



September 2014

## Central Bank Consults on Fund Management Company Effectiveness – Delegate Oversight

The Central Bank of Ireland (“**Central Bank**”) has published a Consultation Paper (“**CP86**”) on a number of initiatives which are *‘designed to underpin the achievement of substantive control by fund management companies, acting on behalf of investment funds, over the activities of their delegates’*.

‘Fund management companies’ include UCITS management companies, authorised Alternative Investment Fund Managers, self-managed UCITS investment companies and internally managed Alternative Investment Funds.

The full text of CP86 is available on the Central Bank website. [Link.](#)

### Introduction

The four key areas discussed by the Central Bank in CP 86 relate to:

- guidance on how fund management companies should oversee delegates;
- reduction of the number of existing management functions and streamlining these functions;
- removal of current requirement to have two Irish resident directors (and suggesting replacement provisions); and
- introduction of a requirement to provide a rationale for board composition.

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### **Guidance of Guidance on how fund management companies should oversee delegates**

In light of what the Central Bank has referred to as the 'varied' quality of the oversight of delegates by fund management companies, it proposes issuing *guidance* regarding what it considers to be good practices for directors of fund management companies in their oversight role. This approach is seen by the Central Bank as being preferable to establishing a firm set of rules with regard to oversight. The Central Bank sought the views of a committee of investment professionals which it established in that regard and a document setting out principles that boards of fund management companies might follow, and identifying a number of tasks that should be retained by Boards, has been included in an appendix to CP 86.

### **Reduction of the number of existing management functions and streamlining these functions**

Due to what the Central Bank perceives as a risk of overlap between the existing management functions (currently 9 at the level of UCITS management companies and 15 at the level of AIFMs) it is proposing to consolidate and refine these rules into six managerial functions as follows:

- *Risk Management;*
- *Investment Management;*
- *Regulatory Compliance;*
- *Distribution;*
- *Capital and Financial Management; and*
- *Organisational Effectiveness*

To explain how it envisages the streamlined managerial functions operating, it has prepared a non-exhaustive description on the role of designated persons as an appendix to CP86. This is designed to provide a guide for directors as to what the revised functions entail and also to assist fund sponsors when drafting or redrafting their business plans or programmes of activity in light of these six functions.

Aside from the concept of consolidation of the functions the key difference that this development bring is to a) broaden the functions of complaints handling to incorporate the general role of oversight of distribution and b) introduce the clarified task of organisational effectiveness oversight which the Central Bank notes is different from the task of corporate governance compliance and is a role that should probably be carried out by the chairman. The Central Bank has noted that there will need to be a transitional arrangement for existing management companies with respect to this change.

### **Removal of current requirement to have two Irish resident Directors**

The Central Bank currently requires that the boards of all fund management companies consist of a minimum two Irish resident directors. In light of the absence of a definition as to what constitutes residency (from a regulatory perspective at least) and as a result of concerns that the current requirement limits the pool of potential directors with appropriate competencies, in particular in the area of portfolio management and risk management, the Central Bank is proposing to relax this requirement so that there must be two directors who are in Ireland for not less than 110 working days per year. Fund management companies may however substitute for one of these directors with an individual who:

- affirms that he/she is available to engage with Central Bank supervisors on request within any 24 hour working day period and is available to attend meetings at the Central Bank at reasonable notice;
- is unconnected to the depository or a service provider; and
- is competent in one of the six designated tasks.

The Central Bank has again noted that transitional arrangements will be necessary with regard to this particular change.

### **Introduction of a requirement to provide a rationale for board composition**

In order to ensure that fund management companies pay sufficient attention to achieving a balance of skills and competencies on their boards the Central Bank is proposing to introduce a new rule to require these companies to document as part of the authorisation process specifically how the composition of its board as a whole provides it with sufficient expertise to conduct the tasks expected of the directors and, where relevant, as the designated person for a managerial function. Although this is not expected that a profile of board composition will be required to be maintained as a condition of authorisation it's expected that the director with responsibility for organisational effectiveness will keep this requirement under review on an ongoing basis.

The Central Bank has also noted that it intends to supplement this rule with guidance to clarify that where a fund management company has a contract for the provision of legal services, it does not also have to ensure that the board itself also includes legal expertise i.e. it does not have to appoint a lawyer to the board. This is viewed by the Central Bank as a step to establishing a clear playing field between all potential board appointees.

## Conclusion

The Central Bank has invited consultation until **Friday 12th December 2014**. Dillon Eustace will be providing comments to the Central Bank and should you wish to provide any comments on CP86 to the Central Bank we would be happy to incorporate them into our submission.

Please forward any thoughts to your usual contact here at Dillon Eustace.

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