

Our Ref ID

24 July 2015

Consultation on Delegate Oversight Guidance  
Markets Policy Division  
Central Bank of Ireland  
Block D  
Iveagh Court  
Harcourt Road  
Dublin 2

Sent by email to [fundspolicy@centralbank.ie](mailto:fundspolicy@centralbank.ie)

## CP86 Feedback Statement – Consultation on Delegate Oversight Guidance (“Draft Guidance”)

Dear Sir/Madam

We welcome the opportunity to provide our thoughts on the Draft Guidance on management company delegate oversight.

We have set out below our comments on the Draft Guidance addressing specific paragraphs where we felt specific issues arose. From a general perspective, we would re-iterate some of the concerns we have regarding the issue of guidance in this form.

Whilst we agree that publishing such guidance is a constructive approach to encouraging the development of sound supervision of delegates practices, we continue to have reservations on the form which were noted in our previous response and which we would summarize as follows :

- (a) the prescriptive nature of some of the matters set out in the document, rather than a principles based approach, may generate significant litigation risk for boards which is not necessarily present otherwise;
- (b) risk that setting out a step by step process to the manner in which boards should exercise delegate oversight would lead to a “*check the box*” approach;

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- (c) some of the practices proposed in the document would appear to us to suggest executive management functionality which is not the legal role of a board. Oversight and the monitoring of delegates is still, and should remain, a supervisory and directing function exercised in a controlled and robust manner. There is a clear division of responsibilities between those parties responsible for executive functionality and those parties who have no such responsibility but who have ultimate management responsibility.

In that regard we would repeat our view that a delegate oversight good practice document should be clearly stated as guidance only to boards of the sort of activities the Central Bank expects them to undertake.

We would again stress that it is essential to avoid a situation whereby any document published by a regulator such as delegate oversight good practice document could be contrary to the statutory and common law duties and responsibilities of directors, and accordingly it should be made clear that any such guidance is strictly only guidance

Finally, from a general perspective, whilst we note the distinction drawn in the feedback statement between the roles of directors and the role of designated persons, we believe that a more holistic approach may be to recognise the resources which exist within the Promoter or Investment Manager entities to provide persons to fulfil the designated persons roles, which of course would require a revision of the residency rules regarding such roles.

Specifically, we note the following on the numbered paragraphs within the draft guidance:

Paragraph 9 : The definition of delegate needs refinement as it may currently include anyone contracted to any activity for a fund or manager. The definitions need to be updated to include the ICAV and to note the change in the Companies Acts.

Paragraph 10 : Rather than stating the guidance to be an “overview of relevant good practices” we would prefer to see a clearer statement that it was guidance only, may not be relevant in all circumstances and indeed may not cover all situations arising.

Paragraph 23 : Principal delegates should be defined.

Paragraph 28 : All directors should have an understanding of the Investment Manager's operations sufficient to allow effective oversight of the delegate. The duties of a Director, initially stemming from common law and most recently enacted in the 2014 Companies Acts are that a Director must exercise the care, skill and diligence which would be exercised in the same circumstances by a reasonable person having both (a) the knowledge and experience that may reasonably be expected of a person in the same position as the director and (b) the knowledge and experience which the director has. The proposed statement seems capable of too broad an interpretation to include an understanding of an operating investment management business that would not be common amongst non-executive directors.

We remain available to discuss any of the above or indeed any further items which arise. We look forward to hearing from you should you require anything further from us.

Yours faithfully,

William Fry

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