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Stillorgan Park  
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February 26, 2009

The Editor  
The Irish Times  
The Irish Times Building,  
PO Box 74,  
24-28 Tara Street,  
Dublin 2

Madam,

***Re: Fintan O'Toole's article on the IFSC***

I write in response to Fintan O'Toole's article in your edition of Tuesday 17<sup>th</sup> February entitled "We ignored warnings about lax regulations".

I don't wish to pick a fight with Fintan O'Toole but on this occasion his analysis of his subject matter is very wide of the mark. His article appears to be written against the background of the IFSC in respect of which informed sources never warned about lax regulation. In Europe within the Committee of European Securities Regulators (CESR) the Irish regulation is among the highest. The participation of the Irish Financial Services Regulatory Authority in the CESR debate on regulation is regarded as one of the most informed. Fintan O'Toole is quite mistaken when he states that the primary attraction of Ireland is the extreme laxity of regulation. The reverse is the case. Ireland is chosen as a domicile for investment funds by many sponsors because of its reputation for strong regulation. There is every reason to believe that the Irish model for hedge funds, which requires separation of functions such as custody, administration and investment management will be the adopted model internationally. These requirements plus appropriate information and transparency in relation to exposures, arguably would bring hedge funds satisfactorily into the regulatory fold.

His comment that Ireland acts as a gateway to offshore tax havens is again quite wrong. The Irish rules for example, prohibit Irish funds from acting as feeder funds into any unregulated jurisdiction such as the Cayman except under very strict circumstances.

It is unfortunate that when a regulator makes a mistake or performs to a lower standard than we would wish any and all positive achievements are easily forgotten. It has to be said also that there are two very distinct regulatory regimes operating in Ireland, the domestic and international. For some reason it has been impossible to educate or persuade popular opinion that the regime as applied to the international is to the highest anywhere in the world. I don't criticize the regime as applied to the domestic industry but suffice it

to say that the domestic industry is very diverse with a vast number of participants making the task that much more challenging.

Saying that the regulatory bar in the IFSC is set very high runs counter to the impression of the popular press. Fintan O'Toole refers to the incident of Cologne Re, again in respect of which there are a number of misconceptions. The reinsurance industry was not a regulated industry anywhere in the world at that time but notwithstanding that the Irish Regulator did impose a filing requirement and requirements in relation to suitability. The transactions were conceived outside Ireland, were booked correctly in Ireland but where booked incorrectly by the entities which were operating and domiciled outside Ireland. The unfortunate comment about Ireland being like the "wild west" was an unattributed comment in the New York Times but suspected to have been made by a Mid West US politician who had no knowledge of the Irish Financial Services Centre and was motivated by political self interest. My own view is that Lord Oakeshott's reference to "Lichtenstein on the Liffey" falls into exactly the same category. The fact that he can't distinguish between the activities of an Irish domestic bank and the financial services centre speaks volumes. Why do the Irish media embrace such headline grasping pronouncements so readily without any investigation? Mr O'Toole's statement of massive faking of Parmalat's accounts was through its IFSC based subsidiary is again incorrect. Parmalat simply had a subsidiary in Ireland, but there is so far no suggestion that there was false accounting within that subsidiary. If the criticisms arising out of these two incidents prove to be unfounded the record of the eighteen years of the IFSC is arguably unblemished. Remember criticisms emanating from other jurisdictions are often motivated by protectionism and self interest.

Mr O'Toole refers to the debate raging about "light regulation". The problem is that people who are well intentioned and informed encourage proportionate but effective regulation. The ill informed interpret this as code for light and poor regulation by those who are not well intentioned. Those aspiring to very high standards embrace regulation which prevents fraud and malfeasance. If they are operating in jurisdictions which don't impose such regulation such as the Cayman Islands they impose their own compliance and house standards. What they don't want is prescriptive window dressing which is ineffective, plays to the gallery and costs the clients both in terms of expenses but also in making certain services inefficient. It's worth noting that much of the recent wrong doing is in breach of the 1963 Companies Act. That is not to suggest that regulation does not need constant updating to take account of modern developments but it does put our current travails in context.

To address one aspect of regulation which is topical at the moment, namely "Corporate Governance" I would quote Professor David Hillar of Leeds University who says "**Corporate Governance is not about rules and regulations. It's about the ethical culture within organisations. Without an ethical and accountable environment, Corporate Governance is at best useless and at worst a means to further corporate malpractice**". With this in mind I would urge that a greater focus on encouraging better corporate culture and standards would serve us well. This arguably is best achieved by a combination of better engagement by the regulators with the industry combined with the requirement for appropriate standards. This will not be achieved by setting down prescriptive rules about how directors should hold a board meeting for example, because a one size fits all approach will cause more problems than it solves and the ill intentioned will just avoid the rules in any case. Instead by sensible oversight make sure that companies comply with commitments which they make to regulators in their business plans. If regulators at an operations level get to know those who they are regulating better most of the current transgressions would have been spotted.

Finally it seems that great damage is done by indiscriminate condemnation. When you tar everyone with the same brush it allows the bad guys to hide and disguise themselves. If we are going to beat up the regulators and the politicians we must ensure that we are not guilty of the very laxness and inaccuracy that we accuse them of.

Yours etc,

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