



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

2015

Fund Management Company Boards

- Feedback statement on CP86
- Consultation on delegate oversight guidance
- Publication of guidance on
 - o Organisational effectiveness; and
 - o Directors' time commitments

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Introduction

Feedback on CP86

1. On 19 September 2014 the Central Bank of Ireland (the “Central Bank”) published Consultation Paper CP86 *Consultation on Fund Management Company Effectiveness – Delegate Oversight* (“CP86”). The closing date for comments was 12 December 2014 and 47 responses were received.
2. In CP86 the Central Bank set out a number of proposed initiatives which were designed to further underpin substantive control by fund management companies¹, acting on behalf of investment funds, over the activities of their delegates.
3. Respondents were asked to provide their observations on the proposed initiatives and to comment generally on the approach being taken by the Central Bank. Part I of this document sets out the Central Bank’s feedback on CP86. The remaining parts contain consequential guidance as explained below.

Draft Central Bank guidance on Delegate Oversight

4. Part II of this document contains draft Central Bank guidance on Fund Management Companies - Delegate Oversight (the “Delegate Oversight Guidance”). This guidance focuses on the matters covered in the Committee on Collective Investment Governance (“CCIG”) report but has been revised as Central Bank guidance.
5. The Central Bank is inviting comment on its draft Delegate Oversight Guidance. However, given that the CCIG report was consulted on in CP86, the Central Bank is undertaking a shortened process on the draft Delegate Oversight Guidance.
6. The Central Bank invites all stakeholders to provide observations and comments on the draft Delegate Oversight Guidance. Where a respondent disagrees with a provision, he/she should set out reasoned arguments as to why the provision is unnecessary or inappropriate and/or should suggest viable alternatives.
7. Please make your submissions electronically by email to fundspolicy@centralbank.ie or in

¹ In this document, the term ‘fund management company’ means a UCITS management company, an authorised Alternative Investment Fund Manager, a self-managed UCITS investment company and an internally managed Alternative Investment Fund which is an authorised AIFM. ‘Investment companies’ refers to investment companies and ICAVs which have appointed a UCITS management company or external AIFM.

writing, to:

Consultation on Delegate Oversight Guidance

Markets Policy Division

Central Bank of Ireland

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8. Responses should be submitted no later than 24 July 2015.
9. All responses will be made available on our website. Commercially confidential information should not be included in responses. We will send an email acknowledgement to all responses sent by email. If you do not get an acknowledgement of an emailed response, please contact us on 2246000 to correct the situation.

Central Bank guidance on Organisational Effectiveness

10. A number of respondents to CP86 asked for more clarity around the organisational effectiveness role. To address this, the Central Bank has prepared guidance on the organisational effectiveness role which is set out in Part III of this document, which it is now issuing.

Central Bank guidance on Directors' Time Commitments

11. In parallel with its CP86 consultation, the Central Bank conducted a thematic review in order to assess the number of directorships held by individuals on the boards of corporate investment funds, fund management companies and AIF management companies. The objective was to assess the impact on investment fund governance where multiple directorships are held by individuals in the industry.
12. The thematic review demonstrated that the Irish funds industry has a substantial population of 2,057 active directors with a broadening range of expertise. Amongst this population, there is clearly a strong level of commitment to pursue high ethical standards and directorial responsibility. However, there are 13 individuals who hold 652 directorships in the funds industry in Ireland with an extensive level of aggregate professional time commitments.

13. Good governance in the investment funds industry is a key pillar underpinning the Central Bank's mandate to protect investors. The Central Bank expects boards to assess their effectiveness on an on-going basis, a key component of which is an assessment of the time commitment of its directors both at the time of appointment and at regular intervals thereafter.
14. It is recognised that some economies of scale can be achieved with common boards² and similar sub-funds; however it is clear from the Central Bank's review that a high number of client relationships and a high number of sub-funds within a single umbrella structure requires more time commitment. It also increases the probability of ad hoc issues arising.
15. Boards should review their current board composition, taking into account the Directors' Time Commitments guidance, to ensure that each director appointed has sufficient time allocated to this important role and that directorship numbers are kept at an acceptable and manageable level. Individual directors must also be cognisant of their own obligations and responsibilities as board members.
16. Part IV sets out guidance to assist Chairs, boards and individual directors in assessing the time commitment of individual directors in fulfilling their roles. The Central Bank will use these recommendations as a guide for future reviews of board effectiveness, director time commitments and quality of board operations. The Central Bank's views on directors' time commitments have been informed by dialogue with fund management companies as part of and following on from its thematic review and so this guidance is not being consulted upon.

Next steps

17. Part V of this document sets out next steps and details the rule and authorisation process changes which are being made as a result of the outcome of CP86. It also sets out the Central Bank's intention to publish further fund management company guidance and indicates the contents and timeframe for this work.

² A common board between an externally managed corporate fund and the fund management company.

Part I - Feedback on CP86

General feedback on in CP86

1. There were two recurring themes which ran through many of the responses to CP86. The first indicated a lack of clarity about the purpose of CP86. The second related to directors performing managerial function roles.
2. In relation to the lack of clarity, respondents queried why CP86 dealt with fund management companies and not investment companies. Many of the responses indicated a lack of clarity on how the proposals contained in CP86 interacted with the obligations placed on fund management companies under the UCITS Regulations 2011 and AIFM Regulations 2013.
3. Regarding directors performing managerial function roles, many respondents commented that the ‘designated director’ role and the proposals contained in CP86 blurred the line between executive and non-executive directors. One respondent queried when performing a managerial function changed a non-executive director into an executive director. Other respondents argued that references to ‘designated directors’ performing activities on a ‘day-to-day’ basis were inappropriate and did not reflect how ‘designated directors’ performed their roles in practice. Some respondents queried whether acting as designated person would impact upon a director’s independence.

Central Bank: CP86 focussed on fund management companies because they are subject to the management company regimes set out in UCITS Regulations 2011 and AIFM Regulations 2013. These include detailed organisational and operational rules. Investment companies are not subject to these rules.

The rules that fund management companies are subject to include delegation rules. Many Irish fund management companies operate models which make extensive use of outsourcing. With that in mind, it is important that fund management companies:

- i. exercise sufficient control over their delegates through close oversight of delegated tasks on a day-to-day basis;
- ii. exercise effective control over the management company’s own operations and activities; and
- iii. have boards which are composed of the right mix of experience and expertise to achieve, among other things, the highest standards of oversight of such delegates.

The proposals set out in CP86 aimed to assist fund management companies in achieving these objectives by

- the publication of guidance based on the CCIG report to provide boards with a guide to good practices in the control of the fund management company and its delegates;
- streamlining the managerial functions to make it easier for fund management companies to organise their oversight of delegates in an efficient manner which covers all the key areas without overlapping activities and/or lines of responsibility;
- introducing a new organisational effectiveness role to ensure that there would be an independent director within a fund management board who is tasked with monitoring the way that it is organised and suggesting improvements for consideration by the board;
- defining 'Irish resident' in terms of a sufficient number of working days in the jurisdiction to give the Central Bank a clear and transparent benchmark against which to measure, where concerns have arisen, the availability of persons to meet and engage with it at short notice; and
- requiring documentation of the rationale for the board's composition to help drive fund management companies to have boards which operate to the highest standards by ensuring the quality of the board in terms of the mix of experience and skill sets.

