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By email

8 December 2020

Dear Declan

Thank you for your recent enquiries related to the outcome of the Central Bank of Ireland's (the Central Bank's) thematic review of the implementation of its framework for governance, management and oversight in fund management companies.

The Central Bank has received a number of queries in relation to the impact of the Central Bank's resourcing expectations¹ on Regulation 104 of the Central Bank UCITS Regulations 2019 (the Effective Supervision Rule). In order to address these queries, it is useful to recall the Central Bank's position with reference to three separate but related matters; (i) effective supervision, (ii) substance, and (iii) presence in Ireland.

Effective Supervision/Supervisibility:

The Effective Supervision Rule provides for requirements in relation to the residency of a certain ratio/number of Directors, and also Designated Persons. The rule addresses the Central Bank's ability to exert effective supervision in respect of a firm on an ongoing basis and sets minimum requirements in this regard.

A breach of the Effective Supervision Rule is a breach of a fund management company's legal obligations and therefore it should be complied with at all times. The Effective Supervision Rule was not formulated to inform

¹ As articulated in the [outcome of the Central Bank's thematic review on fund management companies](#) (the industry letter).



the number of staff that a fund management company should employ to enable it to carry out its functions. The industry letter does not amend the Effective Supervision Rule or have an impact on the legal obligations of a firm with regard to it.

Substance/ Resourcing:

Separate to supervisibility, the Central Bank fund management companies guidance addresses matters relating to resourcing, stating that “*Fund management companies need to have sufficient resources at their disposal to enable them to carry out their functions properly, taking into account the nature, scale and complexity of their business. It is the responsibility of the board to determine in the light of its particular circumstances the appropriate resourcing of these functions and to satisfy itself that responsibilities for undertaking delegated tasks are allocated accordingly.*” In addition, there are specific rules related to resources (for example, Regulation 106 of the [Central Bank UCITS Regulations](#)).

These provisions require that the resources are sufficient in quantity, experience and expertise and that they are otherwise adequate in all respects to conduct the activities of the fund management company effectively and ensure compliance by the firm with its specific obligations. A fund management company must be able to clearly demonstrate that its governance structure, including its entity-specific first, second and third lines of defence, are sufficiently resourced to achieve this. In terms of quantity of resources, the industry letter sets out that all fund management companies, including UCITS self-managed investment companies and internally managed alternative investment funds, should have a minimum of three FTE, each of whom should be suitably qualified and of appropriate seniority to fulfil the role. As the industry letter itself states, this number is of course a minimum expectation and only relevant to the smallest and simplest of entities.

For larger firms, Designated Persons are expected to be full time roles. Where Designated Persons are not full time roles there should nevertheless be sufficient support and resources available to the individual to enable the role to be discharged. The approach that a particular fund management company is taking with regard to substance should be set out in its action plan (as mandated by the industry letter).

Presence in Ireland

As set out in the industry letter, fund management companies must appoint locally based persons who conduct managerial functions (Designated Persons) and other staff with sufficient time dedicated to their roles in order to fulfil their duties, which include oversight of delegated activities. The Central Bank is also informed in its approach by the evolving regulatory environment for fund management companies at an EU level and has regard to the ESMA opinion to support supervisory convergence including in the area of



investment management in the context of the United Kingdom withdrawing from the European Union (the ESMA Brexit Opinion).²

The Central Bank's fund management companies guidance, when describing the role of a Designated Person, makes it clear that the role holder is responsible for the management of the fund management company on a day-to-day basis. For an Irish-authorized firm, the management of the entity must take place in the jurisdiction. It is difficult to see how a fund management company could be considered to be located in Ireland unless a clear and convincing preponderance of the firm's Designated Persons and management roles (including key roles) are performed within the jurisdiction.

The Central Bank acknowledges that the travel restrictions in place due to the COVID-19 pandemic present an extraordinary set of circumstances where health protection measures are impacting on individuals' ability to carry out their functions on location, and the Central Bank will apply flexibility in the context of this evolving situation.

Fund management companies should consider their resourcing arrangements taking into account all of these various considerations – the effective supervision requirement, minimum substance level as communicated by way of the industry letter, the resources required to fulfil their obligations, their presence in Ireland and other relevant considerations that may be applicable.

We would be grateful if you could share the contents of this letter with your members.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Gerry Cross'.

Gerry Cross
Director of Asset Management and
Supervision Investment Banking Supervision
(Interim)

A handwritten signature in blue ink, appearing to read 'Colm Kincaid'.

Colm Kincaid
Director of Securities and Markets

² ESMA Opinion (dated 13 July 2017) to support supervisory convergence in the area of investment management in the context of the United Kingdom withdrawing from the European Union.

Available here: https://www.esma.europa.eu/sites/default/files/library/esma34-45-344_opinion_to_support_supervisory_convergence_in_the_area_of_investment_management_in_the_context_of_the_united_kingdom_withdrawing_from_the_european_union.pdf