MAPLES

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Central Bank of Ireland
Block D
Iveagh Court
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13 September 2013

Dear Sirs

Loan Origination by Investment Funds - Discussion Paper

We welcome the opportunity to respond to the discussion paper issued by the Central Bank of Ireland (the "**Central Bank**") on loan origination by investment funds (the "**Discussion Paper**").

Our investment funds group is one of Ireland's leading legal practices and advises some of the world's largest managers on matters connected to loan origination and financing. From this position, we have noted how bank deleveraging and the contraction of traditional credit sources in reaction to the financial crisis have created a demand for investment vehicles which may originate loans. We are aware of a number of other fund jurisdictions globally where this activity is permitted, and we accordingly welcome the Central Bank's initiative to consider loan origination as an eligible activity for Irish funds and to create a regulated fund product option for international managers looking to establish vehicles here.

Representatives from Maples have contributed to the review and responses to the Discussion Paper from both the Irish Funds Industry Association ("**IFIA**") and the Alternative Investment Managers Association ("**AIMA**"). As contributors, we are largely in agreement with the views of those associations and have only added additional comments below to expand on some of the points made in the detailed submissions of those associations.

1. Shadow banking

We note that Questions 2, 3 and 6 of the Discussion Paper all relate to shadow banking. We acknowledge the valid policy concerns surrounding the growth of shadow banking and we appreciate that the Central Bank must consider such concerns when assessing new products of this nature. However, we believe that a distinction must be drawn between shadow banking on the one hand and the proposal to permit QIAIFs to engage in loan origination on the other. We contend that many of the shadow banking policy concerns arise from the fact that such activities are often carried out by unregulated opaque entities, and often involve retail/ non-professional borrowers/ consumers.

Conversely, pursuant to Chapter 2 of the Central Bank's AIF Rulebook, the QIAIF is a very robustly regulated and transparent investment product, available only to professional sophisticated investors who are subject to significant minimum subscriptions and who must certify that they are on notice of the potential risks of such investment.

Equally, as a loan origination strategy is likely to require reasonably substantial assets under management, it is unlikely that many AIFMs of loan origination QIAIFs would qualify for the Central Bank's lighter regulatory burden for "registered AIFMs". It is more likely that a fully authorised AIFM would be required, which would impose a further material overlay of regulatory checks and balances on the structure.

Accordingly, we believe that the analysis of the merits of loan origination QIAIFs should be separated from shadow banking considerations, because the extensive regulatory protection inherent in the Central Bank's QIAIF regime and the broader AIFMD framework would render many of those concerns moot.

2. Liquidity restrictions

Questions 12 and 18 of the Discussion Paper query whether loan origination should be limited to closed-ended QIAIFs. We disagree. One of the attractions of the QIF (and now the QIAIF) regimes has been the flexibility with respect to liquidity. The ability to structure open-ended, limited liquidity or closed-ended products, and to avail of a range of ancillary liquidity measures such as gates, holdbacks, side pockets and in specie redemption, has facilitated investment by QIFs/ QIAIFs in a wide range of illiquid asset classes.

The Central Bank's AIF Rulebook does not impose any asset class-specific liquidity restrictions, and we do not believe that a different approach is warranted solely for loan origination. The AIF Rulebook already requires every authorised AIFM to implement a liquidity management policy specifically in order to address any potential mismatches between asset and fund liquidity, and we believe that this obligation serves as adequate protection.

While we agree that in practice some loan origination QIAIFs may be optimally structured as closed-ended, this will depend entirely on the specific maturity of the loan portfolios. There should be no prohibition on an AIFM pooling more liquid loans into open-ended or limited liquidity QIAIFs, once the AIFM has determined in accordance with its liquidity management policy that it would be appropriate to do so. Any blanket requirement for such QIAIFs to be closed-ended would restrict investor choice and could diminish the appeal of the new product for promoters in this space.

3. Leverage restrictions

Questions 13 and 14 of the Discussion Paper address proposed leverage limits. Continuing the theme of point 2 above, we strongly oppose any such mandatory limits because the AIF Rulebook already adequately regulates such policy concerns, through its requirement for every AIFM to implement risk management procedures and to impose leverage limits which it must be able to demonstrate are reasonable and with which it complies at all times.

General

In addition and as an overall comment, we urge the Central Bank to refrain from imposing arbitrary product restrictions (such as leverage limits) and to focus instead on the credentials of the AIFM. The implementation of AIFMD has significantly increased the regulatory onus on the fund manager. This has already enabled the Central Bank to remove certain legacy product-level restrictions from its pre-existing QIF regime which would have otherwise been considered superfluous in light of the heightened obligations of the AIFM of a QIAIF. Accordingly, we suggest that it would be perverse, in the context of a general shift in regulatory focus towards the AIFM and away from the AIF, for a new product to be introduced which has additional restrictions unique to a particular asset class.

Although we do see real market potential for loan origination QIAIFs, our concern is that undue interference in how those funds may be structured (especially when other asset classes are not subject to similar restrictions) could undermine its popularity as a new product from the outset. Our strong preference would be for any regulatory concerns about loan origination to be addressed at the level of the manager instead.

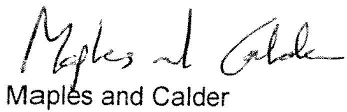
In particular, we endorse AIMA's proposal that managers wishing to engage in loan origination could be subject to specific pre-clearance from the Central Bank, as has historically been the case for asset

classes such as real estate, venture capital and life settlements. Once the Central Bank has satisfied itself as to a particular manager's credentials and expertise in loan origination, though, there should be no additional restrictions on the product, and instead the Central Bank should rely on the robust regulation of both the QIAIF and its AIFM.

Finally, we note that the provisions in the AIF Rulebook which prohibit QIAIFs from granting loans have never had any statutory basis as a matter of Irish law. Those provisions originate from the UCITS Directive[1] and so were necessarily imported into the Central Bank's UCITS Notices, but their inclusion in the Central Bank's non-UCITS Notices also was purely a policy decision rather than a statutory obligation. Accordingly, in the absence of any such statutory prohibition on AIFs engaging in loan origination, we urge that this policy decision be reversed and that loan origination products be permitted without limitation, with reliance instead on the heightened regulatory scrutiny of the AIFMs.

Many thanks for your consideration of our response.

Yours faithfully



Maples and Calder

[1] Directive 2009/65/EC, Article 88