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

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

Dear Sirs,

The Irish Association of Investment Managers ("IAIM") is pleased to respond to this important consultation.

We believe that IAIM members represent, by value of assets invested, the majority of relevant EUTs established in Ireland. All of our members who provide EUT based solutions are MiFID authorised and each applies these obligations in full in the management of EUT business lines. Independent Depositories and Administrators are appointed by the Trusts.

EUTs are a long established form of investment vehicle particularly suited to pension schemes providing portfolio efficiency and significant cost savings. Our members are strongly of the view that the imposition of the restrictions associated with either RIAIF or QIAIF structures are completely unsuited to the pensions industry particularly to those existing investors who have, over many years, designed their strategies around the availability of EUT structures. As more fully explained below we do not believe that EUTs come within the scope of the Unit Trusts Act.

IAIM does recognise that service providers including investment managers, custodians and administrators who support EUTs should be appropriately regulated and supervised (see 4. below).

To use wording in the Consultation Paper, EUTs are not "conventional" investment funds. They are not marketed in any conventional sense but are available to those qualifying investors whose professional advisors are seeking solutions which best deliver the chosen investment objectives. In the case of pension funds the chosen solution may be entirely based on EUT structures or only partially.

The delivery of both portfolio and cost efficiencies to pension funds is complex. Some relevant observations include:-

- Generally, the maintenance of segregated funds is cost efficient at asset levels exceeding €30-€50 Million. This is considerably higher than the average Defined benefit scheme size. If funds are segregated custody and other costs are higher and pension schemes incur other additional costs such as annual audit.

- Defined Contribution Schemes require individual member records and the only mechanism to deliver reasonable costs is through pooled vehicles. The average size of DC schemes in Ireland is less than €1.5 Million.

- Pension funds through best investment practice and by regulation (of the Pensions Board) require certain asset concentrations e.g. bonds. The types of restrictions associated with other Regulated structures – for example RIAIFs and QIAIFs are not suited to pension funds. Achieving the desired investment outcomes is significantly more expensive without the facility of EUT structures

IAIM is available to share, with the Central Bank of Ireland, data on the cost implications for investors of changes to the existing regime.

We believe that the AIFMD, in excluding occupational pension schemes from scope, recognises the special needs of this investor type.

It is our assessment that changes to the current regime (except as suggested at 4. below) will lead to the unwinding of the vast majority of EUTs and will, for cost reasons alone, restrict pension funds to insurance based products.

The study co-ordinated by the Bank into pension fund costs which was published by the Department of Social Protection in October 2012 highlighted the importance of economies of scale to the achievement of realistic cost ratios for pension fund investors.

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

In summarising the organisation of EUTs we believe it important to acknowledge the nature of the underlying qualifying investors and the specific requirements which make EUTs a crucial structure for, in particular, pension fund investors.

The investors in EUTs determine, with separate professional advice, particular investment strategies and related asset allocations and concentrations. Investment in particular EUT structures achieves portfolio efficiencies and cost savings not achievable through other structures. In many cases mandates which specify the use of EUTs as the preferred solution deal with only a portion of the assets of the pension fund. The concentration limits associated with regulated structures would not be appropriate in these circumstances.

The Directive, itself, acknowledges the special nature of pension fund investment.

Q2: Do you agree with our analysis that an EUT is an AIF?

In exempting occupational pension schemes and those charged with managing such assets the Directive acknowledges the special requirements of these investors. While a matter of legal opinion it appears to us that EUT structures which allow a group of investors, who would be individually exempt to collectively invest, should also be exempt from scope.

More particularly we maintain that EUTs do not "raise capital" as envisaged by ESMA. Pension fund trustees seek investment solutions and, typically, explore a number of options from various investment managers or insurance companies. It is the client who selects the solution which may involve UCITS, regulated non-UCITS or EUTs or a combination of each structure. Our experience is that EUTs do not raise capital before they are established. If existing structures do not provide the necessary solution a new EUT would only be established where a client requirement existed.

Q3: Do you agree that an EUT is subject to the UT Act?

The Consultation Paper suggests that the growing number of individual pension schemes undermines the 'argument' that EUTs do not involve 'participation by the public'. We strongly disagree. Such schemes require Revenue approval which is only granted when, inter-alia, an independent professional 'Pensioner Trustee' from an approved list is appointed. We do not see that the process involved in qualifying to invest in an EUT could be viewed as facilitating participation by the public.

Q4: Is there any reason why the Central Bank would not apply the same regulatory regime to EUTs which are AIFs as to any other AIF?

As referred to earlier pension funds, in particular, have special requirements. Throughout the EU occupational pension schemes are separately regulated and investment strategies are, in the main, also limited by regulation. Existing regulated non-UCITS structures do not suit the requirements of pension fund investment at sensible cost levels.

IAIM does support a regulatory framework within which EUTs can operate. In particular;

- the investment manager should be authorised under MiFID or AIFMD.

- a separately authorised depository should be a requirement.

- a separately authorised administrator should also be appointed.

Q5: What transitional arrangements do you consider should be applied?
We do not believe that July 2015 provides sufficient time for many pension funds to unwind existing, long standing strategies implemented using EUTs. As mentioned earlier we believe that many EUTs will be unwound if the Banks current proposals become settled policy. There will be significant challenges and re-appraisals of strategy required of trustees.

We are available at any time to discuss this response.

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Frank O'Dwyer
Chief Executive