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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

Re Consultation Paper CP 86

Dear Sirs,

Thank you for the opportunity to comment on CP 86.

As a general comment the approach taken by the Central Bank is surprising given that the Bank (i) has a detailed and rigorous system of approval of directors under the fitness and probity regime; (ii) has the power to remove directors; and (iii) requires an extremely detailed description of the reporting and corporate governance arrangements for management companies and funds which is set out in the business plan which is subject to extensive review by the Central Bank. The Consultation Paper seems to envisage a further tier of regulation which seems unnecessary.

It would be helpful if the Central Bank could clarify whether it regards directors of management companies and funds as executive or non executive directors. This is a fundamental distinction in determining the nature of the functions to be performed by directors, the duties and liabilities of the directors, the expectations which investors may legitimately have of directors and the appropriate level of remuneration for directors. This analysis is absent from the document and an assessment of the detailed proposals is difficult without a clear statement of principles.

I have the following comments on the specific questions:

Question 1 The Good Practice Document

It is questionable whether directors need to operate to detailed checklists of the kind proposed. There is a danger that the role of directors becomes formulaic, without regard to the nature of the fund, the service providers and the promoter and that the directors lose focus on what are the pertinent issues for the fund, whilst working through a checklist which, by its nature, will be incomplete. The system ought to be sufficiently robust to ensure that the directors chosen have sufficient expertise and experience to discharge their duties professionally. That is the rationale for the fitness and probity regime.

A number of specific points arise in relation to the document:

1. It is stated that the board should reserve to itself the appointment and retention of directors. Nothing should be done to undermine the right of shareholders to appoint and remove directors. Moreover, in practice, it is the promoter who selects the initial directors and frequently does so on the basis that the promoter has the right to remove a director and directors may agree to this in their letter of appointment. This is a significant issue for promoters who may expend significant time, energy and money in establishing and promoting a fund which carries its name and reputation. If the promoter is not satisfied with the performance of a director the promoter should be entitled to remove that director where the director has agreed to be appointed on this basis.

2. In the description of investment management functions it is suggested that the board review investment policy in the light of the internal limits and strategies of the investment manager if they are more restrictive than the prospectus. This is excessive and not necessarily in the interests of shareholders if it restricts the investment manager's scope for flexibility. The directors' role is to monitor investment policy in the light of the prospectus. That is the contract with investors. The internal policies and rules of the investment manager are just that- internal to the investment manager and not subject to review by a board of a client which has retained the investment manager to manage the assets in accordance with specific criteria set out in a public document.

3. Similar comments can be made in relation to the selection of portfolio managers for funds or reviewing their credentials. It is not the function of the board to select the investment management personnel of a regulated investment manager.

4. The questions on marketing and distribution are more likely to hinder, rather than to encourage, marketing. The key issue for the board is that the distributor should have in place procedures to comply with all relevant local regulation. It does not need, for instance, to carry out a review of the "competitive landscape".

Question 2 Operational Functions

The business plans have detailed reporting arrangements for directors. If a director is unable to resolve an issue then the other directors and the chairman become involved. I do not believe that there is any need for an operational effectiveness function.

Questions 3 and 4 Irish Resident Directors

In my experience promoters do not have an issue with the Irish resident director requirement and, in fact, welcome the fact that they have directors on board with knowledge of the local industry and its practices.

There may be an argument for reducing the requirement to one resident director, but the proposed change in the residency test is bizarre. Contrary to what the paper asserts, tax residence is not complicated in this situation. Either a director is claiming to be tax resident or not. For this purpose it is a subjective test. If a director is claiming non residency for tax purposes, then that director should not be allowed to claim residency for regulatory purposes. There is nothing to prevent that director serving as a non Irish resident director on a board.

The proposed methodology for meeting the residency requirement is contrived and cumbersome and seems to apply to a very limited number of directors or potential directors. It will not result in skills being filled. This proposal does not reflect well on the jurisdiction.

Question 5 Board Composition

The Central Bank already has a fitness and probity regime in place and this additional requirement in relation to board composition is redundant. Furthermore, at the outset directors may not know each

other and their only basis for assessing each other may be on the basis of cv's and the fitness and probity form. Therefore it is very difficult to see how this can add anything to the process.

Question 6 Other Issues

It is surprising that the Central Bank has not addressed the issue of limiting the number of directorships which a director may hold. Whilst this does not have to be by reference to a particular number of legal entities, a limit on the number of fund families or structures should apply. The paper is completely silent on this. A review is long overdue.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'CARL O'SULLIVAN', with a stylized, cursive flourish.

CARL O'SULLIVAN