CP86- The 3 Year Journey

Fund Management Companies Guidance

Article 3 – Directors Time Commitments

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CP86 – Overview

The scope of the new guidance as set out by the Central Bank of Ireland on 19 December impacts Investment Companies, UCITS Management Companies, Alternative Investment Fund Managers (AIFMs) and Alternative Investment Fund Management Companies incorporated and authorised in Ireland. As outlined in our introductory article it focuses on 6 key areas that are linked to effective Governance, Compliance and Central Bank of Ireland supervision. A timetable for transition has been provided in our introductory article. This article addresses "Directors Time Commitments".

Directors Time Commitments

Central Bank concerns around Director's time commitments have been largely dealt with and satisfied at this stage of the CP86 process. The Central Bank completed a thematic review to assess the number of directorships held by individuals on Boards of corporate investment funds and fund management companies in June 2015. A key finding of the review was the much publicised statistic that 13 individuals held 652 directorships in the funds industry in Ireland.

The Central Bank further published on 8th September 2016 that its extensive engagement and communication with the independent non-executive director network had resulted in the overall number of directorships of the top 13 directors reducing by 28%.

This engagement included measures such as the introduction of the 20 appointments/2000 hours per year rule of thumb; further concentration on the time commitment relating to the number of sub-funds; and separation of Directorship appointments and Designated Person appointments, including the requirement for separate letters of appointment and time commitment disclosures.

The Central Bank has published guidance to assist Chairs, Boards and individual directors in assessing time commitment as a section of the final post-CP86 'Fund Management Companies – Guidance'. The key points are as follows:

Central Bank Guidance:

The guidance notes that the Central Bank considers a reasonable number of working hours available for each individual is approximately 2000 per year, which is based on a 9 hour day and 230 working days per annum. Within this the Central bank has noted the following:

- This 'total time allocation' should be considered to include all professional commitments including other directorships and employments held;
- Directors and Boards should agree a minimum time allocation for board attendance, necessary preparation, review of documents, and, where appropriate, travel to meetings;
- Directors should include sufficient 'buffer' time to deal with ad-hoc issues which arise from time to time;
- Additional time should be allocated and agreed for Chairperson duties;
- A Designated Person role should be considered separately to the role of a Director. This should involve agreement of a separate time commitment and separate letter of appointment and written contract setting out the job specifications;
- Individuals with multiple directorships should consider the conflicts this may cause;
- In addition to the number of directorships, individuals should consider the additional time required to deal with numbers of underlying sub-funds.
- Individuals should take in to account the number of different client relationships maintained;
- Directors should be aware of the regulatory and legal obligations of different types of boards and legal structures;
- Membership of board committees should be regarded as a separate role and included in assessment of time commitments;
- Ultimate responsibility rests with the Boards and individual directors. Extensive director commitments may lead to significant governance risk;

Areas of Focus:

- The Central Bank has gone through a process of engagement with those individuals with high numbers of directorships and high levels of time commitments to ensure responsibilities are being met.
- The Central Bank has noted that it will treat high levels of directorships combined with high levels of time commitments as a risk indicator, which may trigger additional supervisory attention under the Central Banks risk-based approach.
- Where there is the proposed appointment of a director who falls in to this category, the Central Bank will:
    - Request a letter from each board setting out the time commitment from that director; and
    - Withdraw the option of the 24 hour authorisation time frame for a Qualifying Investor AIF.
- Investment funds which continue to have individual directors who hold more than the defined number of directorships and aggregate hours after 1st January 2016 will be given priority consideration for inclusion in the Central Bank thematic reviews

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