Irish Association
of Investment
Managers
35 Fitzwilliam Place
Dublin 2
Tel: 353-1-676 1919
Fax: 353-1-676 1954
Email: info@iaim.ie

Corporate Governance
Prudential Policy Unit
International Credit Institutions
Financial Regulator
PO Box 9138
College Green
Dublin 2.

29th June 2010

Dear Sir/Madam

Corporate Governance Requirements for Credit Institutions and Insurance Undertakings

The Irish Association of Investment Managers ("IAIM") is pleased to respond to this Consultation Paper. ("CP 41")

IAIM is the representative body for institutional investors in Ireland. Member firms manage assets in excess of €200 billion on behalf of Irish and international clients.

The observations contained in this response reflect our views as investors in Irish listed financial services businesses and, separately, our comments on the appropriateness of applying the proposed requirements to investment firms.

1. Investor Perspective

IAIM members support the principles set out in CP41. They are consistent with the requirements of the Combined Code on Corporate Governance and emerging international thinking on the governance of financial institutions. As investors we are keen that the governance regimes for listed Financial Institutions be both robust and seen to be consistent with international best practice. We therefore urge that the requirements to be implemented in Ireland following this consultation recognise key responses to the EU Commission Green Paper on Corporate Governance in Financial Institutions (COM (2010) 284) which addresses many of the issues identified in CP41. From a global investment perspective listed instruments issued by Irish financial institutions will be competing for rationed capital with other EU issuers. Global investors are likely to have a preference for issuers complying with a pan European governance regime. On a more general point, institutional investors look to the main board of financial institutions for the protection of stakeholder interests. We regard their responsibility as extending to the oversight of governance standards in their various subsidiaries. The existence of subsidiary boards does not, and should not facilitate, any relaxation of those obligations.

We offer the following specific observations:

1.1 The application of the proposals is, in part, to be determined by reference to the definition of “Major Institution” set out on page 10 of the document and which is defined by a scale test. We are strongly of the view that such a definition must have regard to risk. Scale, of itself, can undoubtedly give rise to significant or systemic risk. However, scale is not always a proxy for the level of risk associated with a particular institution or business model. We note that the CP (at 1.4) contemplates proportionate implementation of the requirements. We suggest that this can only be on a risk assessment basis.

1.2 An acknowledged lesson of recent years, deeply felt by investors, was the failure of non-executive directors to adequately protect the interests of stakeholders. It may be that a requirement to increase the numbers of non-executive directors will not, of itself, lead to better risk management. While not addressed in the consultation document, we are aware that the Financial Regulator proposes to interview potential directors and senior executives for certain institutions. We believe it important that any panel(s) charged with such interviews have the skills and relevant industry knowledge necessary to make sustainable assessments.

For large, listed institutions the requirements for minimum board size and board balance will not present challenges. However, for smaller organisations it may be that the requirement to have a majority of independent non-executive directors might, given the need for appropriate executive representation, give rise to unwieldy and possibly ineffective boards. The relevance of this observation to any particular situation is, obviously, proportionate to the risk profile in each case, whether such a board is the main board or that of a subsidiary and other factors. The requirements ultimately introduced should have regard for these situations.

1.3 IAIM recognises that the Financial Regulator does not have a remit to support the development of Ireland as a financial services hub. Nonetheless amongst this Association’s objectives is such development- within a robust regulatory environment. There are many credit institutions and insurance undertakings located in Ireland which are subsidiaries of companies regulated in other EU jurisdictions and countries with comparable regulatory standards. We anticipate that the blanket disqualification of executives within a wider financial services business as being independent may cause difficulty for some entities. Whether such disquiet has merit depends entirely on the risk profile of the Irish regulated entity. As currently drafted there is no flexibility to adapt this (or indeed some other) requirements on a basis proportionate to the risk profile of the Irish entity. We believe such flexibility should be incorporated into the final requirements.

1.4 More generally we note that the CP provides that regulated firms may apply to the regulator for derogation from some of the proposed requirements. We suggest that a regime requiring derogations may be seen as a significant hurdle by those considering establishing operations in Ireland. We consider that the Regulator could achieve the same standard by requiring that firms with lower levels of risk prepare, for regulatory approval, a governance regime consistent with the proportionate application of the principles in CP 41 as suitable for their business. It may be that some provisions such as those dealing with control functions would always have to apply.

1.5 The CP proposes an absolute requirement that each relevant entity have an audit committee, chaired by an independent director. It is likely that a significant number of credit institutions and insurance undertakings which are subsidiaries of overseas parent companies undertake specific activities in Ireland on behalf of those parent organisations. We suggest that a local audit committee, focused only on the activity in the Irish location, may not have sufficient visibility to assess the broader risk context within which the local subsidiary operates and to which it contributes. We suggest that a mechanism be incorporated to allow the parent company audit committee be drawn upon to ensure that issues relevant to the Irish subsidiary have been addressed.

In a similar vein the proposal at 3.8 that Institutions comply with the Proposed Requirements on an individual basis (i.e that group-wide policies and procedures meet local requirements) may give rise to regulatory gaps. Robust group-wide procedures would typically be developed in the context of a comprehensive risk assessment whereas an individual subsidiary might have a narrow mandate unreflective of the larger risk profile.

It may also be appropriate to exempt small, non-complex, firms from the Audit Committee requirement where an appropriately balanced board can address issues directly.

