



STATE STREET.

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Via e-mail: fundspolicy@centralbank.ie

Fund Management Company Effectiveness – Delegate Oversight Consultation
Market Policy Division
Central Bank of Ireland
Block D Iveagh Court
Harcourt Road
Dublin 2

Consultation Paper 86 – Consultation on the Fund Management Effectiveness – Delegate Oversight - “CP86”

Dear Sir/Madam:

State Street Corporation (“State Street”) appreciates the opportunity to respond to CP86 issued by the Central Bank of Ireland (“CBI”) and the proposed initiatives therein.

Headquartered in Boston, Massachusetts, with branches and subsidiaries throughout the European Union (“EU”), State Street specialises in providing institutional investors with investment servicing, investment management and investment research and trading. With EUR 28.4 trillion in assets under custody and administration and EUR 2.48 trillion in assets under management, State Street operates in 29 countries and in more than 100 markets worldwide¹. Our European workforce of 9,000 employees provides services to our clients from offices in ten EU Member States and includes 2,000 employees and 5 locations in Ireland.

State Street acknowledges the CBI’s desire to consult on the topic of the effectiveness of fund management companies and self-managed investment companies given the regulatory environment and the focus on investor protection. We note that the CBI has previously indicated its intention to rely more on the regulatory regimes applicable to Alternative Investment Fund Managers (“AIFMs”) and UCITS management companies in its consultation papers 60 and 77 as a counterbalance for the removal of the AIFM Directive

¹ As of June 30, 2014.

and UCITS Promoter regimes. References to AIFMs and UCITS management companies in this document should be read to include self-managed investment companies.

We are also cognisant of the provisions of Article 82 of the AIFM Regulations, which tasks the Commission with reviewing the application of the “letter-box entity” provisions of the AIFM Directive two years after the implementation of the Directive. To that end it is desirable that Ireland is seen to have a robust management model that stands up to this scrutiny. However, State Street does not believe that the existing frameworks under which AIFMs and UCITS management companies operate in terms of governance and oversight are deficient. We would encourage the CBI to continue to work with industry and the director community to work through any potential concerns on a bilateral basis.

The UCITS Directive also obliges a UCITS management company to ensure that any delegation does not result in a delegation of functions to the extent that it becomes a letter-box entity. However, UCITS is a product directive and therefore has a different focus to the AIFM Directive which is clearly focused on the management of funds. Indeed there are requirements imposed on AIFMs that do not apply to UCITS management companies, such as the regulatory reporting obligations under Annex IV of the AIFM Directive. Therefore, it is important that any additional guidance or framework to be imposed on AIFMs and UCITS management companies recognises this differentiation.

It is important to recognise that an authorised AIFM is already required to compile a detailed programme of activity that specifies how it will fulfil its obligations under the regulations. Similarly, a UCITS management company must also document how it will discharge its obligations in its business plan. Both AIFMs and UCITS management companies will also have other detailed policy documentation related to other specific functions and procedures such as the risk management policy document. Overall, we believe that it is very important that any further guidelines or requirements are balanced and proportionate and take into account this existing framework. It is also very important that AIFMs and UCITS management companies are given the scope to tailor their own oversight framework in accordance with the nature, scale and complexity of the business and the funds they manage. This is a key principle in both the AIFM and UCITS regimes.

We set out our responses to the specific questions posed in CP86 below.

Question 1:

Is publishing a delegate oversight good practice document along the attached lines a good approach to encouraging the development of the supervision of delegates by fund management companies?

State Street acknowledges that there are some sound principles expressed in the good practices report included in Appendix 1 of CP86. Indeed, this document may prove to be a useful reference tool to many AIFMs and UCITS management companies established in Ireland. However, we would suggest that it should not be necessary for the CBI to adopt this document and publish this as CBI guidance in respect of the supervision of delegates. AIFMs are already subject to regulatory parameters governing the principles to and reasons for delegation contained within Section 8 of Commission Regulation 231/2013 (“the AIFM Regulations”). Each AIFM is required, as part of its authorisation process, to submit a detailed programme of activity, which sets out how the AIFM will fulfil its obligations and

conduct its business. Similarly, a UCITS management company will produce a business plan which fulfils a similar requirement. Each programme of activity or business plan is designed to meet the needs of each individual AIFM or UCITS management company with regard to the nature, scale and complexity of the business that it conducts. These documents are subject to the review of the CBI and should enable the CBI to oversee the activity of the AIFM or UCITS management company. Given the amount of focus already involved in these framework documents, we believe it is more appropriate for the CBI's review of delegate oversight to be based on a review of the AIFM and UCITS management company activities as to how they meet, in practice, the operating models described in the programmes of activity and business plans rather than by imposing additional layers of guidance.

Question 2:

Is the breakdown of revised managerial functions correct? Should other managerial functions be provided for? What are your observations about what the operational effectiveness function might entail and how this might be performed? Do you see any obstacles to the Chairperson performing the operational effectiveness function?

