



Ireland Cements its Place as the Gateway to European Capital

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How the Irish Financial Services Industry Continues to Provide Stability in an Uncertain World

U.S. managers are flocking back to Europe. How did we get from the depths of the crisis to this point of unlimited opportunity?

On November 1, 2010, my Aer Lingus flight from Dublin touched the ground in JFK and I began my role as the U.S. representative of a leading Irish law firm. As a practicing investment funds lawyer, admitted by the Law Society of Ireland, my remit was twofold: (i) provide Irish legal services to U.S. managers looking to access European capital through Irish structures, and (ii) market the Firm to as wide an audience as possible.

Following an initial few weeks spent fielding questions about the calamitous state of the Irish domestic economy, the rapid contagion effect of the PIGS economies on the wider Eurozone, and the widely anticipated breakup of the Euro, it finally happened. On November 29, 2010, Ireland became the first EU country to enter a bailout program, as the European Commission, the European Central Bank and the IMF (commonly referred to as the Troika), and the Irish Government announced an agreement that the state would be provided with €85 billion in financial support. At an Invest Europe event I happened to be attending that day, a Swedish counterpart, upon learning I was Irish, drolly offered to pay for my lunch.

For those less interested in the domestic Irish situation and more interested in broader capital raising opportunities in Europe, the story was just as bleak. Unprecedented illiquidity was choking up the market, and the tsunami of European regulation slated for the coming decade was causing most U.S. managers to avoid Europe at all costs. Attempting to generate enthusiasm for the new market for alternatives through the scheduled implementation of the Alternative Investment Fund Managers Directive (AIFMD) was greeted with a roll of the eyes from jaded New York investment managers and lawyers. The staggered roll out of Dodd-Frank and its resultant registration, compliance, and reporting requirements had the U.S. domestic industry at breaking point. Europe was not on the map.

As 2011 came and went, the Irish domestic situation began to show a marked improvement. The new Fine Gael government, led by energetic marketer Enda Kenny, had one message for the international community: Ireland is Open for Business. The new government went on a herculean marketing mission to reinvigorate the domestic Irish economy through international investment. Having never met a sitting Taoiseach (prime minister) in person when living in Ireland, I met Mr. Kenny five

times at various functions in New York, DC & Philadelphia over the course of 2011 and 2012. The pitch was simple, the Irish domestic tax rate of 12.5% is not up for negotiation; the Irish have honored all commitments to international investors and to the Troika; commercial rents are down 50% in Dublin; and there is a pool of graduates hungry for jobs. The domestic disquiet was washed over in a sea of relentless positivity as the Irish government and its delegates pulled on the green jersey and pushed the 4 T's of Tax, Talent, Technology & Track Record. By the time a consortium of North American Investors saved the Bank of Ireland from full nationalization in June 2011, the "Green Army" was becoming more bullish.

But what of the AIFMD? As 2012 became 2013, there was a spike in interest in AIFMD. However it quickly became clear that my services were mainly in demand for from three sources: (i) existing clients who were unfortunate enough to be caught with European products they would have to grudgingly restructure; (ii) lawyers who had an intellectual curiosity in understanding European regulatory developments; and (iii) those who wanted to avoid it entirely. The latter were very much in the majority. As the service providers from key European structuring jurisdictions, as well as some aspirational jurisdictions, presented their case to the industry in New York, it became very clear that the hot topics were reverse solicitation and separately managed accounts, either of which would avoid any requirement to comply in full or in part with the AIFMD. With the Continent in economic and political turmoil, and a constant flow of new regulatory initiatives enthusiastically rained down from Brussels, the appetite for European Alternative Investment Funds was low.

As for Ireland, the Bank of Ireland investment provided the right signal to the market. After much posturing, the Irish National Asset Management Agency (NAMA), the state sponsored "bad bank" set up to clear up the mess following the explosion of the Irish property bubble, stated its intent to divest itself of its entire EUR88bn portfolio over the course of the following decade. There was no shortage of buyers who believed in the Irish story. The distressed asset circus came to town with CarVal, Blackstone, KKR, Lone Star, Kennedy Wilson, PIMCO and many others aggressively bidding for Irish loan portfolios, hotels, and commercial properties. Trophy homes were sold at fire sale prices, and country estates became the hot topic of conversation for misty eyed diaspora looking to reclaim a piece of their heritage.

The macro economic figures were exceptional, business for finance lawyers was exploding, but the hardships in the real economy could not be entirely glossed over. Ireland was indeed open for business but at what cost? Negative publicity surrounding the glut of inversion transactions from the U.S. into Ireland, particularly in the pharmaceutical space; the closing of the double Irish tax loophole; and the Apple case gave the impression of an economic model that could falter at the increased global demand for tax transparency and substance-based taxation.

Thankfully, the consistent and unwavering commitment by successive Irish governments to maintain an open, transparent, stable, and competitive corporate tax regime continues to provide international investors and market participants with certainty that the Irish economic model is on a strong footing. In addition, Ireland has been an active and enthusiastic participant in the OECD BEPs project since its inception. With the days of aggressive opaque corporate tax planning numbered, Ireland is very well placed to thrive within the new global model.

