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**Matheson**

Fund Management Company Effectiveness – Delegate Oversight consultation  
Markets Policy Division  
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**By email**

Dear Sir / Madam

**CP 86 Central Bank Fund Management Company Effectiveness  
Delegate Oversight Consultation**

We welcome the opportunity to provide the Central Bank with our comments on the Fund Management Company Effectiveness – Delegate Oversight initiative and on the questions raised in the Central Bank's related consultation paper (the "**Consultation Paper**").

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?**

We are generally in favour of the creation of a delegate oversight good practice document establishing guidance as to good practice in connection with delegate oversight, provided that those entities within the scope of the Consultation Paper, namely UCITS management companies, self-managed UCITS investment companies, authorised AIFMs and internally managed AIFs which are authorised as AIFMs (collectively "**Companies**"), are not subject to overly prescriptive requirements which may not be tailored to reflect the specific circumstances of a particular Company. A related clarification in the final guidance would be greatly welcomed.

We are in favour of the principle based guidance provided in Appendix 1 to the Consultation Paper. We are not in favour of the overly prescriptive nature of Appendix 2 and do not believe it is appropriate to seek to narrowly define elements of each managerial function.

**Dublin**

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We furthermore do not believe that it is appropriate to stipulate that each Designated Person perform activities on a day to day basis, a stipulation which is inconsistent with the non-executive nature of most Companies' directors' appointments, and their roles in the delegation model of being the individuals to whom issues are escalated from delegates. While we note the ongoing nature of Designated Persons' responsibilities, many of those responsibilities by their very nature are performed less frequently in practice.

We strongly believe that the delegation model currently in place should not be altered or abandoned. We strongly support the full delegation model which has served the interests of shareholders well in the past and continues to do so, and do not believe it is appropriate to prescribe specific day-to-day tasks for Designated Persons.

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 are generally supportive of the streamlining of the managerial functions.

Revised managerial functions should however only apply to UCITS Companies insofar as they reflect UCITS requirements. Managerial functions relating to remuneration and record-keeping do not currently apply to UCITS and should not be unilaterally introduced under this proposal.

Managerial functions should be capable of being shared between two or more directors in circumstances where the skill and expertise of the various board members can more appropriately be deployed in this manner. By way of example, the Central Bank's final guidance should facilitate different directors assuming supervision of delegates, with directors with greater investment management expertise supervising the investment manager, and directors with, say, an accounting background, supervising the administrator.

However, it should be permissible for Companies to allocate responsibility for different components of the streamlined managerial functions to more than one Designated Person where this is reflective of their organisational structure.

On the basis that internal audit is a compliance function, we believe that it would be more appropriately characterised as a component of the Regulatory Compliance function.

The Organisational Effectiveness function should not seek to impose obligations on the officer performing this function to re-do any of the other managerial functions. To the extent that the function extends only to a supervisory role monitoring the functioning of other managerial functions we are generally supportive of such a role. We do not believe that the creation of a quasi-executive type role, as per the broad "day-to-day" based functions imposed on a Designated Person performing this function set out at Appendix 2, is appropriate.

We do not believe it is necessary for the Organisational Effectiveness function to be performed by the chairman, and each board of directors should be given the discretion to select the most suitable individual, on the basis of expertise, experience and ability to manage.

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?**

We are generally supportive of the additional limited flexibility the Central Bank is offering the industry.

We do not share the Central Bank's concern that there may be a scarcity of certain board competencies amongst potential Irish resident directors.

We do not believe it is appropriate to impose a new independence requirement on the substitute to the Irish director. We believe that the new independence requirement in this context unduly limits the potential pool of directors who realistically could be appointed.

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 clear that the current requirement for determination of "Irish residence" is tax residence and would be supportive of clarification of the basis of the criteria used to determine "residence" for the purpose of the Central Bank's requirements.

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?**

Boards of directors should remain self-regulating in terms of composition and we do not support the introduction of a requirement for boards to document the rationale for board composition. Such a requirement could result in boards seeking to replace retiring directors with new directors with similar professional expertise as the retiring directors. We believe such a primary basis of director selection would be an inappropriate gauge of the suitability of prospective directors and would limit the pool of potential directors. A board which, for legitimate and sound reasons, determines not to replace a director with, say, actuarial experience, with a new director with similar actuarial experience, and if such actuarial experience formed the basis for the rationale for the initial appointment of the now retired director, could potentially leave itself open to accusations of negligence in not appointing a further director with similar experience given that the board had at the outset documented the fact that actuarial experience was deemed materially relevant to the board's initial composition.

We would value clarity around whether or not the Central Bank envisages having a role in the selection of board members as we do not believe this is appropriate. The reference to Companies' documenting the rationale for the composition of the board "as part of its authorisation process" leaves open the possibility for the Central Bank to play a role in connection with the composition of the board prior to a fund's launch. We believe the

Central Bank's role in approving proposed directors via the detailed individual questionnaire process adequately provides for the Central Bank's supervision of suitable individuals.

In light of the significant time, effort and expense deployed in meeting AIFMD requirements and less recently, UCITS IV requirements, by Companies, the transition period for the adoption of any changes required arising from the final form of any published guidance must be given careful consideration. We would favour a transitional period of at least 12 months in duration for non-UCITS Companies, and for UCITS Companies we would favour a transition period to coincide with the 18 March 2016 UCITS V implementation deadline.

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

We do not have any further suggestions with regard to additional elements to be included which have not been covered above.

Yours faithfully

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