



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

2017

Investment Firms Questions and Answers

3rd Edition – 6 October 2017



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Investment Firms Questions and Answers

This document sets out answers to queries which may arise in relation to the Central Bank Investment Firms Regulations, MiFID II and MiFIR. It is published in order to assist in limiting uncertainty. It is not relevant to assessing compliance with regulatory requirements. In addition to being published in '*Markets Update*' it will be posted on the Central Bank website and will be updated there occasionally as required. You should check the website from time to time in relation to any matter of importance to you to see if the position on a query has altered. The Central Bank reserves the right to alter its approach to any matter covered in this Q&A at any time.

In this document:

“*MiFID II*” refers to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.

“*MiFID II Transposing Regulations*” refers to the European Union (Markets in Financial Instruments) Regulations 2017.

“*MiFIR*” refers to Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012.

“*the Capital Requirements Regulation*” refers to Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012.

“*the Central Bank Investment Firms Regulations*” refers to the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Investment Firms) Regulations 2017.

Part 1 - the Central Bank Investment Firms Regulations

General

ID 1001

Q. Who do the Central Bank Investment Firms Regulations apply to?

A. The Central Bank Investment Firms Regulations apply to MiFID investment firms and to certain investment business firms authorised under the Investment Intermediaries Act 1995 as defined in Regulation 2.

ID 1002

Q. Does the Central Bank require investment firms which take action to re-register as a company type recognised under the Companies Act 2014 to submit amendments to their constitution?

A. No. However, where companies re-register as DACs a copy of the new certificate of incorporation should be submitted.

ID 1022

Q. Does the definition of “administration services” include support services relating to the administration of an investment fund?

A. Yes. The definition of administration services includes support services relating to (i) the performance of valuation services (ii) fund accounting services and (iii) acting as a transfer agent or a registration agent for an investment fund.

General supervisory requirements for investment firms

ID 1003

Q. As an investment firm I am required to state on headed paper that I am regulated by the Central Bank. What form should this statement take?

A. The statement, which should be included in all advertisements, electronic communications and on websites should be in the form of:

[Name/Trading Name of regulated entity] is regulated by the Central Bank of Ireland.

Outsourcing requirements for fund administrators

ID 1004

Q. Do the fund administrator requirements outlined in Part 4 of the Central Bank Investment Firms Regulations apply to non-Irish funds?

A. Yes the requirements in Part 4 apply to both Irish and non-Irish administered funds.

ID 1005

Q. What are the ‘performance and quality standards’ referred to in Regulation 21(1)(k)?

A. Performance and quality standards include, but are not limited to, matters such as having a detailed service level agreement (SLA) in place, continuously monitoring and checking the quality of the outsourced activities and reviewing the systems and processes that an outsourcing service provider has in place and any audits carried out. In addition, firms should have standard operating procedures (SOPs) in place for outsourcing administration services.

SLAs and SOPs should be reviewed at least on an annual basis by the relevant control function to ensure that adequate management of all outsourced administration services is in place.

ID 1006

Q. What are the “key performance indicators” referred to in Regulation 21(1)(o)(i)?

A. Examples of key performance indicators (KPIs) include price, delivery times, error rates and reconciliation breaks. KPIs should be agreed between the fund administrator and the outsourcing service provider. KPIs should be subject to review at least on an annual basis by operational teams within the fund administrator.

ID 1007

Q. As a fund administrator am I required to carry out periodic due diligence visits in relation to all of my outsourcing service providers?

A. The extent to which periodic visits are required will depend on the nature, scale and complexity of the outsourced task. For example, such periodic visits may not be necessary where a basic task, such as printing, has been outsourced.

ID 1008

Q. I have an existing outsourcing arrangement which I have notified to the Central Bank. Can changes to that arrangement be notified to the Central Bank as part of my annual outsourcing return?

A. No. Any change to existing outsourcing arrangements, other than the addition of new investment funds, must be notified to the Central Bank in accordance with the procedure outlined in Regulation 18, using the notification template. This includes proposals to transfer activities to a different legal entity or to a different location, whether in Ireland or abroad, within the same legal entity. Further information in relation to this matter is set out in the website guidance on the Central Bank Investment Firms Regulations.

The Central Bank may request up to date details of all outsourcing arrangements including the impacted investment funds or require additional reporting by fund administrators at any time.

ID 1009

Q. The Central Bank's guidance on outsourcing requirements provides that fund administrators with existing, previously cleared, outsourcing arrangements in respect of the check and release of the final NAV, that do not meet with the criteria outlined in the guidance, are not required to change those arrangements. How does this apply where an investment fund changes its fund administrator?