As 2015 became 2016, the conversation around AIFMD also shifted. The New York industry buzz-phrase became "reverse solicitation is not a marketing strategy." Even those most bullish on accepting European capital without taking steps to comply with the AIFMD were becoming skittish. The possibility of investor legal action, and a focus by European regulators on unauthorized capital-raising by non-EU Managers, gave the reverse solicitation advocates pause for thought.

In addition, word began to filter through that there was significant European institutional demand for U.S. strategies. The traditional hunting grounds of the UK and Switzerland remained the typical entry points for U.S. managers, often by way of registration of existing Cayman funds under respective private placement regimes. However, beyond the high net worths and family offices which historically allocated offshore, many U.S. managers began to find it very challenging to obtain significant allocations without a fully compliant UCITS or AIFMD vehicle. The main reason for the institutional preference for onshore vehicles appeared to be rooted in the depositary guarantee which was mandated through the AIFMD for alternatives, and UCITS V for retail products. The depositary guarantee added a significant additional layer of investor protection to an onshore fund, in contrast to its offshore counterpart, making it increasingly attractive for European institutions to allocate large tickets to European funds. European investors appeared to be willing to take risk on the strategy to generate alpha but not the structure.

This has manifested in significant investments in European AIFs from countries that would not traditionally have invested in offshore funds, such as Germany and Denmark. The large institutional tickets from Germany, in particular, seem to

represent pent-up demand for alternative strategies. German insurance companies, for example, are restricted in how much they can invest in non-qualifying funds such as offshore funds. As a result, access to strategies such as direct lending had been significantly restricted. Now, with these strategies being employed in a European regulated fund, they have a greater flexibility to invest in these strategies and thus look to add alpha to flat portfolios.

Notwithstanding the compelling business case for capital-raising in Europe, a perceived stumbling block for U.S. managers remained the requirement to have a European regulated management company to run the European fund. The vast majority of U.S. managers did not have any interest in launching a European regulated management company (UCITS ManCo / AIFM, depending on the strategy) when all they really wanted was a fund. In order to bridge this gap, we began to see the strong preference among U.S. managers entering the European market to partner with a locally regulated management company. The local "manco" would handle the significant European regulatory burden, while the U.S. manager would simply manage the portfolio and market the product – a simple, elegant solution to a complex problem. (I, too, followed the market with a move to DMS in mid-2016).

With Brexit on the horizon, and the likelihood of the UK being at a significant regulatory disadvantage in the areas of UCITS, AIFMD and MiFID, we are seeing more and more U.S. managers forego London for Dublin, particularly for regulatory hosting solutions. It is anticipated that this trend will gather pace over the coming years as the European regulatory landscape shifts once again. For example, under MiFID II, U.S. managers will be required to have substance and resources on the ground in Europe to enable them to accept European separately managed account mandates. Where U.S. managers would traditionally have gravitated to London in search of a local MiFID-authorized entity to provide the required substance, they are now taking the short hop to Dublin in search of regulatory certainty.

In addition to the huge investor appetite, preference for onshore vehicles, and cost efficient structuring solutions, the clarity around pre-marketing in most European jurisdictions has been welcomed by U.S. managers who, to date, have been too nervous to get on a plane, lest they inadvertently trigger registration requirements. France, one of the most notoriously inaccessible European jurisdictions, is an excellent example.

In mid-2016, following a significant lobbying effort from Industry, the Autorité des Marchés Financiers (AMF) introduced the notion of pre-marketing, which relaxed the constraining marketing rules applicable to funds in France. The simple set of common sense rules published by the AMF provides a U.S. manager interested in testing appetite for a new strategy in France with the requisite regulatory certainty to enable the manager, or an agent of the manager, to set up a roadshow for up to 50 French professional investors. Pre-marketing is becoming the norm across Europe again, as local regulators have provided clear guidance, local lawyers are comfortable giving advice, and market participants have implemented appropriate practices.

As 2017 takes shape, we see a renewed appetite by U.S. managers for capital-raising in Europe, and a resurgent Ireland is further cementing its place as the gateway to European capital. In the context of the global financial services map, Ireland has a small investor population, but a huge cross border structuring, distribution and servicing market. Irish funds are distributed in 72 countries worldwide, including across Asia, South America, South Africa, Australia, and Canada. Ireland has close to EUR2 trillion under management in regulated fund structures, 50% of European ETFs are structured in Ireland, 40% of global hedge fund assets are administered in Ireland, and 50% of the world's commercial aircraft fleet is managed from Ireland. So it turns out the message back in the dark days of 2010 was true – Ireland is open for business.

About the Author

Joining DMS in August 2016, executive director Daniel Forbes heads the company's New York office, where he oversees business development and client relations across multiple product lines, including offshore and European solutions for both traditional and alternative asset managers. With an extensive background in AIFMD, UCITS products and other alternative investment vehicles, Forbes plays a key role in helping DMS enhance both onshore and offshore governance capabilities.

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