We understand the CBI's desire to streamline the sixteen AIFM obligations and the ten UCITS management functions into one revised set of six which can apply to both regimes. However, there are clearly AIFM responsibilities that do not exist in the context of a UCITS, such as the Annex IV reporting of the AIFM Directive. As such, we do not believe that it is necessarily desirable to try and produce one standard list of responsibilities for both regimes. Further, by consolidating certain functions the CBI will potentially remove the ability for AIFMs and UCITS management companies to allocate management functions to the most appropriate individual director. For example, a particular individual may be well-qualified to take on the function of risk management as it pertains to market risk and those risks specific to the investment strategies and instruments of the fund, but another individual's particular experience may mean that they would be better placed to assess and monitor operational risk along with accounting policies and procedures. We would caution that the proposed amendments could create such rigidity.

CP86 also suggests that the role with responsibility for "organisational effectiveness" is one that would be best fulfilled by the Chair of a board and further suggests that such a role extends the responsibility of this role to one which applies on a day-to-day basis, or at least on a more frequent basis than would be expected from the other board members. We feel that there is a danger that this may result in a more executive type role for the Chair whereas, in our experience, good practice seems to be developing that the role of the Chair is fulfilled by one of the non-executive directors. Further, though the Chair may lead discussion in relation to the overall effectiveness of the board and its organisation, we do not believe that this is a responsibility that ought to be shouldered by one individual.

Question 3:

Is relaxing the two Irish resident director requirement the correct approach? Will relaxing this requirement have an adverse impact on the ability of the Central Bank to have issues with distressed investment funds resolved? If so, how could this be addressed?

As noted above, Article 82 of the AIFM Regulations tasks the Commission with reviewing the application of the letter-box entity provisions of the AIFM Directive two years after the implementation of the Directive. The provisions of this Article stipulate that AIFMs cannot over-delegate to the extent that they lose all substance and become letter-box entities. Article 82 provides that to avoid becoming letter-box entities, AIFMs must “retain the necessary expertise and resources to supervise the delegated tasks effectively and manage the risks associated with the delegation.” If an AIFM or UCITS management company feels that it requires the particular expertise of an individual outside the State in order to be able to discharge its responsibilities, then relaxing the two Irish resident director requirement is a welcome development. However, we believe that having two Irish resident directors itself goes some way to fulfilling substance requirements, which, if removed, would need to be made up in some other way. Indeed, having potentially only one Irish resident individual on the board of an Irish AIFM may be a retrograde step from an overall governance and substance perspective.

Further, we are not convinced that the reason for permitting a waiver from the two Irish resident directors requirement is entirely justified. Currently, the boards of AIFMs and UCITS management companies are made up of individuals from the investment manager or promoter. Oftentimes, the role of risk or portfolio management within the board is fulfilled by one of these individuals who can bring the requisite experience to the board as a whole. As a result, there is no deficit in an Irish fund’s board as a whole in relation to these competencies.

Question 4:

What are your views on the proposed approach to measuring time spent in Ireland? Can you suggest any alternatives or any enhancements to the definition proposed by the Central Bank?

It is not entirely clear to us how this will work. The CBI comments in CP86 that the tax definition of resident is complicated, yet it is fundamentally a tried and tested definition and one with which individuals will be familiar in terms of how it applies to themselves. If needs be, it is also verifiable insofar as it is the basis on which the individual is subject to tax. Introducing a new concept for members of boards will require new definitions and potentially new methodologies for verifying whether an individual was in the State for the whole of any particular day. Does the CBI have a view as to what would evidence time spent in Ireland as this may create additional administrative burden depending on the requirements?

Question 5:

Is there a downside to requiring fund management companies to document the rationale for the board composition? Will fund management companies require a transitional period during which they can alter their board composition to ensure they have sufficient expertise and how long do you consider would be a reasonable timeframe for such adjustments?

State Street does not consider that this should be a necessary part of the authorisation process for a new AIFM or UCITS management company. At an individual level, the CBI already imposes fitness and probity standards and requires board members to submit an IQ. At a board level, the AIFM or UCITS management company is subject to the overarching obligation that it is able to discharge its regulatory obligations as set out in its programme of activity or business plan. Management functions are defined and allocated to individual members. Further, the Corporate Governance Code for Collective Investment Schemes and Management Companies requires an annual review of the board and a formal review of the board's effectiveness once every three years. It further recommends that there is a good balance of skills within each board. The CBI is also able to call on individual members of the boards of AIFMs and UCITS management companies at any time, which is far more valuable in giving the CBI comfort about board members than the review of a one-time justification at the point of authorisation.

Question 6:

Are there any other elements which should be included by the Central Bank in a Fund Management Company Effectiveness – Delegate Oversight initiative?

State Street does not have any other proposals to bring to the CBI's attention in relation to this consultation. We would ask the CBI to consider the existing framework and regulatory obligations under which AIFMs and UCITS management companies currently operate and would suggest that these requirements are sufficient to ensure that they have the necessary organisational structures to discharge their obligations including the effective oversight of their delegates. We would suggest that the CBI does not introduce another layer of prescriptive requirements on top of those existing obligations which allow AIFMs and UCITS management companies to organise themselves according to the nature, scale and complexity of their business.

Please feel free to contact me should you wish to discuss State Street's submission in greater detail.

Yours faithfully,



Susan Dargan, Head of Global Services Ireland

State Street International (Ireland) Limited