The reason why the Central Bank requires fund management companies to nominate designated persons to perform managerial functions is to ensure that the fund management company can exercise sufficient control over delegates on a day-to-day basis. Part of the reason why respondents believe that CP86, particularly the references to 'day-to-day' activities, blurs the distinction between executive and non-executive directors seems to be based on an assumption that directors must perform the managerial function roles. This is not the case.

The Central Bank does not require directors to perform the managerial functions. While they can be performed by directors, at present they can equally be performed by another person appointed by the fund management company to do so. The roles of director and designated person are quite different. Directors are involved in controlling and directing the fund management company; designated persons perform the managerial function which they have been assigned and escalate issues identified in accordance with the fund management company's escalation procedure.

This approach relies on a distinction between director and managerial roles, rather than between executive and non-executive roles. Where a director does choose to take on a managerial function role, he or she is consenting to becoming involved in the fund management company on a day-to-day basis. Whether taking on a managerial role affects independence is potentially an important matter. An independent director should not accept a managerial function role if he/she believes it would undermine his/her independence of judgement.

Having regard to the responses received, the Central Bank has concluded that it is appropriate that it will issue guidance setting out that designated persons should receive separate letters of appointment from fund management companies. These letters should document *inter alia* the time commitment involved and the rate of payment. Such letters of appointment should be issued and accepted having regard to the Central Bank's guidance on the time commitments of directors. Where a director is appointed as a designated person, he/she should receive two separate letters of appointment – one for the role of director and one for the role of designated person. The Central Bank will look to receive a copy of each designated person's letter of appointment to be submitted as part of the fund management company authorisation process.

Feedback on questions posed in CP86

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?

4. Most respondents were in favour of this proposal and believed that the CCIG report would be helpful as guidance. It would encourage a level playing field and increase awareness of expected good practice. The proviso raised by many respondents was that it must be clear that this is guidance and that compliance is not mandatory. It should not be put forward as the only way to manage a board's business. Others stressed that there needed to be consistency across the UCITS Regulations 2011, the AIFM Regulations 2013, the IFIA Code and the Central Bank's fitness & probity regime.
5. Those against the proposal argued that it was questionable whether directors needed to operate to detailed checklists of the proposed kind. One respondent stated that oversight and supervision related to two different principles of management theory and so the CCIG report was inconsistent.
6. Alternatives suggested by respondents included:
 - The CCIG report should be issued by the IFIA and incorporated into the IFIA's corporate governance code.
 - The CCIG report should operate on a 'comply or explain' basis.

Central Bank: The CCIG report was well received. It has formed the basis for Central Bank draft Delegate Oversight Guidance. As this draft guidance has been reworked to make it suitable for issuance as Central Bank guidance, it is presented in Part II of this document for public consultation.

Question 2: Is the breakdown of revised managerial functions correct? Should other managerial functions be provided for? What are your observations about what the organisational effectiveness function might entail and how this might be performed? Do you see any obstacles to the Chairperson performing the organisational effectiveness function?

6. Respondents were in favour of streamlining the managerial functions. However, a number of respondents stated that the Central Bank should make it clear that those managerial functions which currently do not exist for UCITS management companies (e.g. AIFMD reporting) were not being introduced now for UCITS. Some respondents commented on how the current managerial functions were being grouped together. For example, ‘complaints handling’ should be subsumed into ‘Compliance’ instead of ‘Distribution’; ‘Supervision of delegates’ should be a separate managerial function. One respondent commented that the regulatory compliance function did not capture all of the elements that a board needs to be cognisant of e.g. FATCA, EMIR. Some would like flexibility around what the managerial functions should be – these should be determined by the management company using a risk-based approach.
7. One respondent cautioned that merely reclassifying and combining functions did not necessarily result in a simpler process. The regulatory approval process was more inflexible than it should be leading management companies to adopt procedures which were more rigid and complicated than they need to be.
8. Those against the proposal argued that streamlining the managerial functions could increase the scope for overlap and decrease clarity. Concentrating the number of managerial functions may mean tasks are not allocated to the most suitable people.
9. There were mixed views on whether an organisational effectiveness function should be introduced. Many respondents were neutral on the proposal but, of those who expressed a preference, more were in favour than against. Some respondents argued that the organisational effectiveness function is mostly already required under the IFIA Code which, for example, requires an annual review of board effectiveness. Some also commented that there needed to be clarity around the organisational effectiveness role as it seems similar to a COO or CEO role.
10. A sizable number of respondents believed that the organisational effectiveness function should not be performed by the Chair. Many argued that this would reduce the independence of the Chair. They believed that the Chair must maintain a “non-executive”

role independent of management and the promoter. Some doubted that the Chair would be willing to commit additional time to be involved on a day-to-day basis. Others believed that responsibility for overall effectiveness should not fall on one individual.

11. A number of respondents commented on the transitional arrangements which ought to apply for existing fund management companies. They highlighted the costs involved in revising business plans/programmes of operation and the fact that fund management companies have recently completed revisions to this document as a result of regulatory changes. They stressed the need for reasonable transitional periods. One respondent suggested a transition period on a 'no compulsion' basis.
12. Alternatives suggested by respondents included:
 - The Central Bank should restructure the 'managerial functions' approach to be based on a risk framework that leverages executive functionality available with delegate organisations rather than attempting to micro manage by requiring fund management companies to replicate tasks already being carried out.
 - A committee of designated persons or a multidisciplinary committee could perform the organisational effectiveness role.
 - A COO or a director who is an executive of the investment manager could perform the organisational effectiveness role.
 - If organisational effectiveness was introduced, the Central Bank could require the Chair to confirm in writing that he/she has sufficient time for the role. The Central Bank should consider also additional training requirements for Chairs.

Central Bank: The Central Bank is proceeding to streamline the existing managerial functions largely in the manner proposed in CP86, but taking account of some points arising from the consultation which it has found persuasive.

The Central Bank intends to provide more information on what it expects in relation to each managerial function. Accordingly, the content of the role of each designated person will be proposed in a future consultation on management company guidance.

Each designated person is responsible for conducting their assigned managerial functions on a day to day basis. Conflict of interest will be included in the organisational effectiveness role; complaints handling will be separated into complaints concerning distribution, which will fall within the distribution managerial function, and all other complaints, which will fall within the regulatory compliance managerial function; and internal audit will now be included in the organisational effectiveness role.

The Central Bank considers that supervision of delegates pervades each of the board activities identified in the CCIG report and indeed most of the managerial functions. For that reason, it does not accept that the supervision of delegates could be isolated as a single managerial function. However it is recognised that the management company's operational risk is distinct from the risk management associated with its underlying investment funds. For this reason the Central Bank is separating risk management into two separate managerial functions, namely fund risk management and operational risk management. These separate managerial functions may, but do not need to be, conducted by a single person (see further on this below).

A number of respondents asked for more clarity around the organisational effectiveness role. The purpose of the organisational effectiveness role is to ensure that there is an independent director within the fund management board who takes overall responsibility for the effectiveness of it. Part III of this document sets out guidance on the organisational effectiveness role.

A number of respondents commented on who should perform the organisational effectiveness role. There was no consensus amongst respondents on this point. While the managerial functions generally involve control of delegates through close oversight on a day-to-day basis, the organisational effectiveness role is somewhat different. It is more strategic and inward looking in nature. With this in mind, the Central Bank has decided not to classify the organisational effectiveness role as one of the managerial functions. Instead, it is a task which must be undertaken by one of the directors with his or her observations and reports being submitted to the board for discussion and decision. To ensure the effective and objective performance of the organisational effectiveness role, the Central Bank's view is that it must be performed by an independent director which could be an independent Chair or an independent board member.

