LGT Capital Partners (Ireland) Limited
Segrave House
19-20 Earlsfort Terrace
Dublin 2, Ireland

Phone +353 1 433 7420 · Fax +353 1 433 7425
lgt.cpeire@lgt.com · www.lgt.com
VAT No. IE 6416995 A

AIFMD Consultation
Markets Policy Division
Central Bank of Ireland
Block D
Iveagh Court
Harcourt Road
Dublin 2
BY EMAIL: AIFMDconsultation@centralbank.ie
BY HAND

Dublin, 11 December, 2012

RE: Consultation on implementation of Alternative Investment Fund Managers Directive (defined as "AIFMD")

Dear Sirs

LGT Capital Partners (Ireland) Limited ("**LGT Capital Partners**"), as investment manager to LGT private equity and hedge fund of funds domiciled in Ireland, is part of the wider LGT Capital Partners Group, which specialises in alternative investments and, since its foundation over ten years ago, has established itself as one of the world's leading managers of alternative assets. In light of the practical experience and understanding of operations of the industry, LGT Capital Partners is keen to provide feedback on the consultation paper recently issued by the Central Bank.

In the interests of clarity we shall apply the same numbering as out in the consultation paper.

1. Abolition of Promoter Regime

We note 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 and resources could establish Alternative Investment Funds ("**AIFs**") in Ireland. We note the Central Bank now proposes to eliminate the promoter approval process and place reliance instead on the Alternative Investment Fund Manager ("**AIFM**"), taking into account the obligations on the AIFM which the AIFMD imposes.

We would agree with this proposal on the basis that the AIFMD provides substantial additional capital, organisational and control requirements for AIFMs and that a large number of these managers will likely be part of a larger financial group. For this to work, the Central Bank is proposing to clarify in more detail

LGT Capital Partners (Ireland) Limited
Registered in Republic of Ireland No. 396995
Registered Office: Segrave House, 19/20 Earlsfort Terrace, Dublin 2, Ireland
Directors: D. Tobin, P. Garvey, A. Lagger (Swiss), R. Paganoni (Dutch), T. Sneyers (Belgian), T. Weber (German), R. Schlachter (Swiss), O. de Perregaux (Swiss), H. Markvoort (Swiss), W. von Baum (German), M. Brönner (German), B. Goonan (alternate director), A. Finnegan (alternate director)
LGT Capital Partners (Ireland) Limited is regulated by the Central Bank of Ireland

the obligations of directors in circumstances in which an AIF gets into difficulties. We have no issue with this approach but would support a more principal based approach given the complexity surrounding a situation where an AIF gets into difficulty and in this regard the emphases should be on promoting accountability and transparency with sufficient flexibility to enable directors to make decisions that are in the best interest of the AIF depending on the circumstances pertaining at the time.

2. Restriction on investments in multiple unregulated "clone" funds

LGT Capital Partners notes that QIFs authorised under the existing regime are not subject to specific 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. We further note that the Central Bank is not proposing to change this limit of 50% and instead, proposes to tighten the regime slightly by adding a provision to prohibit investment in excess of 50% in unregulated investment funds that are identical in terms of management and strategy.

We appreciate the concern of the Central Bank has in relation to QIFs becoming a wrapper or feeder for unregulated funds however as the AIFM Directive has clearly considered the issue of master feeder structures and defined a level at which this applies, implementing a more restrictive regime places the proposed regime at a disadvantage vis-à-vis other jurisdictions. In this context global asset management firms that are currently reviewing the potential to consolidate different fund structures and investment management activities within fund hubs located in different EU jurisdictions will clearly see this as a negative development in terms of using Ireland as a hub for non-UCITS.

Furthermore this restriction raises numerous practical issues regarding funds under an umbrella structure with similar investment strategies which may not necessarily apply if the limit is raised to 85% (as provided for in the AIFMD), to include but not limited to the following:

i) will the restriction apply only to identical or similar strategies;
ii) who will be responsible for determining whether a strategy is similar or identical;
iii) will it apply at a sub-fund or umbrella level; and
iv) will grandfathering apply for funds which received Central Bank derogations in the past.

In our view, there is a risk that investment in underlying funds whose investment strategies may overlap to some extent may cause a scheme and its investment manager to fall foul of the 50% limit, especially as certain investment strategies or styles are not always mutually exclusive. The proposed limit of 50% would place a very onerous burden on investment managers and/or fund directors.

