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RESIGNATION AND APPROVAL PROCESS FOR FUND MANAGEMENT COMPANY DIRECTORS

INTRODUCTION

The composition of the boards of Fund Management Companies¹ (“**FMCs**”) may change several times during the life of the FMC for a variety of reasons. Rotation after a number of years on the board of the FMC may be provided for in the FMC’s constitutional document; a director may have agreed to abide by the Central Bank of Ireland’s (the “**Central Bank**”) Fitness and Probity requirements (the “**F&P Requirements**”) upon appointment and subsequently not meet the F&P Requirements; there may be a decision made to include additional skills sets or to diversify the board; or change to board composition may occur for personal reasons. While familiarity with the FMC, its objectives and delegates is most certainly beneficial to a FMC this must be balanced with the fact that change to board composition over time is widely held to ensure that independent thought and challenge is maintained throughout the lifetime of the FMC.

You will be aware that the Central Bank recently completed a thematic review assessing how FMCs have implemented Central Bank requirements and related guidance in relation to the organisation of FMCs (the “**Central Bank Review**”). Our recent briefing; “[Central Bank of Ireland findings on the adoption of the Fund Management Company Guidance](#)” summarised the Central Bank’s “Dear Chair” Letter (the “**Central Bank Letter**”). The Central Bank Letter indicates that in order to achieve independent challenge at board level there should be regular rotation of board members.

The Central Bank Review found that 28% of FMCs have at least one Independent Non-Executive Director with a tenure greater than ten years. It was identified that it may not be appropriate to remain on the board for a prolonged period of time. The Central Bank has

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¹ FMC is defined in the Fund Management Companies – Guidance, December 2016, as including entities regulated as AIFMs, UCITS management companies and self-managed companies, in each case incorporated and authorised under the laws of Ireland.

regularly highlighted to the FMC community that greater gender and general diversity should form part of a FMC's review of its governance arrangements.

In addition, the Central Bank Review also referenced the fact that the majority of FMCs have not appointed a CEO and indicated that the Central Bank expects all but the smallest FMCs to have a CEO.

Consequently, it is widely anticipated that the Central Bank Letter will prompt a review of board composition. We have set out below some practical steps to consider when considering a change of composition of the board of a FMC.

RESIGNATION FROM THE BOARD OF A FMC

When a director resigns from the board of a regulated entity, such as a FMC, there are a number of steps that must be followed. Firstly the resigning director must signal his/her intention to resign from the board to the remaining directors of the FMC. The resigning director will be required to provide the FMC with a letter of resignation and also provide a letter for the Central Bank confirming the reasons for the resignation. The FMC's company secretary should of course minute the resignation once the board has formally noted and accepted the resignation of the resigning director.

The director's letter of resignation should cover the following points:

- ❑ The letter will be addressed to the board of the FMC.
- ❑ The resigning director must state his/her name, address, that they are hereby resigning and the effective date of such resignation.
- ❑ Confirm the reason for resignation and that it is not due to any issues relating to the FMC or its board.
- ❑ Confirm there are no claims against the FMC or respected parties in relation to the loss of office as a director of the FMC or any claim of compensation.
- ❑ Confirm there is no outstanding debt, liability or other obligation which the FMC may have over the resigning director.
- ❑ Confirm the resigning director is aware they may seek an interview with the Central Bank upon departure.

The designated System Administrator of the FMC will be in a position to use the Central Bank's online reporting system (the "**ONR**") to complete an ad-hoc ONR return which reports information, such as a change in a pre-approved control function ("**PCF**") of a FMC.

APPOINTMENT TO THE BOARD OF A FMC

❑ **Appointment of new Director**

With regard to the proposed appointment of any new director (the "**Applicant**"), the board members must give due consideration to the proposed appointment of the Applicant and confirm the proposed appointment.

In order to serve as a director for the FMC, the Applicant will need to be approved by the Central Bank, if not previously approved. The approval of the Applicant will need to be formally ratified by the board of the FMC once approved by Central Bank.