It is acceptable for a designated person to perform more than one managerial function and one individual can perform both the fund risk management and operational risk management managerial functions. However, the same person must not perform managerial functions in relation to risk management and investment management. Further, the independent director with responsibility for the organisational effectiveness role should not perform any of the six managerial functions.

In relation to transitional arrangements, the Central Bank is mindful of the fact that many fund management companies have recently undertaken significant revisions to their business plans/programmes of operation as a result of regulatory changes. The Central Bank would prefer that fund management companies took their time to consider how to revise their managerial functions to best suit their needs rather than rush to revise documentation within a short timeframe. On the other hand, the Central Bank believes that an end date for the transitional period is necessary to ensure that this matter does not drag on for years into the future. Accordingly, the Central Bank will require existing fund management companies to update business plans/programmes of operation which reflect the revised managerial functions and the organisational effectiveness role by 30 June 2016.

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?

13. There were very divergent views on this proposal and respondents were fairly evenly split between agreeing, disagreeing and being neutral.
14. One respondent in favour of the proposal stated that arguments against were motivated by self-interest and that it was right to extend the candidate pool to other jurisdictions. Some of those in favour went further and suggested that there was no need to impose any Irish residency requirements on directors. Knowledge and experience were the important things and therefore residency should not be a consideration. Relaxing the residency rule, for independent directors specifically, sent the message that Ireland was determined to promote genuine independence of directors.
15. Those against argued that having one Irish resident director may be a retrograde step in terms of governance. Reducing to one Irish resident director would be counterproductive and that director could therefore become isolated and weakened.
16. In relation to distressed investment funds, those in favour of relaxing the Irish resident director requirement argued that this would have no adverse impact on distressed investment funds if only directors of high calibre and capacity were appointed. Also, regulatory changes since the financial crisis should reduce the risk of investment fund distress.
17. Those against relaxing the Irish resident director requirement argued that having two Irish resident directors was of great assistance in distressed investment fund situations. Relaxing the Irish residency rule was bound to adversely impact the Central Bank's access to directors. Non-resident directors were less amenable to enquiry and sanction.
18. Many respondents disputed the notion of a skills shortage and instead argued that the issue was really around the transparency of the director selection and appointment process. One respondent suggested that a register be created of individuals willing to act as directors listing their skills and qualifications.
19. Some respondents suggested that a register be created which listed individuals available for appointment as directors together with their qualifications and experience. Another

suggested that an industry association for independent non-executive directors should be established. The CCIG had made a similar comment in the cover note to its report.

20. Alternatives suggested by respondents included:

- Allow a derogation for one Irish resident director where the applicant can demonstrate that their search for an Irish director with a very specific skill set proved fruitless.
- A more prescribed approach to time availability, capacity and independence would have a more meaningful impact on board effectiveness.
- A formally documented competency standard and central register of directors meeting that standard would increase transparency.
- Fund management companies should have a senior person at the investment manager as a point person for the board and Central Bank. This should be a pre-approved control function.
- The issue of distressed investment funds should be addressed by reintroducing the promoter requirement or reviewing the role of the depositary in relation to distressed investment funds.
- The current Irish resident director rule should be retained for self-managed investment companies and/or UCITS.

Central Bank: One of the reasons for the proposal to relax the number of Irish resident director's requirement was the Central Bank's concern that it could unduly limit the pool of individuals (particularly those with portfolio management and risk management) available for appointment as directors. The Central Bank acknowledges that many respondents did not agree with this assessment. They felt that there was an adequate talent pool available in Ireland and that the real issue was the lack of transparency around the process for selecting and appointing new directors.

However, the argument that the Central Bank found most persuasive was in relation to the important role of Irish resident directors in circumstances where an investment fund or fund management company becomes distressed.

In light of these arguments, the Central Bank has decided to retain the requirement for two Irish resident directors. Should the Central Bank come to the view based on its thematic reviews that there is proving to be a problem with the supply of good quality directors, it will revisit this question.

The Central Bank agrees with the submission that further guidance on the time commitments of directors has the potential to have a positive impact on board effectiveness. Therefore, the Central Bank is issuing guidance on time commitments of directors.

The Central Bank will continue to take opportunities to engage with directors and potential directors of Irish funds and Irish fund management companies with a view to explaining its views and encouraging greater cohesion amongst them.

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?

21. Respondents were almost universally opposed to this proposal. They felt that it was unnecessary, arbitrary and was an additional compliance and recordkeeping burden.
22. Alternatives suggested by respondents included:
 - Use the tax residency test instead.
 - Ask whether a director is habitually present or resident in Ireland.
 - Change the focus to qualifications to serve, integrity and independence.
 - If it is necessary to define Irish resident, this should be linked to availability to attend board meetings in Ireland, to meet delegates, service providers and the Central Bank.

Central Bank: One of the reasons why the Central Bank imposes the Irish residency requirement is to ensure that individuals are on-hand and available to meet and engage with it at short notice. The Central Bank has, in the past, received numerous queries on the meaning of the residence requirement. Such queries are motivated by a positive desire to be able to ensure that they were compliant with the Central Bank's requirements. The Central Bank believes such conscientious persons have a reasonable expectation of clarity on this point. From the Central Bank's perspective, the purpose of defining 'Irish resident' is to provide a benchmark against which the availability of a person can be assessed when a concern arises. In CP86, the Central Bank proposed that this benchmark be presence in Ireland for 110 working days per year, which is based on half a working year excluding vacation and public holidays.

Many respondents were against the proposal because of the additional recordkeeping and compliance burden which it imposed. The Central Bank believes that this is not an onerous requirement since electronic diaries facilitate the recording of working patterns. This requirement will underpin the required level of availability to perform functions in the State, attend board meetings, meet with delegates and service providers and to attend meetings with Central Bank supervisors at reasonable notice.

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?

23. There was a division of views on this proposal but, overall, more were in favour. Many respondents commented that this requirement should apply on an annual basis or whenever the board composition changes and not just at the authorisation stage.
24. Those in favour of the proposal argued that it would be a key audit resource. Also, it would enable contingency and succession planning. It would be of great assistance when replacing existing directors and appointing new ones.
25. Those against felt that this was an unnecessary additional burden as promoters carefully considered board composition in any event.
26. Some respondents highlighted that getting the right board composition was more of an art than a science - there are softer elements involved in crafting the right board composition and that it would be difficult to document these elements in writing.
27. Some respondents queried whether the Central Bank proposed getting involved in the board composition process – would it object to a board if it felt that the board composition was not right? Respondents cautioned strongly against the Central Bank adopting this approach.
28. Regarding transitional periods, some respondents commented that, for the most part, they did not expect board compositions to require amendment so the transitional arrangements were irrelevant. Where transitional periods were suggested, these ranged from 6 months to 3 years. The most commonly suggested transitional period was 12 months.
29. Alternatives suggested by respondents included:
 - Justification for board composition could be included in the business plan.
 - Boards could demonstrate their range and depth of skills via a themed review.

Central Bank: The Central Bank is of the view that documenting the rationale for the board composition is good practice which will instil the discipline of considering board composition in a systematic way.

