



**National Asset  
Management Agency**

Margaret Falsey  
Committee of Public Accounts Secretariat  
Leinster House  
Dublin 2

17 January 2017

Dear Ms Falsey,

I refer to your correspondence of 13 January 2017 on behalf of the Public Accounts Committee (the "Committee"), seeking further information. The attached document sets out NAMA's responses to the information requested in that correspondence.

Yours sincerely,

A handwritten signature in blue ink, which appears to read 'Martin Whelan', is written over a long horizontal line that extends across the page.

**Martin Whelan**  
**Head of Public Affairs**

## INFORMATION SOUGHT BY THE PUBLIC ACCOUNTS COMMITTEE

(as sought in PAC Letter of 13 January 2017)

**1. There is a lack of clarity on dates when Frank Cushnahan made disclosures re 6 debtor connections. Can you supply the dates when these were made? Can you supply details of the nature of the relationship he specified with each?**

### **RESPONSE:**

During his time as a member of the Northern Ireland Advisory Committee, Frank Cushnahan made six separate disclosures of interest to the Committee. These disclosures were made on the following dates:

- 13 April 2011
- 27 June 2011
- 18 October 2011
- 18 June 2012
- 18 June 2012
- 10 December 2012

The Comptroller & Auditor General's report (Section 5.10, Page 91), outlines that Mr Cushnahan's involvement with these debtor connections was in relation to the provision of financial consultancy services. *"These disclosures of interests did not relate to matters scheduled on the agenda at the Committee meetings where the disclosures were made,"* the C&AG report states.

In his evidence to the Public Accounts Committee on 20 September 2016, the Comptroller and Auditor General also referred to Mr Cushnahan's declarations of interest: *"over time, Mr. Cushnahan declared to NAMA his involvement as an adviser to six NAMA debtors, mainly on a non-fee basis."*

As outlined in NAMA's response to the Committee on 10 November 2016 and also in Question 12 of the response of 28 November 2016, NAMA has received advices from both NTMA Compliance and NAMA Legal to the effect that it is prohibited from releasing these records.

Specifically, we are advised that Section 35 of the Ethics in Public Office Act 1995 (the "Act") prohibits the disclosure of information contained in a statement provided under Section 17 of the Act; that is, statements of interests made by designated directors. We are advised that this request does not fall into any of the exceptions provided for in Section 32(2) of the Act.

We are also advised that the disclosures or statement of interests are made on the understanding that they will be treated confidentially by NAMA, which places an obligation of confidentiality on NAMA.

**2. In your reply of 22 December re PIMCO's referral to Denis Rooney, you refer to a Dennis Rooney letter attached in Appendix 1. However, no Appendix 1 was included. Can you please forward a copy of the Denis Rooney letter?**

**RESPONSE:**

A copy of the correspondence sent to Mr Rooney and the response received are contained in **Appendix 1.**

**3. Can you supply a copy or details of Cerberus and Fortress business plans submitted with bid?**

**RESPONSE:**

Bidders for the Project Eagle loan sale were not required to submit business plans with their bid. It is not standard industry practise to seek such business plans from bidders.

**4. Can you clarify for the record NAMA's definition of an "open sale process" and the term "transact off market"?**

**RESPONSE:**

NAMA understands an 'open sales process' to be one which is open to all potential bidders with the financial capacity to submit credible arm's-length bids for the asset or assets concerned and to do so knowledgably, prudently and without compulsion. In this, NAMA is guided by the definition of 'market value' which is included in Section 72 (2) of the NAMA Act.

The term 'transact off market' is used to describe cases in which an open market process is not appropriate such as, for instance, cases where there may be special purchasers or legal issues.

It is also used in cases where a public authority purchases a NAMA-secured property at the assessed market value outside of a formal open market sales process. This is in line with the NAMA Board's commitment to giving first option to public bodies on the purchase of property which may be suitable for their purposes. In line with that commitment, the Board has accommodated the sale of lands and property for schools, health care facilities, community and recreational amenity, and other uses.