3. Enhanced ability to create side-pockets

LGT Capital Partners notes 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 safeguards. We further note the Central Bank is considering whether open-ended QIAIF should be permitted to purchase assets and immediately place these in side-pockets and accordingly 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 in the side pocketed classes.

We note the Irish Funds Industry Association response on this particular point and confirm we are in agreement with the views outlined in this submission. In addition, it should perhaps be noted that in our experience distressed or illiquid assets can often be acquired at a significant discount and can therefore represent an attractive investment opportunity for schemes with the ability to acquire them, thus benefitting investors. We agree that adequate disclosure to investors is important in relation to the acquisition of illiquid assets.

4. Extended initial offer period for real estate and private equity funds

LGT Capital Partners notes that 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. It is further noted that the Central Bank is considering whether this period can be longer, possibly 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 capital raising period.

In the last 12 months LGT Capital Partners has had a number of discussions with the Markets Policy Division of the Central Bank regarding this issue. As advised an initial offer period of 12 months is not considered appropriate to private equity funds and that an initial offer period of 24 months from the initial closing date would be preferable. Previously LGT Capital Partners have made a number of detailed submissions dated 10 May 2012, 14 August 2012 and 28 August 2012 outlining the reasoning behind this extended offer period and have alluded to various European counterparts (Luxembourg, France and Italy) who have acknowledged the reasonableness of this extended offer period.

In support of an extension to the offering period, LGT Capital Partners have referred to the following key issues:

i) Investors are typically large pension funds or institutional investors who require more time for due diligence purposes to make investment decisions for a long term commitment;

ii) Other regulated jurisdictions allow for a longer offer period;

iii) Institutional investors clearly understand and accept the risks associated with a longer offering period;
iv) Full disclosure regarding the offer period will be in the offering documents; and
v) Initial investors are compensated via different measures including but not limited to interest charges on amounts called to date for subsequent investors.

An extension to the offering period would be in line with what is available in other European jurisdictions, consistent with the needs of institutional investors who require significantly more time to complete their due diligence and it would also be beneficial to existing investors by enabling further diversification of the fund's portfolio.

LGT Capital Partners' concern regarding the wording of this proposal is to ensure that the two year offer period commences on the date of the initial closing date (i.e. the date when initial subscriptions are made into the QIF) and not from the date of authorization of the documentation by the Central Bank. In this regard we note that the current wording in the draft AIFM handbook does not clearly specify that the offer period is deemed to commence on the first close as opposed to commencement of marketing and could be open to interpretation. As previously advised the practice in other regulated jurisdictions is that the offer period is deemed to commence on the initial close of the fund.

LGT Capital Partners understands that the Central Bank may have a concern that investors in the first 12 months are placed at a financial disadvantage versus investors who subscribe after the initial 12 month offer period however in light of the illiquid nature of the asset class and the time required for the underlying portfolio to become fully invested this is not considered a material issue. This risk is mitigated by the following:

i) A longer offer period is a product of more comprehensive investor due diligence;
ii) Full disclosure in offering documents;
iii) Limited to Qualifying Investors;
iv) Limited build up of portfolio holdings in first 18 - 24 months versus 12 months as funds generally take up to four years to complete the portfolio structuring process;
v) Private equity returns are typically generated in the latter stages of the life of the fund;
vi) Long term nature of investments;
vii) Later investors pay interest and bear the risk of a lower subscription amount due to the implementation of a hard cap; and
viii) Standard for other regulated jurisdictions is 18 to 24 months.

It is worth noting that based on a review of our European and Asian funds, primary limited partnership values have predominantly negative returns in the first two to three years so generally there is no immediate financial upside on these investments for investors after the initial closing.

5. Discontinuance of PIF regime

LGT Capital Partners note the Central Bank is proposing to discontinue the Professional Investor Fund regime.

We note the Irish Funds Industry Association response on this particular point and confirm we are in agreement with the views outlined in this submission.

6. Increased flexibility for retail non-UCITS funds

We note 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. In addition, it is proposed that RIAIF be permitted to have at least the same ability to invest in derivatives that UCITS now have following UCITS III.

LGT Capital Partners agrees with the concept of having three separate distinct fund offerings and welcome the proposed introduction of a retail investor alternative investment fund.

We note the Irish Funds Industry Association comments on this particular issue and confirm we are in agreement with the views outlined in their submission.

7. Issuance of partly paid units

LGT Capital Partners notes the Central Bank query whether RIAIFs should 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.