The Central Bank is proceeding to implement this proposal and is incorporating the suggestion that this matter be included in a fund management company's business plan/programme of operations. Accordingly, a fund management company will be required to include a rationale for its board composition in its business plan/programme of operations. Fund management companies have to keep their business plans/programme of operations up-to-date. This means that the rationale for the board composition will need to be revised any time the board changes.

In addition, the organisational effectiveness role will include keeping the board composition under review and reporting to the board on this matter.

Question 6: Are there any other elements which should be included by the Central Bank in a Fund Management Company Effectiveness – Delegate Oversight initiative?

30. Respondents suggested a significant number of additional items which the Central Bank should consider including the following items:
- a. Given the reduced number of managerial functions and the increased workload per function, the Central Bank should allow more than one designated person per managerial function.
 - b. The Central Bank should remove its requirement that non-director designated persons be located in the State. Alternatively, the Central Bank could relax the Irish residency requirement for designated persons where a management company has two Irish resident directors.
 - c. The Central Bank should introduce an independence requirement. It should require a majority of independent directors – boards should be demonstrably and measurably majority independent of the promoter. Alternatively, it should require two independent directors including an independent Chair.
 - d. The issue of directorship limits needs to be tackled. The Central Bank should deal with the time/capacity issue. This is a major governance risk. The Central Bank needs to take a more proactive and transparent role in resolving this matter.
 - e. The Central Bank should reconsider its proposal that the same person cannot perform the investment management and risk management managerial functions. Alternatively, if the designated person for the investment management managerial function is independent of the investment manager then he/she should be able to also be the designated person for risk management.

Central Bank: The Central Bank notes that a number of other issues were raised by respondents to CP86. These are being considered by the Central Bank and will be dealt with in separate consultation.

In relation to (a) above, there is nothing to stop more than one person from being involved in performing tasks related to a managerial function role, however, there can be only one designated person appointed to the role for reasons of clear accountability.

In relation to (b), this has been answered as part of question 3 or will be dealt with subsequently.

In relation to (c), independence is addressed separately in on-going discussions with the Irish Funds Industry Association relating to the IFIA Code.

In relation to (d), this is being dealt with as part of a separate set of guidance which is being issued.

In relation to (e), the Central Bank disagrees with the views of respondents who would wish to allow one person to perform risk management and investment management managerial function roles. This is on the grounds that it weakens the performance of these managerial functions and involves too many potential conflicts.

PART II

Fund Management Companies – Delegate Oversight

Scope

1. This Part sets out the Central Bank’s recommendations regarding good practice for boards of directors of investment companies, UCITS management companies, alternative investment fund managers (AIFMs) and AIF management companies incorporated and authorised in Ireland (referred to in this Part as “relevant companies”).
2. A board of a relevant company has ultimate responsibility for all aspects of management that are not specifically reserved to the shareholders (whether by constitutive documents or applicable law). While boards may delegate tasks internally, it is also common in Ireland for certain tasks to be delegated externally. The focus of this document is on the role of boards where significant tasks are delegated externally. It is not deemed necessary at this time to issue guidance on other aspects of a board’s work. In those regards, boards are recommended to exercise prudent judgement having regard to, but not necessarily confining themselves to, widely accepted standards of good governance and to have regard to the particular challenges of the relevant company.
3. Such delegation, and the legal responsibilities of delegates, do not reduce the board’s ultimate responsibility. It follows that the board must, notwithstanding any such delegation, at all times retain and exercise overall control of the relevant company’s management.
4. There are also limits on the extent to which delegation is legally permissible. In particular, under European legislation as transposed, AIFMs and UCITS management companies are under an obligation not to delegate to the extent that they become letterbox entities³.
5. The responsibilities of a UCITS management company and an AIFM, as set out in applicable legislation, differ. A UCITS management company is defined as a company whose regular business is the management of UCITS (defined as including investment management, fund administration and distribution). An AIFM may carry on all these functions but is required to perform investment management (defined as encompassing portfolio management and risk management). In this Part, no distinction is drawn between UCITS and AIFs, but, in the

³ Regulation 23(2) of the EC (UCITS) Regulations 2011 and Regulation 21(4) of the EU (AIFM) Regulations 2013.

application of the principles it sets out, account should be taken of the specific circumstances which prevail.

6. The scope of this Part covers:
 - A. investment management
 - B. distribution
 - C. risk management (both operational and investment risk)
 - D. operation and administration
 - E. support and resourcing
 - F. boards of externally-managed investment companies

7. The main body of this Part concerns the responsibilities of relevant companies (and, by extension, of their boards, which have ultimate management responsibility) which are authorised in Ireland as AIFMs or UCITS management companies. This encompasses:
 - self-managed UCITS and AIFs; and
 - UCITS management companies and AIFMs.

8. In some cases UCITS management companies and AIFMs will have been appointed by investment companies (i.e. UCITS or AIFs). A further section F therefore addresses issues specific to the responsibilities retained by such investment companies (and, by extension, their boards).

9. In this Part the term:
 - “delegate” means, in the context of any relevant company or the board of any relevant company, a delegate of that relevant company;
 - “depository”, in the context of an investment fund, includes reference to any trustee or custodian, if applicable, of that investment fund;
 - “investment company” means an investment company authorised in accordance with Part XIII of the Companies Act 1990 or the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (S.I. No. 352 of 2011) or an Irish Collective Asset-management Vehicle (‘ICAV’) registered with and authorised by the Central Bank under the ICAV Act 2015;
 - “investment fund” means a collective investment scheme whether structured as an investment company, unit trust, common contractual fund, investment limited partnership or otherwise⁴;

⁴ Investment funds may be organised and authorised under the laws of jurisdictions other than Ireland. The laws applicable to such an investment fund may impose on a management company additional, or

- “fund management company” means an entity regulated as an AIFM or a UCITS management company⁵ in each case incorporated or otherwise organised, and authorised under the laws of Ireland. In the context of section F, however, it may encompass a management company organised and authorised in another EU member state or an AIFM established outside the EU; and
- “investment management” means that which, in an AIFMD context, would be encompassed by the portfolio management aspects of investment management.

10. The principles set out in this Part are intended to assist relevant companies by providing an overview of relevant good practices. This Part does not purport to address every aspect of such practice in detail. The overriding principle should be that the board should design its governance practices so as to be appropriate and commensurate to the business of the relevant company and, where applicable, the investment funds it manages. General observations

Relationship between fund management company and delegates

11. Good governance requires clarity as to the allocation of responsibilities, documented policies and procedures, structures which foster constructive challenge, and the effective provision of appropriate information to boards. The adoption by a board of the general principles identified in this Part will not in itself achieve the objective of good governance. The environment and culture in which such principles operate are also key.
12. The relationship between a fund management company and a delegate must be such as to enable competent and appropriate management of the fund management company and a shared understanding as to how to achieve it. The following features are essential to such a relationship:
- Openness: Full, frank and open dialogue between the board and the delegates is essential. A delegate should provide all information that the board needs in order to discharge its responsibilities. The scope of that information should be clearly identified by the board and agreed with the delegate;

alternative, obligations to those imposed in the case of an Irish investment fund. The Central Bank has focussed only on investment funds organised and authorised under the laws of Ireland and has assumed that nothing in the laws of such other jurisdictions would affect the recommendations made in this Part. Of course, the board of a management company must be satisfied that the management company has complied with all applicable legal and regulatory requirements. It follows therefore that it should also be satisfied that there is no conflict between the respective requirements of each relevant jurisdiction.

