



FINANCIAL SERVICES

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# Questions Directors of Regulated Funds Should Ask During Times of Market Turbulence

by **David Naughton**

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David Naughton, and Shane Coman of Nexus Governance, consider key questions for directors of regulated funds during the current challenging times.

Directors of an externally managed investment fund ("Fund") in Ireland are monitors of the appointed management company and associated delegates. The directors typically also monitor investment performance, delegate service performance and the level of risk created by the investment management of the portfolio of the Fund. In these times of market turbulence, caused by the COVID-19 pandemic, this brief article sets out some suggested questions for directors to consider.

## 1. How do we communicate as a board?

Due to the COVID-19 pandemic, most boards of Funds are not meeting in person. Some questions to ask in order to maintain effective board communication include:

What is the process in the constitution of the Fund to hold and participate in remote meetings?

How can decisions be made remotely? Can we pass written resolutions? Generally, written resolutions must be signed by all directors, requiring unanimous agreement.

If all the directors of the Fund are not attending a meeting in person in Ireland, is the alternative meeting arrangement in compliance with Fund tax residency rules?

The Central Bank of Ireland ("CBI") has recently confirmed it has no rules regarding in-person voting for contractual or other arrangements.

## 2. How often should we communicate, with whom and on what issues?

In these times of market turbulence, we are supporting a range of Fund boards in having informal weekly calls or email exchanges with the ManCo and any delegate investment manager, to discuss issues including:

- Volatility impacts on the Fund
- Liquidity tracking
- Risk limits tracking
- Redemption levels, if any
- Any ADL measures applied
- Any swing pricing mechanisms applied
- Any counterparty exposures
- Any concerns on illiquid positions and associated pricing sources
- The adequacy of business continuity logistics at delegate service providers

- Any portfolio realignments towards securities such as eligible Government bonds
- If the offering documents require original documents for redemption orders consider the impact of unstaffed post rooms at service providers
- Any required changes to the investment policies of the Fund

Some Fund boards deem it appropriate to hold formal board meetings to discuss these issues instead.

### **Three words of caution:**

Remember this is a time where service providers may have limited capacity for ad-hoc meetings and reporting. It is important that information and meeting requests are focused and relevant in order to support the fund rather than hinder ongoing services.

The primary means of CBI supervision of Fund activities is through a review of board minutes. Are all discussions and key decisions being appropriately documented from a legal and regulatory perspective?

Where relevant, be conscious of coming into possession of inside information. Is the Fund in compliance with the applicable market abuse rules, during these discussions?

## **3. What about communication with investors?**

Some Fund boards are recommending more active communication with Fund investors, as the industry navigates market turbulence caused by the COVID-19 pandemic. For example, can the Fund strike a more frequent NAV, after consultation with the ManCo and administrator, to share with investors, thereby giving them increased transparency?

## **4. Should there be a suspension of dealing?**

The suspension of dealing in a Fund is a big decision. Some questions to ask in considering making this decision include:

Has the ManCo and delegate investment manager considered the rules in the constitution and prospectus of the Fund which detail the circumstances in which there can be a suspension of dealing?

If a recommendation to suspend dealing is made to the board of the Fund, what notifications are required, to whom and how are these notifications completed?

In considering such a recommendation, under what circumstances can a suspension of dealing be lifted, and what is the process to be followed, to include required timing?

## **5. What does the CBI expect of a Fund board during this market turbulence?**

As noted at the start of this article, one of the main functions of a Fund board is to monitor its principal delegate, the ManCo. Some questions to ask a ManCo during these times, driven by CBI expectations, include:

How is your business continuity policy operating at present? Have any service delivery issues been encountered during the COVID-19 pandemic?

Likewise, are any issues coming to light as the risk management policies and procedures are being complied with?

Some questions that a Fund board may wish to consider among themselves in this area, include:

Have we properly assessed the material operational, investment and legal risks to the Fund, caused by the COVID-19 pandemic? Is there a material risk that some services cannot continue to be provided?

Has any material issue arisen which triggers a report being made to the CBI?

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Nobody currently knows how long the COVID-19 pandemic will last or the extent of the market turbulence that will ultimately be caused. Fund directors can control how they navigate a way through, and some of the suggested questions in this article may assist them on this journey.

For more information please contact David Naughton (Partner, Financial Services at LK Shields) at [dnaughton@lkshields.ie](mailto:dnaughton@lkshields.ie) or Shane Coman (Founding Partner at Nexus Governance) at [shanecoman@nexusgovernance.com](mailto:shanecoman@nexusgovernance.com).

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