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26th June 2012

Dear Siobhan,

Consultation Paper CP 59 – Proposed changes to the regulatory reporting requirements of Irish authorised collective investment schemes

We welcome the opportunity to respond on the consultation in respect of Consultation Paper CP 59 – Proposed changes to the regulatory reporting requirements of Irish authorised collective investment schemes (“**CP59**”) and have set out herein the response of the Irish Funds Industry Association (the “**IFIA**”) in respect of CP59.

1 General

We note that CP59 provides for a number of changes to the existing reporting regime for investment funds and provides for online submissions for a number of reports which are currently filed in hardcopy via post or soft copy email format. In principle, we have no objections to a move to online submissions of such reports, however, in our view, CP59 goes far beyond providing for such submissions and proposes to impose a number of changes and requirements which will impact negatively on the competitiveness of the Irish funds industry and which we feel are excessive and overly burdensome for investment funds and their service providers without providing any clear and tangible benefits for the investment funds industry or for investors who will ultimately bear the costs of such additional requirements. In particular, we would highlight the following:

- 1.1 CP59, in addition to requiring the online submission of the relevant report, also requires the completion of a questionnaire to be submitted with each report. We will address the specific issues in respect of each questionnaire below, however, in general, these questionnaires are overly detailed, going, in a number of instances, beyond the detail contained in the respective report and requiring further information, thereby imposing additional obligations on investment funds or their service providers who carry out such filing.

As you are aware, a number of the reports are currently filed by the administration companies on behalf of their investment fund clients. Given the level of detail required in certain of the questionnaires, administration companies may no longer be comfortable completing such questionnaires, or completing them without obtaining back-up information from the investment fund or other service providers to that fund. Therefore, significant changes will be required to the current reporting process and investment funds may be

required to reorganise the manner in which reports are filed or may be required to obtain additional confirmations or reporting. We do not believe that the costs of implementation of these proposals outweigh any benefits to the funds industry or to investors. The implementation of the proposals set out in CP59 will involve additional expense for the investment funds which will in turn be passed to their underlying investors without any clear benefits to the investors.

- 1.2 While we can appreciate that the new proposals may assist the Central Bank in terms of its review of such reports and gathering of fund data, we do not believe that the appropriate manner of achieving this is to have service providers or investment funds being required to essentially summarise certain aspects of the reports submitted or provide additional information above and beyond what is contained in the report. In addition, requiring such a summary from a service provider gives rise to issues in respect of liability should the questionnaire be incorrectly completed which would need to be considered further by the industry. Clarification would also be required from the Central Bank in respect of the consequences of submitting an incorrectly completed questionnaire.
- 1.3 CP59 also provides for a Sub-Fund Profile Questionnaire which is not currently required by the Central Bank. We believe that the introduction of such further reporting requirements at this stage, which effectively summarise the details contained in the relevant prospectus or supplement, sends out the wrong message to fund promoters in terms of the Irish regulatory regime, particularly following so closely after the introduction of the fitness and probity regime and the reporting required thereunder. Such reporting is in excess of that required in other jurisdictions and may undermine Ireland's position from a competitiveness standpoint as well as giving rise to additional costs.
- 1.4 In addition to the general points above, we believe that the issues identified below in respect of specific reports serve to underline the excessive nature of the proposals set out in CP59 and illustrate that further consultation is necessary with the industry given the significant issues for the industry posed by the proposed changes sought to be introduced to the reporting regime pursuant to CP59.

2 **Operational concerns**

We considered the administration of the investment funds' log-on identification numbers (IDs) and passwords separately and the impact this will have on the investment funds and their delegates in managing the process. We believe there will be significant challenges for investment funds and their delegates to manage the process of issuing passwords to the various parties responsible for the filings. Our comments and questions in relation to this are based on experiences in completing various returns using the ONR.

