BLACKROCK

11 December 2012

AIFMD Consultation
Markets Policy Division
Central Bank of Ireland
Block D
Iveagh Court
Harcourt Road
Dublin 2
Ireland

RE: Consultation on implementation of the Alternative Investment Fund Managers Directive (AIFMD) – Consultation Paper CP60

Dear Sirs

BlackRock is pleased to have the opportunity to respond on Consultation Paper CP60.

BlackRock is one of the world's pre-eminent investment management firms and a premier provider of global investment management, risk management and advisory services to institutional and retail clients around the world.

As of 30 September 2012, BlackRock's assets under management totalled $3.673 trillion (€2.88 trillion) across equity, fixed income, cash management, alternative investment and multi-investment and advisory strategies including the iShares® exchange traded funds ("ETFs"). Through BlackRock Solutions®, the firm also offers risk management, strategic advisory and enterprise investment system services to a broad base of clients, including governments and multi-lateral agencies, with portfolios totalling more than €9 trillion.

In Europe specifically, BlackRock has a pan-European client base serviced from 20 offices across the continent. Public sector and multi-employer pension plans, insurance companies, third-party distributors and mutual funds, endowments, foundations, charities, corporations, official institutions, banks and individuals invest with BlackRock.

As at 30 September 2012 BlackRock affiliates managed 136 funds which we expect fall within the scope located in Ireland with total assets under management of €30.2 billion.

Key points

BlackRock welcomes the proportionate approach adopted by the Central Bank of Ireland and the opportunity taken to rationalise the Irish funds regime in a set of consolidated rules.

We note that a number of the questions regarding the establishment of a Retail Investor AIF ("RIAIF") run in parallel to the European Commission's Green Paper on UCITS and we believe that any such moves should be closely aligned with future European developments. It is also important to consider the liquidity profile of any such fund vehicle as well as potential distribution methodologies.

We also welcome the operational flexibility offered by the proposals to allow condensed portfolio statements and accelerated publication of NAV in certain situations provided suitable investor safeguards have been put in place.

Responses to questions

1. The Central Bank has previously placed significant reliance on the Promoter to underpin the formal regulatory regime by ensuring that only sizable entities with relevant experience could establish AIFs in Ireland, entities who could support AIFs in difficulty. To this end, the Central Bank has had a promoter approval process. We are now proposing to eliminate the promoter approval process and place reliance instead on the

AIFM, taking into account the obligations on AIFM which the AIFMD imposes on them. For this to work, we are proposing to elaborate in more detail to clarify the obligations of directors when an AIF gets into difficulties. Is this the correct approach? The proposed QIAIF requirements differ significantly from the Qualifying Investor Funds ("QIFs") requirements previously in place. A number of requirements will no longer be applied because in our judgement, the AIFMD provides an appropriate level of protection, through the requirements applied to the AIFM or, through the AIFM, on the AIF. Do you agree with this approach?

In principle we agree but we note that particular consideration needs to be given to the multi-manager or sub-advised model to make clear where regulatory obligations lie in such scenarios.

Subject to determination of the delegation/letter-box entity provisions at AIFMD Level 2, we believe that regulatory responsibility for compliance with AIFMD should typically lie at the management company level (or self-managed AIF level) assuming that sufficient management substance exists, rather than at the level of a third party sub-advisor.

2. QIFs authorised under the existing regime are not subject to investment and borrowing restrictions. However, in order to avoid circumvention of the Irish regulatory regime, they may not invest more than 50% of net assets in a single unregulated investment fund. The Central Bank is not proposing to change this limit of 50%. Indeed it is proposed to tighten the regime slightly by adding a provision to prohibit investment in excess of 50% in unregulated investment funds which are identical in terms of management and strategy. Do you agree with this approach? Do you think it is necessary to further address possible circumvention through investment in clone funds?

We agree with this approach. Any circumvention of these rules could potentially lead to a concentration of risk in respect of a single strategy and fund promoter / manager. Notwithstanding that we agree with this prohibition, we would not advocate a change in the rules applicable to QIF feeder funds, particularly the derogation in accordance with Annex 1(D) of Guidance Note 1/01 which permits a QIF feeder fund to invest into an unregulated scheme.