LGT Capital Partners would agree RIAIFs should be permitted to issue partly paid units or to provide for a subscription amount that is called over the life of the fund as this is a key requirement for private equity funds in terms of the nature of the underlying partnership investments and to ensure the efficient deployment of investor capital. It would appear reasonable to assume that retail investors can, with the appropriate prominent disclosures, understand that their total investment is the amount subscribed but that the actual funding of this subscription will be called down during the life of the fund.

8. Financial derivative instruments

We note that UCITS are permitted to invest in financial derivative instruments subject to detailed requirements including those relating to risk management procedures and that it is intended that RIAIFs should, at least, be provided with the same possibilities in relation to derivatives.

We agree with this approach and note the Irish Funds Industry Association comments on this particular issue and confirm we are in agreement with the views outlined in their submission.

9. Commodity trading

LGT Capital Partners note that RIAIFs may invest in gold subject to appropriate disclosure requirements.

LGT Capital Partners is of the view that RIAIFs should be entitled to invest in all commodity classes including individual commodities and sub-commodity indices. As it stands a UCITS may gain access to commodities via the main commodity indices and certain structured products that are classified as transferable securities. Thus a broadening of the investable assets of a RIAIF would appear consistent with the concept of a retail investment alternative investment product. To mitigate any concerns of the Central Bank, restrictions for individual commodities should be agreed under a separate consultation process.

10. Emerging Markets

LGT Capital Partners note the Central Bank has a requirement for a risk warning in relation to RIAIFs which invest in emerging markets and that it is proposed to include specific risk disclosures for RIAIF gold funds.

We note the Irish Funds Industry Association response on this particular point and confirm we are in agreement with the views outlined in this submission.

11. Application of AIFMD to below threshold AIFMs and AIFs

LGT Capital Partners note that where an AIFM falls below the thresholds specified in the AIFMD it is not required to be authorised but must meet with registration requirements. Details of the registration procedure which will apply will be set out by the Central Bank at a later stage. However, the Central Bank considers that RIAIFs and QIAIFs *"should be subject to all AIFMD requirements as they are authorised investment funds"*. We note that this statement is open to question and should be assessed in light of the detailed rules proposed by the Central Bank as AIFMD seeks to regulate managers of AIFs not the AIFs themselves (except in the case of "internally-managed AIFs"). In the event an AIFM of an unregulated investment fund does not fall below the thresholds, or wishes to "opt in" to the full AIFMD regime as is permitted, the chapters of the AIF Handbook in relation to the AIFM and Depositary will apply.

LGT Capital Partners concurs with the proposed approach of the Central Bank in this regard. Nonetheless it does have reservations in that this approach may restrict the ability of new AIFMs who are under the threshold, to launch products. In effect this would dampen any opportunity to develop Ireland as a hub for new AIFMs.

We also note the Irish Funds Industry Association response on this particular point and confirm we are in agreement with the views outlined in this submission.

12. Exempt unit trusts

No comment.

13. Verification of Performance Fee

LGT Capital Partners note that the calculation of performance fees payable by RIAIFs and QIAIFs must be verified by the depositary. We further note that the Central Bank is considering amending this rule to allow that a party other than the depositary to 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.

LGT Capital Partners is under the impression that it would be appropriate for another independent third party of an RIAIF or QIAIF to carry out this function, subject to approval by the Board of Directors.

14. Condensed Portfolio Statement

LGT Capital Partners note that 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 note the Central Bank are considering for QIAIFS whether a condensed portfolio statement should be permitted, which lists positions/exposures greater than 5% of net asset value.

We note the Irish Funds Industry Association response on this particular point and confirm we are in agreement with the views outlined in this submission.

15. Calculation of the NAV

No comment.

16. Further issues

We note that at present there is limited guidance regarding the AIFM approval process and associated timelines. LGT Capital Partners as a leading investment firm in the alternative asset industry would like to be in a position to launch products under the AIFM regime from July 2013 therefore we would encourage the Central Bank to provide feedback to the industry in terms of how they intend to manage this process and how they can facilitate the AIFM approval process in advance of the July 2013 deadline. Alternatively, in the event that approval cannot be supplied in advance of this date it would be helpful if there was clarity around the interim measures and how this will effect the authorization and distribution of new funds from July 2013.

We wish to thank the Central Bank for the opportunity to provide feedback on the AIFM Directive and look forward to the finalisation of the AIFM handbook in the coming months. We would be happy to provide clarification on any of the points outlined above should you have any queries regarding same.

Yours faithfully

Tobin

Desmond Tobin
Director

Paul Garvey
Director