don't agree) the de facto promoters may in a fund distress scenario or a scenario of their own insolvency or discontinuation leave a fund as an 'uncared for orphan'. While an oversea independent director may continue to act diligently in such a scenario it is not guaranteed. Irish resident directors would find it more difficult to 'abandon' their duties given their residence in the jurisdiction. The concept of one 'resident' director being left to manage the affairs of a fund vehicle (management company /SMIC etc) is a thought that should be chilling to both the regulator and the population of Irish resident directors. It also raises the issue of a board being rendered powerless if board meetings with only one director are considered not to have a quorum.

The current regime (2 resident directors) has proved a very effective method of fund governance and I am certain given the Central Bank reassurance that it has two board members within the jurisdiction.

In the case of a distressed or bad fund with a recalcitrant overseas director , instances may arise where the 24 hour commitment is not honoured. While resident directors may also prove difficult to liaise with, their residence within the jurisdiction will make this unlikely.

I would suggest that the requirement for two resident directors be maintained but perhaps allow to the possibility of a derogation to reduce this to one (with the 24 hour commitment and independence requirements retained). Derogations should only be permitted where the applicant can demonstrate they have conducted a comprehensive search for a suitable resident candidate with a very specific skill set for the fund vehicle in question , which has proved fruitless.

Question 4

I have no issues with the 110 day measurement proposed.

Question 5

There is a downside in that it increases the 'regulatory' burden but I believe the benefits would outweigh the burden involved. I suggest the transitional period should cover two annual board cycles (i.e. two years from decision that board does not have requisite composition).

Question 6

No observation

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