⁵ This includes any self-managed investment company which is itself regulated as an AIFM or UCITS management company

- Engagement: Directors should be attentive to their duties as directors and dedicate sufficient time to their discharge. The Central Bank's guidance on directors' time commitments is relevant in this regard. A delegate should recognise the directors' duties and facilitate the discharge by the directors of their ultimate responsibility for the delegated tasks;
 - Co-operation: A fund management company and its delegates should recognise their common interest in a well-run fund management company that serves the interests of investors in the funds that it manages.
 - Dialogue: A delegate should accept that directors, in order to discharge their duties, may need to seek further information on proposals and performance, ask probing questions and provide constructive criticism. The relationship between the delegate and the board should be such that directors are encouraged to do so. Nothing in the way directors are appointed or support is provided to directors should signal any reluctance on the part of delegates to support open board-level challenge.
13. The relationship between the fund management company and its delegates should be such as will support and facilitate the exercise by the board of its ultimate responsibility for, and control over, the management of that fund management company.

Retained tasks and delegated tasks

14. A fund management company may, notwithstanding the ultimate management responsibility of its board, delegate in whole or in part certain specific tasks which form part of the fund management company's management functions. While the tasks may be delegated, however, ultimate responsibility for those management functions themselves cannot be delegated. Delegation is permitted but responsibility is retained. The terms of any delegation should, therefore, be such as will facilitate the discharge by directors of:
- their duties to the relevant fund management company (including those relating to that company's discharge of its obligations in respect of investment funds it manages); and
 - any other responsibilities assumed by them to other persons, for example to shareholders (investors) pursuant to the prospectus, where it is a self-managed investment company.

Retained tasks

15. The board should, notwithstanding any delegation of tasks, take all major strategic and operational decisions affecting the fund management company and any investment funds it manages⁶.

16. Examples of key responsibilities that should be retained by the board include the following:

- issue of the prospectus, where the fund management company has responsibility in this regard;
- review and approval of financial accounts and investment fund documentation, where the fund management company has responsibility in this regard;
- temporary suspension of redemptions, or other measures taken in response to adverse financial developments, where the fund management company has responsibility in this regard;
- approval and periodic review of the business plan or programme of operations, as the case may be, and compliance with it;
- its own internal governance, including the appointment and retention of directors and any staff, the capacity of directors to fulfil their roles and conflict of interest policies;
- adoption and review of a comprehensive suite of policies and procedures and, to the extent that reliance is placed on the policies and procedures of delegates, periodic review of the appropriateness of such reliance;
- satisfying itself that arrangements are in place to enable compliance with applicable legal and regulatory requirements;
- appointment, oversight and removal of delegates (including the basis on which delegates may further delegate tasks);
- investment approach (see section A below);
- launches or closures of sub-funds and share classes; and
- distribution strategies including the jurisdictions into which the investment funds are marketed.

17. The board may of course discharge these responsibilities with the benefit of advice and recommendations from delegates. Given the nature of its responsibilities, however, it should consider any such advice and recommendations and reserve the right not to act on such

⁶ Subject always to any matters reserved to its shareholders (in the case of decisions affecting it), or to the shareholders (or other investors) or board (or other internal management) of any externally-managed investment fund (in the case of decisions affecting such an investment fund). The below comments on retained tasks should be read subject to this.

advice and recommendations where appropriate. Decisions on matters reserved to the board should be minuted in precise, unequivocal and directive terms.

Delegated tasks

18. The main body of this Part deals with the oversight of tasks which are delegated.
19. The delegation of a task does not release the board from its ultimate responsibility for the relevant management functions. The board should satisfy itself that the manner of delegation is such that the relevant board responsibilities can be discharged, that management roles delegated internally can be effectively performed (see Part III on organisational effectiveness) and that the external delegate performs the relevant task to an appropriate standard.
20. A board should exercise skill, care and diligence when identifying and approving the appointment of a delegate for any task. It should satisfy itself as to the capacity of the prospective delegate to undertake such task to the required standard.
21. It should continue to exercise skill, care and diligence in its continuing oversight of delegates. To this end the board should receive and be satisfied with periodic reports from appropriately authorised personnel of the delegate.
22. Such reports should address compliance with relevant legal and regulatory requirements and with relevant policies and operating procedures (including those of the fund management company and the delegate as relevant), noting the extent of any breaches; error reporting should be included. The board should identify when standards fall short of the required levels and require remedial action to be taken.
23. In addition, boards should receive and be satisfied with reports or presentations from their principal delegates addressing significant developments in the delegate's business, including development plans or changes in organisation, business mix or client base, outcomes of regulatory inspections and external and internal audit reviews, and business continuity programmes.

A. Investment management

24. The board should seek a report or presentation from the investment manager prior to the issue of the prospectus and launch of the investment fund or sub-fund (the “relevant fund” in this Part) to inform it of the investment approach the investment manager proposes to take. It should approve the proposed investment approach, taken as a whole. For this purpose, the board should be provided with information about at least the following matters:

- the investment objective and policies;
- any benchmark against which the relevant fund’s performance will be presented to investors and/or used in the calculation of performance fees;
- the range of assets into which it is proposed the relevant fund should invest;
- the portfolio management team’s credentials for the task;
- the investment processes to be adopted by the portfolio management team;
- the type of restrictions and limitations imposed on the management of the relevant fund, additional to those specified in the prospectus, for example those dealing with large exposures or leverage, and the related control arrangements;
- frequency of unit dealing, the basis for pricing relevant fund units, and any anti-dilution measures;
- the investment manager’s trading protocols, including order management, best execution, allocation of business to brokers and commission sharing;
- the basis on which any securities lending is undertaken, including fees, counterparty risk and collateral management;
- the extent to which it is proposed to use financial derivative instruments, the controls to which such use will be subject and applicable policies in respect of collateral management, counterparty risk and leverage management;
- processes for the management of liquidity risks, including the potential for liquidity mismatches between assets and liabilities, and the actions to be taken to mitigate them; and
- distribution strategy (see section B).

25. Once the relevant fund has been established and launched, the board should oversee the investment manager’s compliance with the approved investment approach. While it is not the role of the board to take day-to-day investment decisions that are properly within the remit of the portfolio manager, it should put in place processes under which it monitors, and the investment manager is accountable for, the delegated tasks.

26. The board should receive and be satisfied with comprehensive annual presentations from the investment manager detailing developments affecting the manager itself, the investment

process and strategy, the investment team, progress and performance (including strategy for responding to any underperformance) and any proposed development of the investment approach. Changes to the investment approach at any time should be subject to approval by the board. A suitable representative of the investment manager should be available to answer questions.

27. The board should also receive and be satisfied with regular (at least quarterly, unless the particular circumstances indicate otherwise) reports during the year. These should include details of any departures from the investment approach approved by the board or breaches of the investment manager's internal policies, and any remedial action taken.

28. All directors should have a good understanding of all relevant aspects of the investment manager's business and policies. This might require site visits and/or meetings with senior management, in addition to the regular presentations and reports from the personnel working directly on the account where practicable. Such site visits are often beneficial and should be given positive consideration.

B. Distribution

29. At the time of the launch of a new investment fund (including any sub-fund), the board should approve the proposed distribution strategy, including:

- who will undertake the tasks associated with distribution and any proposed delegation;
- the marketing strategy and approach;
- target markets and channels, including the competitive landscape;
- the jurisdictions into which distribution is proposed, whether immediately or in due course;
- the control framework for compliance with any local legal, regulatory, tax or other compliance requirements;
- the control framework for marketing in a manner consistent with the terms of the prospectus.

