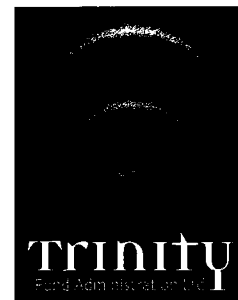

AIFMD Consultation
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11 December 2012

Dear Sir/Madam

Consultation Paper 60, ("CP60") – on the implementation of the Alternative Investment Fund Managers Directive, ("AIFMD")

We welcome the opportunity to make comment on CP60 issued by the Central Bank on 30 October 2012. As a general comment, we concur with the Bank's objective to redesign the AIF regime to achieve optimal reliance on the European regulatory requirements set out in the AIFMD. In an increasingly competitive industry, we would strongly support any framework, which does not seek to add additional requirements not included in the AIFMD and which could put Ireland at a competitive disadvantage versus other member states, such as Luxembourg and Malta, but also the United Kingdom.

We note the commentary prepared by the Irish Funds Industry Association of today's date and wish to align ourselves with the specific comments contained within that document. Whilst we could have many comments on aspects of the Bank's consultation paper, most of these are covered by the IFIA paper. The following are, however, a number of high level comments, pertaining to the "Questions for consideration" and the draft handbook.

Questions for consideration

1. We welcome the removal of the promoter approval requirement, which has the potential to increase the attractiveness of Ireland as an AIF regime. The suggested correlation inherent in the question that directors will be required by regulation to step up when a fund "gets into difficulties" rather than a promoter is hard to understand.

   The current regime imposes no correlation between promoters and the protection of investors in distressed situations, as the promoter is not required to stand over, or guarantee the performance of a fund. If the past four years have taught us anything, it is, however, the exemplary performance in the vast majority of cases of Independent directors in acting professionally, promptly and competently in distressed situation and in protecting the interests of investors above all else.

   Irish company law and the large body of nearly 200 years of company related common law provides substantive guidance on the appropriate behaviour of directors. The past

few years have also taught us that in distressed situations, directors need to be flexible, nimble and capable of lateral thinking. "Clarifying the obligations" of directors by regulation would not materially add to the protection of either investors, or directors acting on their behalf.

2. We strongly disagree with the suggestions concerning the prohibition for funds of funds in investing more than 50% in unregulated investment funds, which are identical in terms of management and strategy, which would appear to significantly breach the stated aim of CP60 to place *"optimal reliance on European regulatory requirements set out in AIFMD."*

   The AIFMD rules differ from the Central Bank's current regime in that there is an 85% threshold which must be crossed before an AIF is considered to be a feeder. We consider that the new rules must address any current inconsistencies between the current, or the proposed CP60 Irish rules and accepted EU standards, as defined in AIFMD and the UCITS directives and as AIFMD has extra-territorial effect, come into line with the global understanding of EU investment fund law as it applies to master-feeders.

   Failure to follow the AIFMD limits in Ireland will conflict with the requirements of the directive and also throw up administrative difficulties, as the AIFMD filing and disclosure thresholds are based around the 85% limit.

   It is also important to note (as per the latest available draft) that there are no AIFMD restrictions on the ability of an EU AIF to feed into an unregulated AIF per se, but merely some restrictions on how that AIF may be sold to investors. There is also a strong possibility that the Central Bank's suggestions breach Article 35, as it would appear that Member States do not have the ability to prevent the passporting of AIFs in this manner.

   If the new QIAIF and RIAIF rules are more restrictive than the main competitor jurisdictions then Ireland will potentially lose all such business, with potentially catastrophic consequences to activity and employment in the sector.

3. AIFMs falling below the thresholds specified in the AIFMD 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 funds".

   We have grave concerns about this suggestion. The general intention of the AIFMD was to have a "lighter regime" for AIFMs, which manage less than €100m, or €500m in unleveraged funds.

   The sub €100m / €500m market is incredibly important to Ireland. All large funds originally started as small funds and to effectively ban smaller managers from being able to operate in servicing Irish funds while competitor Member States impose no such restriction will be commercially disastrous.

   We would propose that the Central Bank adopt an approach such as that in Luxembourg, where SIFs and SICAR products, which do not qualify as AIFs are not impacted by the AIFM law and remain under a version of the old regime.

The above points are not an all-inclusive list of those matters, which would cause us concern and indeed on further consideration of CP60 other issues may come to light, which we consider problematic. However, in the interests of the widest possible input to your considerations in the limited time available, we offer these points for your consideration.

As evidenced by the success to date of the Irish fund industry and its enviable reputation for the highest standards, we do not have to "prove" our professionalism, or integrity to anyone. The enhanced responsibilities and regulatory requirements contained within the European UCITS regime and the AIFMD legislation (as well as other key industry wide regulations), will only enhance this position.

As a result, we would stringently emphasise the view that the creation of a "gold plated" AIFMD regime in Ireland will inevitably lead to regulatory arbitrage and inevitably a flight of funds, promoters, jobs and tax revenue to other Member States. We would therefore strongly request that you resist the inclination to do so.

If you wish to discuss any of the above points please let us know. We wish you well in the implementation of this very important directive not only for the European financial services industry but also for Ireland itself, as a leading international jurisdiction for the domiciliation and servicing of investment funds.

Yours sincerely,

John MD McCann

Managing Director