Master feeder structures are intended, as in UCITS, to allow an effective method of pooling investor's assets while taking into account the different tax and reporting regimes applicable to different types of investor. We currently avail of this derogation to facilitate the effective pooling of investor assets and have applied to the Central Bank of Ireland for approval to establish another QIF feeder fund which would avail of this derogation.

We note that this derogation is still available for a Qualifying Investor AIF ("QIAIF") under the AIF Handbook as set out in the Appendix and would welcome confirmation that this will remain unchanged.

3. The Central Bank has permitted both QIAIFs and RIAIFs to use share classes in order to side pocket assets which have become distressed, subject to certain safe-guards. We are considering if open-ended QIAIF should be permitted to purchase assets and immediately place these in side-pockets. In that case the QIAIF would, in effect, no longer act as an open ended fund for the totality of the portfolio and investors would lose redemption rights in respect of part of their total holding. If suitable disclosure is provided do you consider that this option should be available to QIAIFs? Should a limit apply to such side-pocket arrangements? Can the QIAIF continue to be regarded as an open-ended AIF?

We can see some benefits for open-ended QIAIFs to have powers to side pocket an illiquid or hard to value investment from inception provided that such side-pocketing was (a) clearly disclosed to investors; and (b) capped at a reasonable percentage of the QIAIF's AUM, e.g. 33 per cent. This would be in addition to having the power to use side pockets as a liquidity tool.

4. QIFs authorised under the existing regime are subject to requirements in relation to initial offer periods. In the case of QIFs which are real estate or private equity funds this period can be extended for a period of up to one year. We are considering if this period can be longer, up to 2 years, provided that the arrangement and the terms to apply to investors who invest after the investment strategy has been initiated are both clearly outlined at the commencement of the offering as the capital raising period. Do you consider that this should be permitted and what are the risks for investors who subscribe at the outset, particularly where the QIAIF has commenced investing?

We would support an extension to 2 years provided that this is properly disclosed to investors.

5. The Central Bank is proposing to discontinue the Professional Investor Fund ("PIFs") regime. This will mean that no new PIF structures will be authorised but the Central Bank will consider allowing existing PIFs to establish new sub-funds. What are stakeholders' views concerning the grandfathering provisions which should apply to PIFs? Should existing umbrella funds be permitted to establish new sub-funds where this category of AIF will not be provided for in the AIF Handbook?

Provided grandfathering issues are applied to PIFs we do not see an issue with this proposal. We would, however, suggest that the difference in minimum investment limits which currently apply between PIFs and QIFs are aligned particularly to allow pension funds who invest money drawn from regular member contributions to reach the minimum investment limit over the course of a year.

6. The proposed RIAIF Requirements allow for the creation of an investment fund which is subject to less investment and eligible asset restrictions than the UCITS regime but is more restrictive than the QIAIF regime. In particular, key limits on investment in unlisted securities, single issuers and other investment funds have been raised. Do stakeholders agree that it is correct to create a different risk profile for RIAIFs compared with UCITS?

We believe that any such moves should be closely aligned with proposed developments raised by the European Commission in its recent Green Paper. It is important to consider the liquidity profile of any such fund vehicle. The ability to take advantage of existing distribution channels is key to the success of any regime for RIAIFs.

There are essentially two key limbs of retail fund distribution:

- firstly, the existing open-ended fund distribution platforms which, to develop economies of scale, require operational standardisation with predictable dealing cycles.
- secondly, the other key distribution channel will be for exchange-traded vehicles. Exchange listing presupposes a minimum fund size in order to meet the listing costs. Listed funds typically do not pay commission and are often offered to a narrower set of the population and, unless offered through secondary market mechanisms such as a manager's savings schemes, do require investors to open a dealing account with a broker. As financial advisers' requirements to advise on a wider set of products increase following initiatives in MiFID, we can see the popularity of these vehicles growing over time.

In practical terms, we could foresee potential in this context for open-ended AIFs with reduced liquidity (e.g. monthly or quarterly), which would need to have a broader eligible asset base and more relaxed diversification and concentration requirements. For example, the scope of eligible assets could include wider access to precious metals, bank loans or real estate. We believe some of our retails clients may benefit from the creation of retail funds with specific lock up periods (i.e. monthly, quarterly) because this will allow retail funds to take more exposure to potentially less liquid assets, which could have stronger risk/return characteristics. For instance, we would not operate a daily dealing UCITS fund that invests 100% of NAV in leveraged loans (see response to question 3 below), but would consider such a product for a longer-term vehicle.

