APTI

The Association of Pension Trustees of Ireland Limited

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

11 December 2012

Re: Consultation on implementation of Alternative Investment Fund Managers Directive
Consultation Paper CP60

Dear Sirs

As the current Chairman of the Association of Pension Trustees of Ireland (APTI), I wish to respond on behalf of the industry we represent, namely in relation to Question 12 of the above Consultation Paper.

APTI was initially constituted to represent the circa 40 firms that provide corporate trustee services to small self administered pension schemes (SSAP's). When last surveyed, our members assisted in administering over 7,200 schemes with over 3 billion in assets.
In addition to this role, many of our members also act as trustees of Exempt Unit Trusts (EUTs). EUTs have been in use in Ireland for several decades. We estimate that there are approximately 40 EUTs currently in existence. Most of these are umbrella structures, containing a large number of sub-trusts. One of the largest and oldest EUTs is the Irish Property Unit Trust ("IPUT"), which was established in 1967 and currently has assets of €381m. The use of EUTs increased significantly in the 1990s and 2000s, driven not least by the appetite for property exposure on the part of the individual pension investors.

We estimate that on a Gross Asset Value basis the assets of EUTs will be in the billions with thousands of unitholders, some holding through a SSAP and others through insurance company products. EUTs have been priced and advised to investors as unregulated products.

The draft AIF Handbook and your consultation document would give rise to many concerns as to the sustainability of EUTs. For example, it is unclear from the draft AIF handbook whether an EUT where assets are held in a sub series trust or alternatively by a single unitholder, would be considered an AIF or not. It is also unclear whether EUT's would be considered Retail AIFs or Qualifying Investor Funds, and open or closed ended.

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The underlying assets of many EUTs comprise of property or private equity funds. In many cases the trustee of the EUT does not manage the assets of the EUT once they have been invested, i.e. in a company or a special purpose vehicle. It is unclear whether the Trustee would always be considered the AIFM or if the asset manager could qualify. Whilst mindful of the implementation of the AIFMD following several years of discussions and amendments, it was our understanding up to the recent publication of the consultation paper that EUTs would not be subject to the AIFMD. Furthermore, I was part of the Steering Group of the Review of the Regulatory Regime for the Safeguarding of Client Assets and raised the question of whether EUTs would be subject to the CAR Regulations. It was accepted that they would not.

If the AIFMD would mean the application of Client Asset Regulations would apply to unit holders, the issues raised previously by APTI with the Central Bank would apply. For example, unitholders are wholly pension schemes including insurance company pension arrangements and clarity is required as to who constitutes the client and whether to disaggregate the EUT or not in the context of CAR.

If the monetary test of €100m was applied to the Trustee as an AIFM, many EUT providers may consider the application of AIFMD too costly or arduous to implement and would have no choice but to resign or wind up the EUTs. This could have serious implications for investors and firms. While many EUT providers are already authorised by the Central Bank it may be that the level and type of authorisation envisaged by the Directive would prove too onerous for the business models of these providers.

In any review of regulation we believe it is important to consider why the status quo currently exists. EUTs exist to serve a client need, to facilitate investment in areas traditional institutional investor do not service mainly illiquid property and private equity markets. EUTs can also provide a clear legal framework for holding assets for clients. That EUTs have grown so strongly over the past decade and that insurance companies have invested in them bears testament to the client demand. A key benefit for investors is that they can determine the assets to be acquired and the trustee of the EUT acts in essence as a nominee.

It is the opinion of APTI that EUTs should be exempted from the AIFMD. However if further/future consideration is being given, then a working group similar to the CAR Working Group should be established to consider the issues raised.

Yours sincerely

Eugene Foley
Chairman