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Fund Management Company Effectiveness
Delegate Oversight Consultation
Markets Policy Division
Central Bank of Ireland
Block D
Iveagh Court
Harcourt Road
Dublin 2

December 12, 2014

Reference: Consultation on Fund Management Company Effectiveness – Delegate Oversight
Consultation Paper CP 86.

Dear Sirs

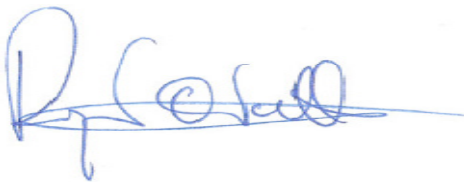
I am pleased to have the opportunity to participate in the consultation process and engage with the Central Bank on Fund Management Company Effectiveness – Delegate Oversight.

I fully support a consultation process that involves reviewing regulation and best practice, which engages all stakeholders as this is a very important process and one which should lead to ensuring Ireland is one of the leading global jurisdictions for locating fund management companies and investment fund companies.

Enclosed please find my responses to the questions posed in CP 86.

Should you have any questions or require further clarification, I am happy to discuss this matter in more detail.

Yours sincerely



Raymond O'Neill
Director
A.R.C. Directors (Ireland) Ltd

1 Is publishing a delegate oversight good practice document along the attached lines a good approach to encouraging the development of the supervision of delegates by fund management companies.

Publishing a delegate oversight good practice document is a good approach to encouraging the development of the supervision of delegates by fund management companies and is a step in the right direction to ensuring best practice when it comes to oversight of delegates by fund management companies. However best practice can be viewed differently and thus the individual boards should themselves collectively decide what is best practice for their particular board. The presence of guidance from the Central Bank on this matter is important and thus rather than make the guidance mandatory boards should be asked to explain why they may have chosen not to follow the guidance note in full.

2 Is the breakdown of revised managerial functions correct? Should other managerial functions be provided for? What are your observations about what the organisational effectiveness function might entail and how this might be performed? Do you see any obstacles to the Chairperson performing the organisational effectiveness function?

The consolidation of the managerial functions makes sense and the new categories are appropriate, including the introduction of the organisational effectiveness function.

In reviewing the role of the designated person who conducts the designated function of organisational effectiveness as noted in Appendix 2 of CP 86, I do not agree that the most appropriate individual to carry out all of these functions is the Chairperson. The Chairperson is the individual who is leading the board, assessing the effectiveness of the board, and ongoing should consider the skill set and diversity of the board. Thus the Chairperson should take responsibility for performing those activities but not the others as outlined in Appendix B Organisational Effectiveness.

I am also concerned about the references in CP 86 that suggest the Chairperson should be taking on “ day to day” and “ongoing monitoring” functions. This would suggest a full time or executive role, which is contrary to how fund boards have operated historically, which has been one of oversight and delegation to third parties. Should Fund Governance move in that direction, then the independence of the Chairperson may be in question.

Should the Organisational Effectiveness function become the responsibility of the Chairperson then another impact arising from this proposal is the likely increase in cost that the investment management company or investment fund company will incur, a cost that will ultimately be borne by investors.

In relation to the Managerial Oversight Task of Distribution, the activities performed by the Designated Person should also include monitoring the compliance of fund distributors in their local jurisdictions.

3 Is relaxing the two Irish resident director requirement the correct approach? Will relaxing this requirement have an adverse impact on the ability of the Central Bank to have issues with distressed investment funds resolved? If so how could this be addressed?

It is important for our industry to have sufficient numbers of individuals with the relevant skills and competencies available to act as directors of management companies and funds. If these individuals are not available in Ireland then clearly action should be taken by stakeholders to ensure the industry has the necessary skills and competences required. May be the perceived shortfall in relevant skills is more about the selection process of independent directors rather than the availability of relevant skills and competences.

I do not agree that relaxing the two Irish resident director requirement will resolve the perceived shortage in skills, specifically around risk management. In looking to resolve the perceived skill shortage, The Central Bank might consider introducing a derogation to the requirement for two Irish resident directors (permitting one to be non resident) subject to the rationale provided by a fund management company on a case by case basis.

There is the possibility that relaxing the requirement for having two Irish resident directors may adversely impact the ability of the Central Bank to resolve issues with fund management companies. The Central Bank has limited influence over directors that reside in other countries.

I would note there are many promoters, investment managers and investors who like and agree with the need to have two Irish resident directors which also supports the permanent establishment requirements.

4 What are your views on the proposed approach to measuring time spent in Ireland? Can you suggest any alternatives or any enhancements to the definition proposed by the Central Bank?

I am not aware of the process the Central Bank used in the calculation of 110 days and believe further clarification is required. An approach to residency by the Central Bank which is different to that applied by the Irish Tax Authorities and the Irish Stock Exchange may cause unnecessary confusion, especially in the international market place.

5 Is there a downside to requiring fund management companies to document the rationale for the board composition? Will fund management companies require a transitional period during which they can alter their board composition to ensure they have sufficient expertise and how long do you consider would be a reasonable timeframe for such adjustment?

Good Corporate Governance would suggest that boards should document how the diversity and skill set of the board members allow the board to meet its responsibilities. This coupled with

annual performance evaluation should identify areas where the board or individual directors are lacking. This evaluation should occur on an annual basis and hence the rationale for the board composition should not only occur during the initial approval process but throughout the life of the fund management company and the investment fund company.

However there are other attributes that make boards more effective like leadership that do not form part of the core competences. Thus the Central Bank should not be too prescriptive in this area but let the individual boards identify and manage their own skill set and composition requirements.

Should a transitional period be required to alter the composition of a board to ensure the board has sufficient expertise, this should be decided by the board in question. However such a transitional period should not take longer than one year.

6 Are there any other elements which should be included by the Central Bank in a Fund Management Company Effectiveness – Delegate Oversight initiative?

CP 86 does not focus enough on Independence at the board level and I believe the board composition of fund management companies and investment fund companies should have a majority of independence directors.

The Consultation Paper does not deal with the ongoing capacity debate and the Central Bank needs to take a more proactive and transparent role in resolving this specific matter.