30. The board should receive and be satisfied with regular reports on distribution, including:

- patterns of distribution, current progress and development, and resourcing;
- sales flows in the period and current pipeline;
- any proposed new developments and initiatives;
- any local legal, regulatory, tax or other compliance issues

31. The arrangements with any distributor should be structured so that marketing activities are required to be consistent with the agreed distribution strategy. The board should be entitled therefore to receive on request any marketing materials prepared by the distributor, including fact sheets and generic presentations to prospective investors. Boards should seek such marketing material whenever they have reason to believe that such material includes significant elaborations on the matters covered in the investment approach. The board should also examine such material if there is a perceived risk that its content conflicts with the prospectus.

C. Risk management

32. Whereas a fund management company may delegate (internally or externally) many day-to-day risk management tasks, its board retains ultimate responsibility for risk management⁷. It should adopt a risk management framework which:
- identifies the applicable risks;
 - confirms the risk appetite;
 - identifies any appropriate risk mitigants; and
 - incorporates appropriate policies for the measurement, management and monitoring of risk, including the implementation as appropriate of any risk mitigants.
33. The risk appetite statement should be appropriate and proportionate to the nature, scale and complexity of the activities of the fund management company and the investment fund(s) under management. The risk policies should include clear procedures (with thresholds where appropriate) for reporting to the board, and considering breaches of any limits.
34. The board should keep the risk management framework, and its constituent elements, under periodic review.
35. The board should agree how its responsibility for risk oversight and management is discharged, given any delegations of tasks, and establish a shared understanding with each delegate as to their respective roles. The board should determine the quality, type and format of risk-related information which it requires and put in place arrangements to receive it.
36. While the board may obtain advice and recommendations on risk issues, including periodic review of the risk management framework, it should retain the ultimate decision-making capability. While it may seek advice relating to risk management and delegate tasks relating to the implementation of the policies, it should ensure that it receives and reviews comprehensive reports from any such delegate.

⁷ Subject always to any matters reserved to its shareholders, where it is a self-managed investment company, or to the shareholders (or other investors) or board (or other internal management) of any externally-managed investment funds.

Investment risk

37. A fund management company's risk management framework should address all significant investment risks to which any investment fund it manages is exposed, which may include some or all of the following:

- market risk, including major external developments which could impact investments
- portfolio risk, including quantitative analysis
- liquidity risk, including the risk of investor redemptions requiring the disposal of assets of limited liquidity
- country or regional risk
- credit risk
- counterparty risk
- leverage

38. Investment risk appetite should be set having regard to:

- the investment objective and strategy and product design of the investment fund(s) under management;
- the likely nature of potential investors in the investment fund(s) and the appropriate disclosure of risks; and
- the liquidity of the assets in which the investment fund(s) invests and the potential for any asset/liability mismatch

39. The board should receive and be satisfied with regular reports assessing risk levels relative to the risk appetite(s) for the investment funds under management.

Operational risk

40. A board should satisfy itself that the business of delegates is effectively managed and controlled, and that appropriate risk policies and procedures are in place and subject to regular review. It should receive and be satisfied with regular reports on the performance of the delegate, including the following:

- significant IT incidents
- fraud
- complaints
- outsourcing
- dealing errors
- pricing errors
- other breaches

Operational risk - Enterprise risk and business continuity

41. Boards should receive and be satisfied with reports on risks which could impact the fund management company and the investment funds that it manages. These would include:
- large dealing risk
 - key person risk
 - failure of a delegate or sub-delegate
 - reputational risk
 - regulatory risk
 - continued capacity of systems and personnel
42. In respect of delegated tasks, a board may consider it appropriate to rely upon business continuity programmes maintained by delegates. It should however satisfy itself that
- those programmes are sufficient to discharge the board's own obligations for the relevant tasks; and
 - the delegates' programmes, taken together with any maintained by the board (for example where tasks have been retained rather than delegated), encompass all relevant activities of the company and the investment funds under management.
43. Such reliance should be the subject of periodic review.

D. Investment operations and administration

44. When appointing a delegate to take on operational and administrative tasks, a board should establish in particular that the delegate has:
- operational resilience (the ability to provide an uninterrupted service to the required standard even in adverse circumstances);
 - robust risk management policies and procedures;
 - sufficient capacity and flexibility to manage varying levels of business including potential variations in the fund management company's requirements over time; and
 - suitable procedures for maintaining confidentiality and security of information.
45. The board should receive and be satisfied with regular reports on operational matters, including but not limited to:
- depositary reports, where the board considers that they are necessary for the discharge by the fund management company of its responsibilities;
 - fund administrator reports;
 - performance, including appropriate error and breach reporting;
 - oversight by delegates of any outsourcing arrangements they put in place, and performance of sub-delegates;
 - operation of anti-money laundering policies;
 - IT systems issues, including significant changes and developments of relevance to the board;
 - resourcing of the provision of services to the fund management company.
46. The board should adopt and keep up to date an appropriate valuation policy. It should receive and be satisfied with regular reports on exceptional valuation items, such as stale prices and fair valued securities, and appropriate error reporting. The board should receive reports covering material and non-material pricing errors which identify patterns in causation and satisfy itself that those errors have been mitigated. In the case of illiquid assets, it should satisfy itself as to the process by which values are set.
47. The board should approve and keep under review a budget for payments over and above the investment management fee which may be charged to the investment fund and receive periodic reports.

E. Support and resourcing

48. 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.
49. The matters on which the board will require support and resources (in addition to the support of the official company secretary, the duties of which are prescribed by law) may include, without limitation, the following:
- proactive monitoring of developments between board meetings, assessing which if any require the immediate attention of the board, and arranging any necessary action;
 - management of board meetings including adequate planning and preparation, preparing the agenda, managing the attendees, actioning of board decisions, briefing of directors on developments and preparation where appropriate of executive summaries for directors;
 - management of other meetings and visits of directors which may include training sessions, due diligence visits, board evaluation meetings or planning and strategy sessions;
 - management of documents, including meeting minutes, business plan, policies, procedures, offering documents, material contracts, registers and correspondence;
 - preparation of reports, summaries and other material relevant to the board's considerations and decisions;
 - timely preparation of half-yearly and audited annual financial accounts;
 - managing an annual calendar, so that all matters required to be considered by the directors through the year are dealt with in an orderly fashion, and facilitating the timely preparation and circulation of papers to the board to enable directors to give proper prior consideration to all relevant matters;
 - regular review of the fund management company's suite of policies and procedures, and preparing any required revised drafts for consideration and approval by the board, including collecting relevant information from delegates, monitoring regulatory and other external developments and evaluating the need for changes.
50. There is a variety of potential resourcing models for the necessary support including, without limitation, models based on employees of, and/or secondees to, the fund management

company and/or services provided by external delegates. The appropriateness of any proposed model will depend on the circumstances of, and any legal and regulatory requirements applicable to, the relevant fund management company. The board should satisfy itself that the model selected is appropriate in the relevant circumstances.

51. Individual directors may be designated as having particular managerial functions. Such designation should not, however, be taken to affect the board's overall collective responsibility for the function, and procedures should be adopted so that matters continue to be escalated for consideration by the full board where appropriate. When designating an individual director for such a managerial function, boards should be satisfied that:

- the individual has the requisite skills and experience for the role;
- sufficient support and resources are available to the individual to enable the role to be discharged; and
- the designation does not compromise the ability of the individual, or the board as a whole, to satisfy any applicable independence requirement.