2.1 **System access**

We understand from CP59 that the Central Bank will issue a log-on identification number (ID) to the investment fund. A representative of the investment fund will then decide which individuals will be making the returns. Some returns such as the annual and semi-annual financial statements and the accompanying questionnaire will more than likely be completed by the administrator; other returns such as the FDI report, KIID and sub-fund profile questionnaire may be completed by different representatives of the investment manager. The password administrator of the investment fund will be

required to issue and reissue passwords from time to time as required. It is unclear from CP59 whether a director of the investment fund will be the only party authorised to submit the forms once they are completed. We believe this process is unduly burdensome on a board of directors and for an investment fund to administer. Typically the owner of a system is responsible for the issue and reissue of passwords and IDs for their system. We ask that the Central Bank consider a more efficient way of administering passwords and IDs to the many users and approvers.

The following are areas which we believe require particular clarification:

- 2.1.1 will a second level approval be required to submit all filings to the Central Bank? Related to this is that the Central Bank states that the board of directors are responsible for filing the annual and semi-annual financial statements, in practice, there will be an expectation that the fund administrator will submit the financial statements. Our view is that the fund administrator or other delegate should have approval for submitting the financial statements as they are already approved by the board of directors as evidenced by their signatures on the financial statements or in an approved board minute; and
- 2.1.2 some filings are done at umbrella level, other filings are at sub-fund level, how will the fund IDs distinguish between the two and link the two?

2.2 **System administration**

- 2.2.1 CP59 provides that the responsibility for filing reports lies with either the board of directors (of an investment company), the manager (of a unit trust or common contractual fund), or the general manager (of an investment limited partnership) collectively referred to as the “Fund”. CP59 further provides that each Fund will receive access to the Central Bank’s ONR system through a primary system administrator. In turn, the Fund may elect to file returns itself, create log-ins for a third party or delegate the filing of any of the returns to the Fund’s administrator or legal adviser.
- 2.2.2 It is not clear who the system administrator will be. CP59 appears to contemplate that the Fund will have an ability to manage the filing process itself. This is clearly not the case for self-managed investment schemes. There does not appear to be any recognition of the delegated basis under which self-managed investment schemes operate in Ireland. It is likely that the role of system administrator will effectively fall between the investment manager, legal adviser or administrator, however, this is not specifically contemplated in CP59.
- 2.2.3 Irrespective of whether the burden of system administration is carried by the investment manager, administrator or legal advisers to the Fund, it is clear that significant resources will need to be invested in this process – even before any filings are made.

2.3 **Roll out**

We would like clarification as to whether there will be a requirement for investment funds to upload historic reports as there was with fund service providers and whether the Central Bank intends to implement dual reporting for the initial round of reporting (i.e. with funds submitting paper based and electronic returns) should the changes to the reporting process ultimately be implemented.

2.4 Reporting currency

In addition, we would like to ascertain if financial returns for Funds that are denominated in other currencies will need to be converted into Euro. If this is the case it will add significantly to the administrative burden.

3 Specific reports

3.1 Annual financial statements and interim financial statements

3.1.1 Overall the financial statements questionnaire, as currently proposed, is viewed as a process that will significantly increase costs, increase risk and will ultimately be anti-competitive for Irish funds relative to other jurisdictions due to the volume/type of data requested. Additionally, the benefit of providing all the data is not transparent, especially where the data is already maintained by the Central Bank or included in the financial statements.

3.1.2 We would have the following specific comments on the proposals in respect of the financial statements:

3.1.2.1 Responsibility for the completion of the questionnaire will become the responsibility of the administrator including the consolidation of data from multiple sources (Prospectus, investment management agreements, directors, auditors and advisors) and the accurate upload of the questionnaires.

(a) Field 22 – Directors/Fund Managers Report; the administrator will require the board to confirm this matter at the board meeting called to approve the respective financial statements. Consideration and direction will be required on the form in which these comments will be appended to the questionnaire and how they should be validated as part of the submission with the board to ensure accuracy of any such comments.

3.1.2.2 The current proposed questionnaire will require the administrator to populate 26 data items. The majority of the data items are already provided to the Central Bank and are actively maintained by the investment funds through regulatory filing/notification obligations to the Central Bank. There are also data requirements that may not be readily available in the financial statements and will therefore require additional administration support.

(a) Field 25 – Percentage of total assets – valuation category; administrators do not currently calculate this data as part of the financial statements and this would require additional effort to complete. Additionally the calculation of this data at umbrella level would not be relevant to investors given investors invest in the individual sub-funds, not the umbrella.

