

Irish Stock Exchange Response to the Consultation by the Central Bank of Ireland on the implementation of Alternative Investment Fund Managers Directive (“AIFMD”) CP60

The Irish Stock Exchange (ISE) welcomes the opportunity to comment on the Consultation on implementation of the AIFMD.

By way of background, the ISE operates the regulated market (Main Securities Market) in Ireland on which equity securities, government bonds, collective investment undertakings and debt securities are admitted. In addition, the ISE operates two multi-lateral trading facilities, the Enterprise Securities Market and the Global Exchange Market. At the end of November 2012, the ISE had 2,601 funds and sub-funds listed and 1,619 of these are Irish regulated funds.

General Comments

The ISE welcomes the logical structure to the handbook as well as the approach taken in relying on EU requirements in designing the new regime and believes it will provide clarity to issuers and those operating within the framework.

A process is underway at the ISE to revise its listing requirements to ensure they are aligned with both our local regulatory framework once finalised, as well as the AIFMD requirements that relate to an alternative investment fund (“AIF”).

Response to questions

1.

The ISE agrees with the approach to discontinue the promoter approval process and focus on the Alternative Investment Fund Manager (“AIFM”) and the requirements of the AIFMD. The change will ensure that bringing a product to market will be as efficient as possible but with sufficient safeguards in place as provided for in the AIFMD.

In our view it isn’t necessary to clarify the obligations of directors when a fund gets into difficulties as there are already robust legal and regulatory requirements applicable to directors of Irish authorised funds. We believe the removal of the promoter regime does not change any of the significant responsibilities that a director to an Irish fund has under existing requirements.

We believe the removal of requirements applicable to QIFs which are now deemed unnecessary is the correct approach to take.

2.

The ISE believes that a 50% restriction would not be appropriate after implementation of the AIFMD. The concerns of the Central Bank could be addressed through insisting that key essential features of the QIAIF are also met by the underlying unregulated fund, rather than specifying an investment limit. In such a case a QIAIF should be able to invest its entire portfolio into an unregulated fund.

The ISE operates a long established master feeder regime designed to satisfy similar concerns whereby a fund that invests greater than 40% into another fund must demonstrate how it can control the underlying fund. This can be demonstrated in a number of ways but more commonly by the use of a control agreement which requires the underlying fund to comply with key listing rules. A similar approach could be adopted by the Central Bank to ensure that its concerns are addressed but at the same time, ensuring our domestic regime is aligned with the AIFMD.

The ISE also propose that a QIAIF feeder investment into an unregulated fund that is listed on a regulated market should be taken into account when the Central Bank is assessing the suitability of that unregulated fund as an investment for a QIAIF. The robust conditions and disclosures required by the ISE's Code of Listing Requirements and Procedures for investment funds will, in some respects, meet with the provisions of the AIF Handbook.

If a limit must be imposed, it should be aligned with the AIFMD Article 4 (1) (m) and be set at 85%.

Finally, we do not agree with the proposal to add a provision to prohibit investment in excess of 50% in unregulated investment funds which are identical in terms of management and strategy. The addition of a provision of this nature does not add any value.

3.

The ISE believes allowing a QIAIF to purchase assets and immediately place them into a side pocket should be permitted, provided appropriate disclosure of this intention is made. In addition, the redemption limitations that this may create should be disclosed. Allowing this, should provide flexibility for investment managers to manage redemptions, and pursue a wider range of strategies, while simultaneously ensuring all shareholders are treated equally.

Provided redemptions can be managed in line with redemption provisions detailed in the offering document, the fund should be considered open ended.

4.

The ISE supports the suggestion to permit longer offer periods for real estate and private equity funds, provided full disclosure is given to investors. Any risks for early stage investors should be detailed in the offering document. In certain circumstances the two year period may not be

sufficient and we would suggest this is an area that may need a flexible approach, depending on the nature of the product rather than a fixed two year limit.

5

The ISE believes that any fund established under the PIF regime should be allowed continue until the fund is terminated, even if not provided for in the new handbook. A PIF should be permitted to add new sub-funds to existing structures and any other outcome would seem inequitable to existing PIF issuers.

Conversion to the new regime should be straightforward and encouraged but not mandatory as the fund may incur conversion costs which ultimately will be borne by shareholders. In addition, it may not be possible to convert in some cases given varying investor criteria. Further, investment managers that have an established practice of using stand-alone PIF's as part of their investment strategy for a number of years should continue to be allowed to do so.

6.

We support the proposition for a less restrictive regime for the RIAIF and the raising of key limits to enable more flexibility than a UCITS.

7.

The ISE believes that the concept of partly paid units should be understood and available to all types of investors including those investing into RIAIFs.

8.

The ISE supports the proposition to allow RIAIFs invest through derivatives and would like to see a more flexible regime available for RIAIF's than for UCITS. This will provide a wider choice for retail investors into Irish regulated funds outside the UCITS framework.

9.

We support the idea that the new RIAIF regime should cater for as wide a range of investment strategies as possible, including direct investment in a range of commodities. It may be useful to provide certain minimum standards in key areas such as custody and deal with specific requirements on a case by case basis.

10.

There are risks associated with investment in emerging markets and commodities which should be highlighted, alongside all other material risks known. The risks disclosed will differ depending on the product and the type of investor and so a specific risk disclosure for RIAIFs would not be appropriate.

11.

The ISE believes requiring all RIAIF's and QIAIF's to be subject to "all AIFMD requirements", even where the AIFM falls below the thresholds specified in footnote 5, will impose an unnecessary regulatory and financial burden on smaller managers who were expressly excluded from the AIFMD. This would also defeat the intended purpose of having an exemption in Article 3 in the first place. The creation and growth of newly established managers within Ireland needs to be promoted by our regulatory requirements.

Specifically with regard to this point, the ISE's view is that this does not represent a proportionate regulatory regime.

12.

The ISE has no comment on this.

13

The calculation of performance fees should not be confined to a specific entity. Therefore, we are in support of allowing a broader range of entities to carry out this function provided they have the necessary experience, there is full disclosure and there are no conflicts of interest.

14.

The ISE supports the proposition to allow for condensed portfolio statements in the case of QIAIF's. However, we believe that a detailed portfolio statement which lists each investment should be available to *current* investors. With regard to *potential* investors, the AIFM should have the discretion whether to make the detailed portfolio statement available or not.

15.

The ISE believes that any publication of the net asset value should be done after the necessary checks are complete. If publication was allowed before this, it could cause confusion with shareholders as there may be a number of prices released relating to the same security.

16.

Real Estate Investment Trusts ("REITS")

The Department of Finance have recently announced the establishment of an Irish REITS regime. The ISE is currently developing a listing framework to support this. Market feedback to date has suggested that a property trading company would be the preferred structure rather than a closed ended investment fund ("CEIF"). However, in the event there was demand to establish a REIT as a CEIF the current retail AIF requirements may need to be amended to accommodate this product once the final details of the enabling legislation are known.