52. Where a board engages support in discharging its functions, it should retain control at all times, and the respective responsibilities of the provider of that support and of the board should be clearly documented so as to facilitate the exercise by the board of its ultimate responsibility for, and control over, the management functions to which that support relates.

53. A director or directors may on occasion consider it necessary to obtain independent advice on issues relating to the board's functions and responsibilities. It is desirable for a director's contract to enable the director to do so.

F. Boards of externally-managed investment companies

54. The fund management company is responsible for ensuring that it and its investment funds under management comply with regulatory obligations. The board of an externally-managed investment company should ensure that it supports the ability of the fund management company to comply with all regulatory obligations. But it also needs to satisfy itself that the delegation to the fund management company is working effectively for investors.
55. Externally-managed investment companies are not regulated as fund management companies. Nevertheless the board of an externally-managed investment company retains ultimate responsibility for its management⁸, including the appointment and oversight of the fund management company, which is its principal delegate.
56. The relationship between an externally-managed investment company and its fund management company may be structured in a number of different ways. The two entities should agree in the light of their particular circumstances the appropriate and proportionate approach to the recommendations in this section.
57. The board of the externally-managed investment company retains responsibility for issuing the prospectus. It should expect to receive information about the investment approach of the fund management company, as outlined in section A of this Part. It also retains responsibility for publishing audited financial statements (a responsibility shared with the fund management company in the case of an investment company authorised as an AIF).
58. The board of the externally-managed investment company should satisfy itself that its relationship with the fund management company is such that the relevant board responsibilities are discharged, and that the fund management company performs the relevant tasks it is required to undertake to an appropriate standard. It should receive and be satisfied with regular and appropriately detailed reports from a senior representative of the fund management company in this regard. It should further consider and identify any conflicts of interest that may arise and should satisfy itself that such conflicts are being appropriately managed. In general, it should hold the fund management company to the same standards of accountability as the preceding sections of this Part recommend that a fund management company should set for its delegates. It should also receive and be satisfied with regular, direct reports from the depositary. It does not, however, need to replicate the detailed oversight of delegates by the fund management company.

⁸ Other than in respect of matters reserved to the shareholders

59. The board of the externally-managed investment company should expect to receive and be satisfied with regular reports from the fund management company describing:
- its performance (whether directly or through delegates) of the investment management tasks outlined in section A of this Part;
 - significant developments in the distribution of the investment fund, including any significant legal, regulatory, tax or other compliance issues;
 - its performance (whether directly or delegated) of the risk management tasks outlined in section C of this Part;
 - its performance (whether directly or delegated) of the operational and administrative tasks outlined in section D of this Part;
 - the extent of its delegation of any of the tasks and its control framework for oversight of its delegates' performance.
60. The board should also consider whether it should, in addition to reports from the fund management company, require periodic direct reports from (including, if appropriate, attendance at board meetings by) the delegates of the fund management company.
61. Some AIF “management companies” may appoint external AIFMs. These AIF “management companies” are not regulated as AIFMs but retain responsibility for the AIFs under management and the oversight of the AIFM. The board of the AIF management company also retains responsibility for issuing the prospectus (unless the AIF is itself an investment company) and for publishing audited financial statements (unless the AIF is itself an investment company), the latter responsibility being shared with the AIFM.
62. In such cases, the board of the AIF management company should apply the same principles to the oversight of the AIFM as described above in the case of an investment company.
63. For avoidance of any doubt, this section (F) is limited to externally-managed investment companies and to AIF management companies with external AIFMs, and does not apply to other forms of investment fund or fund management company.

PART III

Fund Management Companies – Organisational Effectiveness⁹

1. One of the independent directors of a fund management company, which could be the Chair if he or she is independent, should undertake an organisational effectiveness role. The purpose of this role is to ensure that there is an independent director within the fund management company who has the specific task of keeping the effectiveness of the organisational arrangements of the company under ongoing review, with his or her reports being submitted to the board for discussion and decision.
2. The independent director who undertakes this task will be on alert for organisational issues and will escalate these to the board. They will be change leaders who bring proposals to improve effectiveness to the board. They will champion these proposals and will drive through the change agenda to ensure that agreed actions are implemented.
3. Having a person with responsibility for reviewing organisational effectiveness should ensure that a fund management company does not continue to adhere to agreed organisational arrangements when these are no longer appropriate because, for example, the fund management company has grown and developed, because market practice has moved on or because one of the arrangements suffers from an unanticipated conflict of interests.
4. Some non-exhaustive examples of the types of matters which the independent director undertaking the organisational effectiveness role will be involved in are: monitoring the adequacy of a fund management company's internal resources to its day-to-day managerial roles; reviewing the organisational structure of the fund management company and considering whether it remains fit for purpose; considering the conflicts of interest affecting the fund management company and its investment funds under management and initiating action, such as escalation to the board, where these are having or are likely in the near future to have an adverse impact; reviewing the board composition and reporting on this to the board; organising periodic board effectiveness evaluations and overseeing how well the decision taken by the fund management company and the arrangements for the supervision of delegates are working in the interests of investors.

⁹When all sections of the Central Bank's fund management company guidance have been finalised, the Central Bank will amend the AIF Rulebook and include in its forthcoming Central Bank UCITS Regulations a rule that the organisational effectiveness role must be performed by an independent director which must be an independent Chair or an independent board member. In anticipation of the introduction of that rule, the Central Bank is setting out guidance on the organisational effectiveness role.

PART IV

Directors' Time Commitments

1. The Central Bank considers that a reasonable number of working hours available for each individual is approximately 2000 per year. This is based on a 9 hour day and 230 working days per annum. This 'total' time allocation should be considered by individuals when taking on new directorship roles and should include all professional commitments including other directorships and employments held. Directors should satisfy themselves, and their boards, that they have sufficient time to fully discharge their duties.
2. Directors and boards should agree a minimum time allocation for board meeting attendance; this should include all necessary preparation, review of documents and also, where appropriate, travel time. The agreed minimum time allocation should be documented in the director's letter of appointment in line with paragraphs 5 and 6 of this Part.
3. Sufficient time should be set aside as a buffer for directors to deal with ad hoc issues that arise from time to time. This should be in addition to the normal time allocated to each director role.
4. Additional time should be allocated where a director carries out a Chairperson role. This time allocation should be agreed with each board and be commensurate with any additional work that this role requires.
5. A designated person role for managerial functions should be considered separately to the role of director. A separate time commitment should be allocated for each such designated person role and should be commensurate with any additional work that this role requires, including remuneration received. The time allocated should take into account, inter alia, the on-going oversight role, daily availability, report review and onsite visits to delegates.
6. A separate letter of appointment should issue in respect of a designated person role for managerial functions. This should include a written contract setting out the job specifications, the time expectations and the fee arrangements for the role. The separate letters of appointment should be subject to annual review by the board and made available to the Central Bank upon request.

