

A&L Goodbody

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Date | 11 October 2013

Exempt Unit Trusts Consultation-CP68
Markets Policy Division
Central Bank of Ireland
Block D, Iveagh Court
Harcourt Road
Dublin 2



**Submitted via e mail to
fundspolicy@centralbank.ie Re. EUT Consultation - CP 68**

Re: Central Bank consultation CP 68 on types of alternative investment funds under AIFMD and unit trust schemes under the Unit Trusts Act 1990 (including EUTs, REITS etc.)

Dear Sir/Madam,

We welcome the opportunity to respond to the consultation on types of alternative investment funds under AIFMD and unit trust schemes under the Unit Trusts Act 1990 (including EUTs, REITS etc.). We have contributed to the response of the Irish Fund Industry Association (IFIA) to CP68 and endorse their response. To avoid unnecessary repetition, we do not propose to repeat the reasoning and responses set out in the IFIA response, unless we are of the view that this adds value. We have adopted the defined terms and track the numbering used in CP 68.

We set out below our responses to the specific questions posed in the Consultation Paper and other general comments.

1. Do you believe that our brief summary on the organisation of EUTs as set out above is correct?

As elucidated below, we are of the view that EUTs do not automatically fall within the scope of the UT Act. This is because the UT Act effectively only applies to unit trust schemes which offer facilities for participation by the public.

2. Is an EUT an AIF?

We do not believe that just because a structure is an EUT, that it is automatically an AIF for the purposes of the AIFMD and related regulatory provisions. It may well be that a number of EUTs are in fact AIFs which fall within the scope of the AIFMD but a case by case analysis would need to be undertaken in respect of each EUT to determine if that was the case. This is consistent with the Central Bank's AIFMD Questions and Answers document (4th Edition – 30 September 2013) and in particular Question ID 1016 which recommends that appropriate legal advice is taken in respect of each investment structure.

Based on our analysis of a variety of possible EUT structures, some would be considered AIFs but equally some would not or may otherwise fall outside the scope of the AIFMD.

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3. Is an EUT a unit trust for the purposes of the Unit Trusts Act 1990?

We do not believe that an investment vehicle that is limited to investment by Revenue approved pension funds and charities is necessarily a unit trust scheme for the purpose of the UT Act. The UT Act defines a unit trust scheme as "an arrangement made for the purpose, or having the effect, of providing facilities for the participation by the public, as beneficiaries under a trust, in profits or income arising from the acquisition, holding, management or disposal of securities or any other property whatsoever". By contrast, EUTs are structured so as to exclude all investors other than those that do not jeopardise the EUTs tax status, and this, in turn, results in the EUT in question not being capable of participation by the public.

In addition, even if a contrary view were to be taken by the Central Bank in respect of EUTs in general, it would be incorrect to state that all EUTs would automatically be subject to the UT Act. Once again, a case by case analysis would be required as an EUT may have further limited its investor base such that by any analysis, it was not providing facilities for participation by the public.

4. Is there any reason why the Central Bank should not apply the same regulatory regime to EUTs which are AIFs as any other AIF?

As detailed above we do not believe that EUTs should be made subject to the UT Act and therefore be regulated. Moreover, we do not believe that the Central Bank should apply the same regulatory regime to EUTs which are AIFs as any other regulated AIF. If it were deemed necessary to apply a regulatory regime to EUTs, it would be important to develop a set of distinct rules which would reflect the particular the often long term investment nature of EUTs and allow for the differing investment and liquidity requirements of their investor base. These structures would not fit often with the RIAIF or QIAIF structures, for the reasons set out in the IFIA response.

Accordingly, in the event that it was determined to regulate EUTs under domestic Irish legislation, we believe that a separate regulatory regime applicable to these entities should be developed.

Any such shift will involve substantial increased costs which would ultimately be borne by pension funds and charities that invest in EUTs and accordingly a cost-benefit analysis should be obtained to ensure that any increased costs on investors are merited.

5. What transitional arrangements do you consider should be applied?

We echo the IFIA response in this regard.

We trust that the above is clear and of assistance. If you require any clarification on any points made in this letter please do not hesitate to contact us at mbarr@algoodbody.com or orngreene@algoodbody.com

Yours faithfully

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