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OUR REF	YOUR REF	DATE
TJS\6542956.3		11 December 2012

AIFMD Consultation
Markets Policy Division
Central Bank of Ireland
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Response to Consultation Paper CP60 By Email

Dear Sir/Madam

We are writing to you to provide our feedback to Consultation Paper CP60.

Representatives from McCann FitzGerald have been involved in the preparation of the Irish Funds Industry Association (the "**IFIA**") response that is being submitted to the Central Bank today (the **"IFIA Response"**) and we fully endorse all of the points that have been made in that submission. The purpose of this letter, therefore, is to emphasise certain points in the IFIA Response which we feel are of particular importance to Irish domiciled funds.

Promoter and Directors

The proposal to remove the promoter approval process is covered in the first question for consideration. Whereas we are supportive of the proposal to remove the promoter approval process, we feel the existing safeguards that are already in place with respect to regulated funds are sufficient. We do not believe that the additional conditions that are sought to be imposed on directors, and which arise directly from the removal of the promoter approval process are necessary, or appropriate. We feel that the IFIA's points in this regard are well made. We particularly agree that an assumption that the promoter would step in to support a fund were it to find itself in a distressed situation has always been debatable. We do not believe that the Central Bank should impose conditions on directors where a fund is in a "distressed" situation or when directors are tendering their resignation. The directors have both legal and regulatory obligations to act in the best interests of the unitholders of the fund and those obligations should not be fettered. The directors should, therefore, be able to decide on their own course of action, taking into account their fundamental legal duties. If the Central Bank does not agree with a course of action pursued by directors of a fund, it can communicate with the director(s) directly or take this into account when considering a director's appointment to a regulated entity in the future.

Feeder Funds

This is discussed in the second question for consideration in the consultation paper.

We would disagree with the Central Bank's suggested approach in this area. The proposal to retain the 50% investment limit does not recognise the introduction of the new Alternative Investment Funds Managers Directive (the "**AIFMD**") regime. This would put Ireland out of step with the rest of Europe and make its regime inconsistent with the AIFMD and UCITS investment restrictions, which both now define a feeder fund as being a fund which invests at least 85% of its assets in a master fund. By continuing to impose a level of 50% of NAV as the limit above which an investment becomes a feeder investment could potentially prove damaging to the Irish funds industry. The fund of funds and master fund industries in alternative investments are significant and it would be a major loss if these industries were to choose another EU jurisdiction in which to establish their feeder funds and funds of funds purely on the basis that such other jurisdiction had implemented the 85% limit as set out in AIFMD.

We do, however, recognise the Central Bank's concern that a feeder fund could be used as a regulated wrapper for an unregulated fund. We would welcome further discussions to identify and discuss these concerns in order to address them to the Central Bank's satisfaction (e.g., through a master feeder/control agreement between the feeder and the master), provided that any measures introduced do not put Ireland at a competitive disadvantage to other EU member states.

AIFMs Outside the AIFMD Thresholds

This is discussed in the eleventh question for consideration in the consultation paper.

We do not agree with the Central Bank's proposed approach in respect of alternative investment fund managers ("**AIFMs**") (and the alternative investment funds ("**AIFs**") they manage) that are out of scope of AIFMD. As with the feeder fund proposals above, we are concerned that the Central Bank is imposing requirements that are over and above those required by the AIFMD. Whereas it is essential that the Central Bank continues to regulate non-UCITS funds, we believe that those non-UCITS that are not within the scope of AIFMD should not be subject to the requirements of AIFMD as set out in the Handbook. This gold-plating of AIFs that are out of scope would put Ireland at a competitive disadvantage when compared to other member states and risks damaging the Irish funds industry.

Timing / Transitional Arrangements

We acknowledge that the Central Bank has indicated that the final decision in respect of the timing of the transitional provisions will be made by the EU Commission, and not by the Central Bank. However, we support the IFIA's stance that the new regime should be in place well in advance of the effective date of the AIFMD. We feel that this is necessary in order to allow new alternative investment managers and their funds to obtain authorisation under the AIFMD as soon as the new regime comes into force. Furthermore, we would propose that the Central Bank would support the

FSA's interpretation of Article 61 of the Directive by allowing a grandfathering period of one year for existing AIFMs and their AIFs to comply with the provisions of AIFMD.

We also support the IFIA's proposal that any matters that have been contemplated and agreed as part of the review of the non-UCITS regime, and which are not reliant on the implementation of AIFMD, should be introduced as soon as possible and should not be delayed until 22 July 2013.

Yours faithfully

A. Spratt

McCann FitzGerald