7. Individuals with multiple directorships should consider the conflicts which may arise when sitting on a number of boards and the corporate interconnectivity that is created. Conflicts which may occur between individuals with full-time positions in a service provider to the board should also be considered and the most appropriate action taken.
8. In addition to the number of directorships, individuals should consider the additional time required to deal with the number of underlying sub funds within one investment fund. The type and complexity of individual investment funds and sub-funds should also be considered carefully by individuals when assessing both the required time commitment and the necessary expertise needed at board level to oversee the investment fund.
9. Individuals should also take into account the number of different client relationships they have entered into when assessing time commitments.
10. Directors should be fully aware of the regulatory and legal obligations of differing types of boards and legal structures prior to any board appointments.
11. Membership of board committees should also be regarded as a separate role and should be included in any assessment of director time commitment and availability.
12. The ultimate responsibility for compliance with all regulatory obligations rests with the boards and the individual directors. Extensive director commitments without sufficient awareness and consideration of the corresponding impact may lead to significant governance risk.

Central Bank engagement

13. The Central Bank will directly engage with those individuals with high numbers of directorships combined with high aggregate levels of annual professional time commitments to ensure their legal obligations and responsibilities as board members are being met and will monitor directors' commitments so as to avoid any potential risk that governance standards may be weakened.
14. The Central Bank intends to treat high levels of directorships combined with high aggregate levels of annual professional time commitments as a risk indicator. Where any risk indicator is triggered, additional supervisory attention is appropriate under the Central Banks risk-based approach to supervision. Accordingly, in the rare case of the proposed appointment of directors who already hold in excess of a defined number of directorships (including directorships outside of the investment fund industry and directorships within the funds

industry outside Ireland) and a defined number of annual hours representing aggregate professional time commitments the Central Bank will:

- Request a letter from each board which will set out the proposed time commitment for that director in accordance with paragraph 4.5 of the IFIA Code;
- Withdraw from corporate Qualifying Investor AIF which propose such a director, the option of the 24 hour authorisation time-frame. In each such case the Central Bank will be considering additional enquiries which will not be capable of being completed within that timeframe.

15. Previously authorised investment funds which continue to have individual directors who hold more than the defined numbers of directorships and aggregate hours representing annual professional time commitments after 1st January 2016 will be given priority consideration for inclusion in Central Bank thematic reviews where board effectiveness is being tested in any respect.

16. The Central Bank is initially setting that risk indicator in terms of a joint test of (a) having more than 20 directorships and (b) having an aggregate professional time commitment in excess of 2000 hours. These numbers may be reviewed from time to time, having regard to the typical burden on directors and changes in the environment impacting on regulatory risk. The fact that directors hold less than the referenced numbers of directorships and annual hours of professional time commitments does not, of course, obviate the need for the whole of this guidance to be had regard to and the publication of this risk indicator should not be read in that way.

Part V

Next steps

Immediate rule changes

1. In conjunction with the publication of this document, the Central Bank is amending its AIF Rulebook to include a definition of Irish resident being any person who is present in Ireland for the whole of 110 working days per year. A similar definition will be included in the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1) (Undertakings for Collective Investment in Transferable Securities) Regulations 2015 (the “Central Bank UCITS Regulations”) which will be published shortly.

Immediate authorisation process changes

2. In conjunction with the publication of this document, the Central Bank is amending its authorisation process for fund management companies to require:
 - a. a copy of each designated person’s letter of appointment to be submitted; and
 - b. the rationale for the board composition to be included in the business plan/programme of operations.

Future rule changes

3. In conjunction with the publication of the Central Bank’s fund management company guidance (see below), the Central Bank will amend its AIF Rulebook and include in its forthcoming Central Bank UCITS Regulations the following:
 - a. The number of managerial functions will be reduced to six, namely investment management, fund risk management, operational risk management, distribution, regulatory compliance and capital and financial management.
 - b. The organisational effectiveness role must be performed by an independent director which must be an independent Chair or an independent board member.
 - c. The same person must not perform managerial functions in relation to risk management and investment management.
 - d. The independent director with responsibility for the organisational effectiveness role must not perform any of the six managerial functions.

Future Central Bank management company guidance

4. The Central Bank’s supervisory experience is that when it comes to demonstrating compliance with regulatory obligations, there is room for improvement. In many instances,

fund management companies reference the systems, policies and procedures which operate at group level within delegates as evidence that the fund management company is complying generally. However, the UCITS Regulations and AIFM Regulations place regulatory obligations directly on fund management companies and these firms must be able to demonstrate specifically how they are complying with each of those requirements.

5. To assist fund management companies, the Central Bank intends to develop fund management company guidance which will set out the Central Bank's views on a number of issues which concern fund management companies, including how they can comply and demonstrate compliance with their regulatory obligations.
6. The fund management company guidance will cover the following matters:
 - i. Delegate Oversight
 - ii. Organisational Effectiveness
 - iii. Directors' Time Commitments
 - iv. Managerial Functions
 - v. Operational
 - vi. Procedures
7. The Central Bank intends to issue the fund management company guidance in three releases.

First publication

This document contains the Central Bank's draft Delegate Oversight Guidance and the Central Bank's guidance on Organisational Effectiveness and Directors' Time Commitments.

Second publication

8. Later in 2015, the Central Bank will issue the 'Managerial Functions' and 'Operational' sections of the fund management company guidance for public consultation.
9. The 'Managerial Functions' section will include provisions on managerial functions and on-going control. The managerial functions guidance will:
 - a. set out the Central Bank's views on the tasks involved in each of the managerial functions. It will be based on Appendix 2 to CP86 but will be amended to reflect the Central Bank's decision to: include conflicts of interest in the

- organisational effectiveness role; separate complaints handling into complaints concerning distribution, which will fall within the distribution managerial function, and all other complaints, which will fall within the regulatory compliance managerial function; and include internal audit in the organisational effectiveness role;
- b. provide that designated persons should receive separate letters of appointment from fund management companies. These should document *inter alia* the time commitment involved and the rate of payment. Where a director acts as designated person, he/she should receive two separate letters of appointment - one for the role of director and one for the role of designated person; and
 - c. clarify that, subject to the Central Bank's rules, it is acceptable for a designated person to perform more than one managerial function and one individual can perform both the fund risk management and operational risk management managerial functions.
10. The on-going control guidance will deal with how designated persons should oversee each of the regulatory obligations which fall within their managerial function. This should assist fund management companies in complying and demonstrating compliance with their regulatory obligations. It will also include guidance on time commitments for designated persons.
11. The 'Operational' section will cover policies and procedures and recordkeeping. The policies and procedures guidance will include the Central Bank's expectations where a fund management company relies on the policies and procedures of its delegates. The recordkeeping guidance will set out the Central Bank's views on how a fund management company's records should be kept.
12. The 'Procedures' section will also be published at this time. It will deal with the procedures relevant to authorisation applications and fund management company passport applications. The authorisation process guidance will explain steps which proposed fund management companies go through to obtain authorisation. It will be based on the authorisation provisions set out in Notice UCITS 2 and Guidance Note 4/07. The fund management company passport guidance will focus on the matters which the Central Bank considers where a fund management company utilises its fund management company passport and will be based on based on the equivalent section in Guidance Note 4/07. Given that this guidance will be procedural in nature and based largely on current guidance, the Central Bank does not

believe that public consultation on this section will be necessary.

Third publication

13. Before the end of 2015, the Central Bank will issue the finalised 'Managerial Functions' and 'Operational' sections. When this series of publications has been completed and the fund management company guidance has been published, fund management companies will be equipped with guidance on how the Central Bank expects fund management companies to comply and demonstrate compliance with their regulatory obligations. Divergence from the guidance will not be a regulatory breach. However, the Central Bank's supervisors will have reference to this guidance when forming a view as to whether a fund management company has complied with its regulatory obligations.

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