**5. Can you clarify what NAMA means by the term "debtor connections" and if an how this is different to "debtors"?**

**RESPONSE:**

A Debtor is defined as a borrower whose loans were transferred to NAMA. Debtor connections may consist of one debtor or a number of closely-connected debtors whose aggregate debt is considered by NAMA to be best managed as one cohesive connection rather than managed through separate debtor entities.

**6. Cerberus sought a written certification from Tughans regarding their conforming to requirements of FCPA and the UKBA. Can you confirm that these refer to the Foreign Corrupt Practices Act and the UK Border Act?**

**RESPONSE:**

- FCPA refers to the USA Foreign Corrupt Practices Act 1977
- UKBA refers to the UK Bribery Act (Bribery Act 2010)

**7. Can you provide details on NAMA's consideration or planning for the possibility that confidentiality might be lost during the Project Eagle Sales process?**

**RESPONSE:**

NAMA took appropriate steps, in line with market standards, to protect the confidentiality of the sales process. This included the requirement that potential bidders execute Non-Disclosure Agreements (NDAs). At the NAMA Board meeting of 8 January 2014, the Board approved the execution of the Project Eagle loan sale transaction in a time-bound, focused and confidential manner. The intention was to conduct the transaction in a focused and discreet manner, while recognising that there was always a risk that it might not have been possible to maintain sales process confidentiality for the full duration of the process. NAMA relied on the advice of the loan sale advisers, Lazard, in this regard; the minutes of the NAMA Board meeting of 8 January 2014 record that one of Lazard's requirements was to *"advise on an appropriate marketing approach which would balance the open marketing requirement with the need for confidentiality."*

When a press report on the Project Eagle sale process appeared on 13 February 2014, the transaction became public. The NAMA Board considered the position at its Board meeting of 13 February 2014 and, recognising that the confidentiality requirement was no longer relevant, approved that Lazard would be given the *"flexibility to increase the number of bidders involved in the process if genuine, credible interest arose."*

Having been provided with this flexibility, Lazard was in a position to ascertain the level of interest from other potential investors and this resulted in a number of other firms being invited into the sales process.

## Appendix 1

- Correspondence between NAMA and Mr. Denis Rooney re: PIMCO correspondence



**Gníomhaireacht Náisiúnta um Bhainistíocht Sócmhainní**  
**National Asset Management Agency**

**Denis Rooney**

Email: [REDACTED]

19/12/2016

**Re: PIMCO correspondence to PAC**

Dear Denis,

Our conversation on Friday last refers.

As explained, correspondence has been sent by the US investment firm, PIMCO to the Dáil Public Accounts Committee (PAC) which is currently looking at the Project Eagle loan sale. That correspondence makes the following reference to you:

*"We are not in a position to know when NAMA became aware of Brown Rudnick's approach. However, we can advise that Mr. Kelnan informed PIMCO that NAMA was 'now in the loop' and had appointed Denis Rooney to look after the transaction in June 2013.*

This is the first time that NAMA has heard any reference to you in the context of this sale. I would appreciate your comments in response to this letter.

Yours sincerely

PP

**Frank Daly**  
**Chairman**

**From:** Denis Rooney  
**Sent:** 20 December 2016 16:21:26  
**To:** Frank Daly  
**Subject:** PIMCO correspondence to PAC

Dear Frank,

In reply to your letter of 19th. December, I have not had any contact with PIMCO or Brown Rudnick before, during or since my term as a member of the NAMA Advisory Committee and cannot offer any view on the extract from the letter you forwarded. As you are aware the reference in the PIMCO correspondence that I had been appointed to look after the transaction, which I presume to be Project Eagle, is incorrect.

Yours faithfully,  
Denis

Sent from my iPad

Sent from my iPad

Sent from my iPad