In general, the less liquidity there is in a product, the smaller the retail demand becomes i.e. the further you move away from a UCITS-type model, the smaller the demand from retail clients.

A further option would be to look at the Prospectus Directive (PD) and its interplay with AIFMD. Closed-ended funds (such as investment trusts in the UK or SICAFs in France) already attract significant assets in different countries. Closed-ended funds for retail investors typically:

- invest a proportion of their assets in less liquid transferable securities;
- will meet AIFMD requirements for the management company and depositary, but focus on a national market and capital – not all jurisdictions in the EU accept that an AIF issuing securities according to the PD can benefit from the PD passport.

In our experience of managing these vehicles, the key to the success of closed-ended vehicles is the ability to offer adequate secondary market liquidity. Taking the example of an investment trust in the UK, we note a number of key characteristics which could be replicated in a closed-ended vehicle. These include:

- oversight by the listing authority;
- a discount or premium between the NAV and the traded price;
- a tender or buy-back mechanism to reduce the discount between the NAV and the traded price;
- trading on the secondary market once the initial offer period is over. This means the fund is dependent on secondary market mechanisms to provide adequate liquidity, such as agreements with market makers. Most UK investment trusts, for example, go for premium listing in order to provide confidence to investors.

We consider that, in addition to UCITS eligible assets, the following assets could be considered for RIAIFs:

- Loans: We see value for our clients in being able to invest in certain loans within retail funds. Although we can invest in some types of leveraged loans via total return swaps in our retail funds today, we believe clients would benefit from the flexibility to be able to invest in leveraged loans directly. These instruments, however, must be set up manually and are operationally complex to trade in volume. Risk management systems need to be designed to allow managers to monitor and manage underlying risks including liquidity. We would recommend applying diversification requirements (similar to the UCITS 5/10/40 rules) and other internal limits on exposure as required. We believe clients would benefit from the flexibility to be able to invest in leveraged loans directly.
- AIFs which do not meet the UCITS requirements due to non-UCITS diversification or liquidity profiles.
- A limited exposure, say 10 to 20% in precious metals or instruments representing such assets.
- The ability to borrow, within limits, on a permanent rather than on a temporary basis (as is the case under UCITS). This could potentially also allow direct covered shorting positions to be made rather than on a synthetic basis as is currently the case under UCITS.
- For RIAIFs with limited redemption, there should be enough liquid assets held to meet redemption requests. Otherwise, it seems more appropriate to focus on having robust diversification and risk management policies.

7. Should RIAIFs be permitted to provide for the issue of partly paid units, particularly where the RIAIF is established as a venture capital or private equity fund? Notwithstanding that full disclosure may be provided regarding the capital commitments and drawdowns would retail investors readily grasp the nature of the obligation they have entered into?

We do not believe this is appropriate for a RIAIF.

8. UCITS are permitted to invest in financial derivative instruments subject to detailed requirements including those relating to risk management procedures. It is intended that RIAIFs should, at least, be provided with the same possibilities in relation to derivatives. It is proposed to make that change now. We will also be open to discussing whether these can be extended where appropriate as the AIF Handbook is further developed in future. Do you agree with this approach? How should the rules on the use of financial derivative instruments differ for RIAIFs as compared with UCITS?

We view the UCITS standard as a good reference point for developing RIAIF derivative rules.

Regarding permitted derivatives, it is worth considering allowing a RIAIF to take fully covered short positions. This would require a RIAIF to be able to borrow stock to meet its commitments.

OTC counterparty and collateral rules applicable to UCITS should be fit for purpose for a RIAIF; however as a non-UCITS the RIAIF should be permitted to use more leverage than a UCITS provided that this is clearly disclosed to retail investors.

9. RIAIFs may invest in gold subject to appropriate disclosure requirements. However the markets for different commodities vary significantly. You are invited to provide views on whether the Central Bank should set out requirements for commodities as an asset class or wait for an application to consider this matter. You are also invited to indicate what type of safe-guards should be considered in that context.

No comment.

10. The Central Bank has a requirement for a risk warning in relation to RIAIFs which invest in emerging markets. Is this still appropriate? As mentioned in paragraph 9, it is proposed to include specific risk disclosures for RIAIF gold funds. Is the proposed text suitable in this regard? Are there other asset classes for which a risk warning would be appropriate?