(b) Field 26 – Subsequent events; this data is provided as part of the financial statements to the Central Bank, inclusion of this data filed as part of the questionnaire is considered a duplication of effort and cost.

3.1.2.3 Administrators will incur significant additional cost resourcing and enhancing existing systems to automate the reporting, incorporate controls in-line with corporate policies and

reduce risk. These costs will ultimately be passed to the investment funds and investors in the funds.

- 3.1.2.4 The IFIA's recommendation with respect to the Financial Statements Questionnaire is that if it is decided to proceed with a questionnaire, the scope of the data in such a questionnaire should be reduced to only include data relevant to the filing, thus reducing the costs and risks for funds associated with implementing the proposal.

As a further point, CP59 includes a requirement for the Custodian/Trustee report to be on the Custodian/Trustee letterhead. We are unclear as to why this is required - it should be sufficient that the Trustee signs the report included in the accounts.

3.2 **KIID**

While we note that the additional detail included in this questionnaire is limited to the synthetic risk reward indicator ("SRRI"), we would submit that this information is already included in the KIID submitted alongside the questionnaire. In the event that KIIDs for multiple share classes and sub-funds are being submitted in one filing, the completion of numerous questionnaires creates a significant administrative burden and increases the likelihood of the SRRI being incorrectly extracted from the KIIDs.

3.3 **FDI report**

- 3.3.1 We note that CP59 provides that a separate questionnaire will need to be completed for each sub-fund within an umbrella to accompany the FDI Report. This could require the completion of a number of questionnaires (which could be a significant number based on the number of sub-funds within the umbrella) and is overly burdensome on investment funds.
- 3.3.2 CP59 refers to the responsible entity being required to complete a "brief" questionnaire on filing the FDI Report. On review of the proposed questionnaire as set out in Appendix "A", we would not be of the view that such questionnaire (comprised of 25 separate fields) could be considered to be brief and indeed, the additional information required to that currently required in the FDI Report will involve significant time and costs on the part of the risk manager/investment manager in providing such information.
- 3.3.3 In terms of the questionnaire, we would raise the following specific comments:
- 3.3.3.1 a number of the fields set out in the questionnaire will require information which is already in the possession of the Central Bank or which will clearly be disclosed in the FDI Report submitted. We see little value in requiring the filing entity to extract such information from the FDI report and repeat it in the questionnaire;
- 3.3.3.2 a number of the fields, including, fields 10, 12, 13, 17 to 19 and 21 to 25 require information which is in excess, and in certain instances, far in excess, of that currently required in the FDI Report pursuant to UCITS Notice 10 and Central Bank Guidance Note 4/07. Currently FDI Reports are required to state the year-end VaR number whereas the questionnaire requires a minimum, a maximum and a median in terms of the utilisation of the VaR limit during the year. We also note that the questionnaire requires disclosure in respect of the levels of leverage employed during the period (with minimum, maximum and median values required) in terms of the both the sum of the notionals approach and any supplementary

approach to leverage calculation. The provision of such information represents a significant change to the current level of reporting required and will impose an excessive burden on the risk manager/investment manager in terms of information to be provided. We also note that disclosure is required in respect of any other risk measures employed by the UCITS. Further clarification would be required from the Central Bank as to the scope of such disclosure which would appear extremely broad.

These additional requirements in requiring repetition of information already included in the FDI Report or requiring the submission of additional information not required currently in respect of the FDI Report would appear to be overly burdensome on the funds industry. The requirement of such detail in the questionnaire may mean that administrators and legal advisers may not be comfortable or in a position to complete such questionnaires thus placing additional burdens on investment funds to provide such reporting directly.

- 3.3.3.3 Field 10 of the FDI questionnaire asks: “Were there any other breaches that required escalation to either the UCITS Board or Central Bank during the year?” It would be helpful to clarify whether these relate to any or all breaches, or only to FDI breaches.