Individual Questionnaire (“IQ”)

It will be necessary for the Applicant to complete the Central Bank’s online IQ in advance of their appointment to the board in order for the Central Bank to approve the Applicant to act as a director of the FMC. The System Administrator for the FMC will be in a position to add the Applicant as a “User” on the Central Bank’s ONR so that they can complete an IQ for Central Bank review.

Fitness and Probity Standards (the “Standards”)

It is required that the FMC confirms to the Central Bank that it has satisfied itself on reasonable grounds that a person in a PCF role, such as a director, complies with the Standards. In order for the FMC to give this confirmation, it is necessary for a due diligence check to be completed on the Applicant.

In order to meet this requirement, the Applicant could provide the following documents to the FMC or its legal advisers on its behalf, in support of his/her proposed appointment:

- a) A copy of their passport.
- b) A copy of two recent utility bills (dated not more than 3 months from the date they are furnished).
- c) A written reference, being either a professional reference from a former employer or a personal reference.
- d) A copy of the transcript of the relevant professional qualification which the Applicant holds, where relevant.
- e) Confirmation of compliance with the Standards.

In accordance with the F&P Requirements, the FMC, or its legal adviser on its behalf, will undertake three types of checks on the Applicant from publicly available information; to include:

- a) A regulatory check, on the Central Bank’s website, to seek to confirm that the Applicant has not been the subject of sanction or other regulatory action (and equivalent check in other jurisdiction(s) where the Applicant has lived outside Ireland for more than 6 months within the previous 5 years).
- b) A Companies Register check with the Irish Companies Registration Office for records for restrictions or disqualifications from acting as a company Director (and equivalent check in other jurisdiction(s) where the Applicant has lived outside Ireland for more than 6 months within the previous 5 years).
- c) A creditors’ judgment search to assess if a judgment debt has been registered against the Applicant in Ireland (or other jurisdiction(s) where the Applicant has

lived outside Ireland for more than 6 months within the previous 5 years, from a publically available source).

Central Bank and Companies Registration Office (the “CRO”) Filings

a) Central Bank Filing for an ICAV – Form PR1.7

– Note: only relevant to a self-managed ICAV

The Form PR1.7 will be required to be completed in order to notify the Central Bank of the appointment of any proposed new director of a FMC constituted as an ICAV. A list of current directorships of the Applicant should accompany the form when submitted to the Central Bank. In addition, a signed letter of consent from the Applicant addressed to the Central Bank is also required pursuant to Section 65(8) of the Irish Collective Asset-management Vehicle Act 2015, as amended. Similarly, a Form PR1.7 will need to be completed for the resigning director, if any, notifying the Central Bank of the resignation a signed letter of resignation should also attach to the form. This notification to the Central Bank must be made within 14 days of the change of board member(s) of the ICAV.

b) Companies Registration Office (the “CRO”) Filing for a Company – Form B10

– Note: relevant to FMCs (UCITS management companies, AIFMs and self-managed companies)

The Company Secretary of the FMC will usually complete a Form B10 required pursuant to Section 149(8)(a) of the Companies Act 2014. This will need to be filed electronically (in the first instance) with the CRO within 14 days of any change of board member(s) of the FMC. Full details as set out in the Form B10 must be disclosed on appointment to an FMC whereas, on resignation only the name and date of the resigning board member(s) are required.

Part 5 – Update to Prospectus and Other Relevant Documentation

Once the Applicant has been approved by the board of directors of the FMC and the Central Bank to act as a director of the FMC and once the previous director's resignation is effective, if applicable, it will be necessary to update the prospectus and any other relevant documents where the director(s) are named which, in the case of a self managed fund, may include the business plan, risk management process and policy and procedure documents. Any references to the resigning director should be removed and details such as biographical details of the new director, as relevant, should be included in the relevant documents. Where the FMC is a UCITS Management Company or AIFM, the funds under its management will also need to reflect the change of Board composition in their prospectuses in due course. The FMC letterhead should be updated.

If you have any questions or need any assistance with regard to a proposed change of FMC board composition, please do not hesitate to contact any member of the Asset Management and Investment Funds or Company Secretarial Department.

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