Any retail vehicle will be subject to disclosure requirements in the PRIPS KID in the future – this focuses on managers identifying key risks to be brought to the attention of investors. While there is still a place for specific risk warnings we also recommend focussing on the AIFM's overriding duty to asses and identify key risks for end investors.

11. AIFMs falling below the thresholds specified in the AIFMD, as referenced in footnote 5, are subject to registration requirements only. The Central Bank considers that RIAIFs and QIAIFs should be subject to all AIFMD requirements as they are authorised investment funds. Do you support this approach?

We support this approach to provide consistency of approach for the benefit of end investors.

12. The AIFMD defines AIFs as collective investment undertakings which are not UCITS. Exempt Unit Trusts are not currently subjected to the domestic regulatory regime although as AIFs they will be subject to certain requirements under the AIFMD. Where the AIFM of the Exempt Unit Trust falls below the thresholds referenced in footnote 5 the AIFM will be subject to registration requirements. If the AIFM is above the threshold, the full AIFMD regime will apply. The Central Bank will in the near future look at the option of extending the domestic regulatory regime to Exempt Unit Trusts. What issues will arise from the extension of the regulatory regime to these Exempt Unit Trusts? In your view are there potentially unforeseen consequences which could arise?

No comment

13. We currently require that the calculation of performance fees payable by RIAIFs and QIAIFs must be verified by the depositary. We are leaning towards amending this rule to allow that a party other than the depositary could carry out the verification, provided it is

a party independent from any party involved in or benefitting from the operations of the AIF or the AIFM. Do you agree with this change and who do you consider could carry out this role?

In our experience we are satisfied with the rigour which is supplied by the depositary in this process and do not have any other obvious candidate in mind to oversee this process.

14. RIAIFs and QIAIFs must comply with requirements in relation to the content of periodic reports, including a requirement to include a detailed portfolio statement which lists each investment. We are considering if a condensed portfolio statement should be permitted, which lists positions/exposures greater than 5% of net asset value. We are only considering this for QIAIFS. Do you agree with this approach? Do you consider that the full list should be available to unitholders and potential investors on demand?

We agree that a condensed portfolio statement showing exposures greater than 5% would be beneficial but believe that a detailed portfolio statement should not be available to unit holders and potential investors upon request, as the reality is that detailed portfolio statements would then be offered to all investors, negating any benefit of condensed statements.

We understand that the full portfolio statements will only be prepared in accordance with the periodic reporting dates outlined in the Prospectus and that there will be no expectation to provide a detailed portfolio statement outside of these dates. We ask that the Central Bank confirm our understanding and clarify that reference to periodic reports is limited to the annual and interim financial statements.

We understand that the condensed portfolio statement disclosed in the annual financial statements will be audited in accordance with current process.

15. Requirements applicable to fund administrators specify that the final check and release of each investment fund net asset value (NAV) is a core administration activity which must be performed by the fund administrator. Are there measures or protections which could be put in place to allow the Central Bank permit that fund administrators may publish a net asset value prior to the final check?

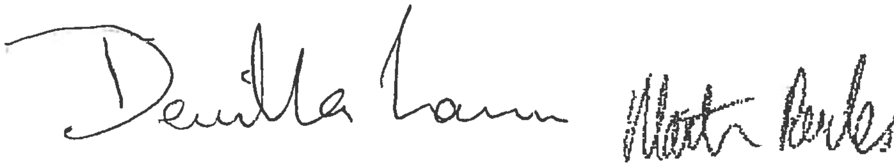
In the case of certain strategies such as fund of hedge funds, NAVs may need to be provided based on estimated figures in order to meet reporting deadlines before the NAV of the underlying vehicle has been finally determined. There may also be certain scenarios due to time zone constraints whereby the unsigned off NAV could be published for indicative purposes subject to final sign off. The ability to consider such NAV final could be beneficial to shareholders while facilitating operational processes.

We believe it is important to look at the appropriateness of such provisions in terms of the investment policy of the fund coupled with a clear disclosure policy as to when the indicative and official NAV will be published so as not to mislead investors.

16. Are there any other initiatives, options or changes which we should consider?

No comment.

Yours faithfully,



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