3.4 **Sub-Fund profile questionnaire**

- 3.4.1 We note that CP59 proposes that a new return, the Sub-Fund Profile Questionnaire, must be filed on a sub-fund basis annually before 30 June in each year. On review of the proposed questionnaire as set out in Appendix “A”, we note that it includes 35 fields. While we appreciate that not all fields will apply to a particular sub-fund, the completion of the proposed questionnaire may involve a significant time and cost burden on the part of the investment manager in providing such information. In particular, this could require the completion of a large number of questionnaires based on the number of sub-funds within an investment fund and the number of investment funds promoted by a particular investment manager. Furthermore, we consider it likely that investment managers/investment funds will request administrators or legal advisers to complete the questionnaires on their behalf. This may result in significant costs being incurred by sub-funds and their investors in meeting the requirement to make the return.

- 3.4.2 It is stated in CP59 that the general purpose of the questionnaire is to assist the Central Bank in gathering information on the characteristics of collective investment schemes which in turn: (i) will form the basis for the Central Bank to engage with the scheme in future; and (ii) enable the Central Bank to monitor trends within the fund sector.

With regard to (i) above, we would appreciate clarification on what is meant by the Central Bank when it refers to the information gathered in the questionnaire forming the basis for the Central Bank to engage with the scheme in future.

With regard to (ii) above, we can appreciate that this information may be useful in determining trends within the fund sector, however, it is not clear that the questionnaire will assist the Central Bank in any way in the regulatory oversight of the Irish funds industry.

The anticipated additional cost burden would appear excessive considering the stated purpose of the questionnaire. Without further understanding of the purpose and benefit of the questionnaire it will be very difficult to justify the introduction of this new reporting requirement to investment managers and unfair on investors who are likely to absorb the cost of making the return.

3.4.3 We note that the questionnaire must be filed annually before 30 June in each year. CP59 is not clear on the timing requirements relating to the filing of the questionnaire. Will there be a prescribed filing period during which the Central Bank will expect the questionnaire for a Sub-Fund to be submitted or will discretion be left with the investment manager as to when to file the questionnaire? For example, can the investment manager choose to make the filing at any time during a 12 month period? When making the filing in subsequent years, will the Central Bank expect a 12 month gap between filings? Further guidance on these issues would be appreciated.

3.4.4 In terms of the questionnaire, we would also raise the following specific comments:

3.4.4.1 a number of the fields set out in the questionnaire will require information which is already in the possession of the Central Bank or which is clearly disclosed in the investment policy for the sub-fund contained in the prospectus for the sub-fund. We see little value in requiring the filing entity to extract such information from the prospectus and repeat it in the questionnaire;

3.4.4.2 a number of the fields (for example, field 11, 12 and 14) may require information which is in excess of that required to be stated in the investment policy of a sub-fund and may require analysis of the portfolio composition of the sub-fund in order to provide an accurate response. This will involve significant time and costs on the part of the investment manager in providing such information;

3.4.4.3 certain fields provide dropdown options which may not always allow an accurate response. For example, field 10 ("Equity Fund Region" - which we assume requires an indication of the geographic focus of an equity fund) provides a number of options. However, the list is not comprehensive. In these circumstances, the dropdown menu should indicate "other" to allow for the completion of the field for sub-funds which may not fall under one of the predetermined dropdown options;

3.4.4.4 related to the point (iii) above, where a dropdown option includes "other" as a permitted response (and this is selected by the sub-fund), will the sub-fund be required to provide further information in the questionnaire?;

3.4.4.5 we note that not all fields will apply to each sub-fund and that the relevant fields to be completed relate to the sub-fund's investment mandate (field 9). Will fields become inoperative where they are not applicable as a result of indicating a particular investment mandate? This may reduce margin for manual error in the completion of the questionnaire; and

3.4.4.6 we would also request that the Central Bank use consistent fund definitions in line with other reports which the Central Bank may require in the future, e.g. future quarterly fund returns, etc.

3.5 **Regulatory return and suspension notification**

3.5.1 Responsibility for, and delegation of, the filing of regulatory returns for investment funds to the Central Bank

The text of CP 59 does not reference the ability of the fund or management company to report, stating at page 7:

“The Trustee/Custodian (“Trustee”) is responsible for notifying the Central Bank of breaches.... Neither the Trustee nor the auditor can delegate these duties. The Fund will not have a role in the provision of these reports and the Fund will not have access to any reports submitted by the Trustee or auditor.”