1.6 We draw your attention to possible constraints on the obligation imposed on regulated entities to satisfy themselves that a proposed board nominee has sufficient time available to discharge their obligations (4.6). The obligations of confidentiality arising from an existing directorship or other position may not allow a nominee divulge sufficient information to allow a board to make the required decision. In some cases it may fall to the Financial Regulator to determine that a nomination is appropriate or not.

2. Applicability of Code to Investment Firms

A universal characteristic of investment firms is that they invest client funds on foot of clear agreed written mandates or in accordance with a prospectus or similar regulated document. The regulatory environment within which investment firms operate reflects the need to protect the client whose assets they manage. Member firms of IAIM (none of whom invest on their own account) are subject, inter-alia, to MiFID, the UCITS III Product and Management Company Directives, CRD, CPC and shortly to UCITS IV and AIFMD. Many are also subject to extensive requirements of overseas regulatory authorities. The obligations under all of these, and other regulations, already deal extensively with matters such as capital requirements, governance, systems and controls, conflicts of interests, client's assets, custody, remuneration, etc.

You will be aware of the intense supervisory focus, placed by your colleagues, on the many governance obligations imposed on boards of investment firms under MiFID. In particular Regulations 33-37 of MiFID place regulatory obligations, analogous to those proposed in this CP, on investment firms.

The governance failures identified internationally which contributed to the financial crisis primarily (but not exclusively) centre on the failure to identify, manage and understand risk, most particularly

risk that may have systemic impact. While the vast majority of such risk has arisen as a result of the activities of retail and investment banks and certain insurance activities rather than investment managers, we nevertheless acknowledge that investment firms who manage client funds could potentially contribute to such systemic risk. Investment firms take governance very seriously as is required by the existing regulatory framework and notably the incidence of governance problems within this sector has been minimal.

The industry, in Ireland, is multi-facetted.

- Domestic investment managers are primarily subsidiaries of larger financial institutions some of which are listed. Others are the investment arms of life or general insurance companies while some are independent firms that specialise in specific asset classes.

- Investment managers which are subsidiaries of larger international groups may have operations which cover the full spectrum of asset management functions while others may provide a particular niche service (e.g. fixed income).

- All firms use a variety of investment structures, appropriate to the differing client situations. Many such structures are authorised by the FR or by its overseas equivalents; the conditions of such authorisation generally involving certain governance requirements. Structures can include PIFs, QIFs, and NURS as well as UCITS. In many cases such entities are incorporated bodies already subject to company law. Other entities are generally constituted as unit trusts and require a management company for operation, such companies being subject to governance requirements under both company law and applicable regulation. It would not be uncommon for some investment firms to have more than 30 separate entities.

- Investment managers with international operations may locate differing elements of their overall service in different jurisdictions structured in different regulated entities. These can be based on different asset classes, differing product types or, indeed, different elements of the investment process. Robust governance arrangements must have regard to these features. Group audit committees may be solely in a position to evaluate the composite risk exposures. Group wide policies and procedures are designed to address all key risks and regulatory obligations irrespective of the specific activities or domicile of any individual entity. Accordingly governance should not be viewed at a single entity level but must have regard to the particular model operated by individual firms/groups.

Clearly a requirement that each entity within a single investment manager structure have a board with a majority of non-executive directors will add significant cost and administrative burdens without any obvious corresponding governance benefit.

We are aware that many of the considerations which apply to the Funds industry apply to investment firms also. Indeed, it appears to be clear that neither the Funds industry nor those involved in the investment management sector have been contributors to systemic risk, nor have either sector suffered the critical failures in governance and risk management experienced elsewhere in the financial services industry. In that regard we welcome the separate consultation

process introduced for that sector. We believe that investment firms, of the type represented by this Association, can contribute to that separate initiative.

Investment managers currently have boards at appropriate "umbrella" levels many of which have non-executive directors. Because of the client asset nature of the industry many such boards have compliance personnel as directors. There is also considerable external oversight from a range of sources. Apart from domestic and overseas regulatory authorities, this oversight regime can involve external audits under the SAS 70 standard, monitoring programmes by the Trust and Fiduciary functions of Trust Banks and oversight by Trustees and Investment Consultants acting on behalf of pension fund clients etc.

The industry is committed to the continued maintenance and enhancement of effective governance principles. However, we are keen that the cost to our clients is proportionate and justified having regard to risk and to the clients' overall objectives. In this regard, the array of structures and collective investment vehicles, each of which adopts a risk posture unique to the underlying clients requirements, makes it challenging to develop a general regime which is proportionate to risk.

We therefore believe that a more detailed examination of an array of differing investment firm models present in the market is necessary before the necessary governance regime can be finalised. We also believe that such an examination should have appropriate regard for both the level of governance risk inherent in investment firms and the pre-existing regulatory framework as it applies to governance, senior management arrangements, systems and controls in order to ensure that the principle of proportionality is observed.

We are available to discuss such a process with you.

Yours faithfully,

____

Frank O'Dwyer
Chief Executive

Directors:

G. Keenan (*Chairman), P.* Wood (*Vice Chairman)*, S. Hawkshaw, R. Richardson,
G. Alexander, J. Richards, K. Dempsey, M. Nolan, F.O'Riordan, D. Warren,
P. Hinkson, B. Hall, A. Kerr, F. Pietribiasi

Registered in Dublin as a Limited Company No. 193905
Registered Office: 35 Fitzwilliam Place, Dublin 2