The Trustee has an obligation to report to the Central Bank on matters of concern; however, clarification would be welcome on the ability of the fund to report the same under the proposed reporting requirements. The IFIA would submit that it is the duty of the fund to ensure regulatory compliance, as such the reporting regime envisaged in this consultation should not limit or restrict existing avenues for the fund to report on the same, or it may face the inability to report relevant matters even if such reporting is merely an acknowledgment of the Trustee’s report. We believe it appropriate that, should the fund, or its directors, wish to report that the appropriate mechanism to do so is provided. In some instances the fund may wish to highlight an issue where the Trustee is not best placed to provide information, or indeed engage directly with the Central Bank.

Furthermore, if the Trustee is the only entity providing such reports to the Central Bank this could lead to confusion, as to date the Central Bank has directly reached out to boards of directors for further information upon being notified of breaches. The text in CP 59 quoted above states the “fund will not have access to any reports submitted by the Trustee”. This may additionally raise issues relating to breach of confidentiality, as any subsequent correspondence to the directors may contain facts that could have only been provided by the Trustee. The reporting regime envisaged in this consultation should not limit or restrict existing avenues for the fund to report and communicate with relevant parties.

The language in this section only refers to “breaches”; the IFIA queries whether the same applies to “errors”. The IFIA believes that there is a clear need for the fund administrator, acting as a delegate of the investment manager, to have reporting avenues for example, in respect of pricing errors, for which they may be best placed to provide information. The industry believes it is important that the fund (or one of its other delegates) is provided the opportunity to report an issue as parties may wish to opine differently on it irrespective of any agreed final outcome.

3.5.2 Filing of regulatory report – as required, pages 14 – 15

Page 14 of CP 59 sets out five events which will be reportable: a material breach, a material error, a significant matter, an advertent breach and NAV/dealing suspension. It would be useful if guidance were available regarding what constitutes each of the aforementioned terms. A clear distinction should be made between those reports to be provided by the Trustee, i.e. the first four events, and the last event, which deals with NAV/dealing suspensions. Reports relating to the latter event are currently provided by the fund or its delegate and this segregation should be maintained.

We welcome the acknowledgement that the Trustee will use its judgement to determine materiality in relation to reporting matters.

However, due to the potential scope for overlap between the different reports, it would be beneficial if the Central Bank could provide qualitative and/or quantitative definitions of the four reportable events. The following areas have been highlighted for further clarification:

- 3.5.2.1 A material breach (Event 1) will presumably also encompass an advertent breach (Event 4). Clarification would be appreciated when an advertent breach, which is subject to quarterly report, escalates to a material breach, which requires prompt reporting.

Additionally, advice would be welcomed on whether a material breach may also encompass inadvertent breaches.

- 3.5.2.2 There appears to be a great deal of scope for overlap between a material error (Event 2), which captures a variety of events that might impact the operation of the sub-fund, and a significant matter which is undefined (Event 3). It may also be difficult for Trustees to distinguish between the two categories as they are both subject to same reporting timeline (i.e. promptly). Additionally, a definition in relation to the “impact” of a material error would be welcome as it is undefined in the paper.
- 3.5.2.3 We would note that the industry would not consider all errors over 50 basis points falling into this category. We would envisage reporting errors resulting in issues that could have an effect to the functional capability of the sub-fund under this category, as stated in the Central Bank’s explanatory text.
- 3.5.2.4 In respect of the quarterly returns (Event 4), it is unclear whether this also encompasses pricing errors over 50 basis points.
- 3.5.2.5 A definition of what will be considered “prompt” is necessary to ensure consistent reporting. The industry recommends that in the majority of cases promptly will mean reporting without delay once the issue has been fully reviewed and the appropriate remedial action has been agreed.
- 3.5.2.6 In cases where the Trustee feels that the appropriate corrective action is not being taken, or believes the matter is of significant urgency, the Trustee will report issues which have not yet been resolved.
- 3.5.2.7 Where reports are filed promptly in relation to Event 1-3, we query whether inclusion will be required in the subsequent quarterly return (Event 4).

It is worthwhile noting that the Trustee is often dependent on other parties to report to it in a timely fashion.

It is submitted that without further explanation on the above matters, there is a danger of inconsistent regulatory standards being applied and uncertainty in the market place.

The IFIA would also appreciate clarification on whether breach of investment objectives is captured under the scope of breaches reporting.

In respect of the regulatory report document to be saved online, it would be beneficial for the Central Bank to liaise with the industry on the required formatting and, if the report is to be required ultimately, to agree a pre-determined format, in order to ease the potential for administrative burden.

3.6 **Compliance form, Appendix B**

3.6.1 In relation to the Compliance Form located in Appendix B, the industry would welcome an opportunity to liaise in relation to a number of questions on the form, such as:

- 3.6.1.1 Field 11: “Provide a copy of trustee/custodian’s written consent to compensation. Also, provide a copy of any trustee/custodian report(s) on error/breach”. The use of the word

“consent” implies that the Trustee may be in a position to withhold consent (or generally control the payment of compensation) to a higher degree than occurs in practice. Whilst the Trustee is proactive in engaging with a fund in the process of determining or paying compensation, language referencing the “acknowledgement” of the Trustee would be more appropriate. It is unclear what trustee/custodian report on the error/breach is referred to here. The questions covered in the Compliance Form typically cover all the key matters that would be contained in a trustee/custodian report to a board.

3.6.1.2 Field 15: “Any internal investigation & measures/controls put in place to prevent similar incident?” A sub-field goes on to query whether disciplinary issues of concern exist, again the Trustee may not necessarily be made aware of this, and would view it as a matter of sensitivity for the directors/investment manager to report. Further the Trustee may not be entitled to share this information as it is subject to data protection standards, whereby the investment manager is the data owner.

3.6.1.3 Field 16: “Investigation by other regulatory bodies (if any). If yes, provide complete details”. We would suggest that “investigation” is replaced with “notification”, as this occurs on a more frequent basis and would encompass investigation, if carried out; bearing in mind that such information would not always be shared with the Trustee.

In addition to the points above, it would be useful for the process around the “locking” or “unlocking” of reports to be clarified, as the Trustee, in order to adhere to “prompt” reporting standards may need to file an initial report, which may then need subsequent updating to reflect information that will have to be sought directly from the investment manager. Provision should be made for unlocking of accounts in such circumstances.

3.7 **Annual statutory duty confirmation return and supporting reports**

With regard to the specific questions raised in CP59, we would respond as follows:

4 **Responses to specific questions**

Question 1 – Do you have any suggestions in relation to the proposed implementation date or in relation to training or guidelines that would be helpful for firms? If so, please provide details.

CP 59 proposes that a fund may delegate the reporting functions to a third party, including an assigned individual. Operationally it would be beneficial for the industry to gain a better understanding as to the management of system access and password control to be operated by the Central Bank, in particular how each party can plan effectively for resource changes. This is of particular importance as delegation to third parties as noted above will presumably require separate access codes and passwords for each reporting function for each fund, which may be a difficult process to manage.

Additionally, should the proposals ultimately be implemented, the industry would appreciate clarification on implementation timing for the filing of the financial statement reports. As CP59 aims for implementation in Quarter 1 2013, the industry would recommend the first filing of financial statements reports would be for interim financial statements in 2013.

Question 2 – Do you have any comments or require clarification on any specific question that appears under a Return Questionnaire, as outlined in Appendix A? If so, please provide details.

Details of the specific issues that would arise in relation to each questionnaire are set out above.

Question 3 – Do you have any suggestions in relation to streamlining/automating the completion of some of the returns e.g. the use of an XML file? If so, please provide details.

We believe that this issue should be addressed once it has been determined if the proposals are to proceed and, if so, the final composition of the questionnaires has been decided. At that point, the extent to which the questionnaire can be automated will be clearer.

We would be happy to discuss any of the above with you further, should the need arise.

Yours faithfully



Pat Lardner
Chief Executive