A. The Central Bank does not currently intend to use a change of fund administrator as an opportunity to object to a previously cleared outsourcing arrangement of this nature solely on the grounds that it does not meet the criteria outlined in the guidance. However, in the event of a change of fund administrator, the new fund administrator must still follow the procedure set out in Regulation 18 and submit a new outsourcing proposal notification to the Central Bank for review and assessment before entering into this outsourcing arrangement.

ID 1010

Q. As a fund administrator I am required to notify existing clients who may be impacted by my proposed outsourcing arrangement. When must I do this?

A. You must notify all impacted clients of an outsourcing arrangement (including chain outsourcing) in sufficient time before the commencement of the operation. In addition, client notification records should be sufficient to evidence that clients have been notified of the outsourcing arrangement. Such records should be available for inspection by the Central Bank and where the record is retained in electronic form it should be capable of being produced in a timely manner for review.

ID 1011

Q. Can I submit an outsourcing proposal notification to the Central Bank notwithstanding that the 'go live' date has not been confirmed?

A. You should only submit an outsourcing proposal when it has an estimated or known 'go live' date and should not submit a proposal if the 'go live' date has yet to be determined.

ID 1012

Q. When providing a notification to the Central Bank under Regulation 18 what details should I provide about the staffing arrangements within the outsourcing service provider?

A. Details of the staffing arrangements within the outsourcing service provider should include details (at a minimum) on training arrangements and the number of staff, and should outline whether staff members will be part of:

- an Ireland dedicated team;
- an activity dedicated team; or
- an investment fund specific team.

ID 1013

Q. When providing a notification to the Central Bank under Regulation 18 what details should I provide about my oversight of the outsourcing service provider?

A. You should include, where relevant, information on areas such as the tolerance levels you will apply to the review of exceptions closed out by the outsourcing service provider.

Where the outsourcing proposal notification relates to the check and release of the final NAV, you should provide the following:

- items to be included in the check by the outsourcing service provider prior to release of the final NAV; and
- items to be included in your check the day following the release of the final NAV by the outsourcing service provider.

ID 1014

Q. Will the Central Bank develop a template for the annual outsourcing return?

A. Yes. An annual outsourcing return template will be uploaded onto the ONR for fund administrators to complete.

ID 1015

Q. As a fund administrator what date should I reference when submitting the annual outsourcing return, in order to comply with Regulation 25(1)(c)?

A. You should provide the date of the clearance letter received from the Central Bank to outsource the relevant activities.

ID 1023

Q. As a fund administrator, am I required to carry out a stress test to assess the cost of my continuing to provide administration services under alternative arrangements if a disaster recovery scenario impacts either me or an outsourcing service provider?

A. Yes. You should assess what budget might be required to cover the costs of a disaster recovery scenario where an alternative outsourcing service provider and/or an alternative location is required. The budget should cover the costs of the fund administrator, the outsourcing service provider in distress, and any other service provider to whom an emergency transfer of activities is required (including to the fund administrator itself).

This issue should be addressed in your capital planning process but reference to stress testing may also be included in your outsourcing policy, business continuity planning policy or take back / resilience testing policy.

ID 1024

Q. Do I need to receive approval from the Central Bank in advance of outsourcing a service to a new location and/or a new outsourcing service provider due to a business continuity event?

A. You must notify the Central Bank immediately when you become aware of any situation which may result in a change to an outsourced service which requires the service to be moved to a new location and/or a new outsourcing service provider.

Following this notification, the Central Bank will, taking into consideration whether the outsourcing service provider has sufficient capability to perform the service, issue a temporary response to the fund administrator.

Each arrangement will be reviewed on a case by case basis and if the new arrangement is to continue over the longer term, the Central Bank may revisit its approval.

Final NAV

ID 1016

Q. Is the new definition of final NAV in the Central Bank Investment Firms Regulations applicable to all investment funds including those which deal on a less than daily basis (e.g. weekly or monthly dealing)?

A. Yes. The definition of final NAV in Regulation 2 applies irrespective of the dealing frequency of the investment fund.

ID 1017

Q. Where a final NAV is checked and released by an outsourcing service provider, must this be available to all investors in the investment fund?

A: Yes.

ID 1025

Q. Can the review of the check and release of each investment fund NAV, required by Regulation 19 to be completed by a member of senior management of the fund administrator, be completed and signed by a senior staff member of the fund administrator?

A. Yes. For the purposes of Regulation 19, a “member of senior management” may include a senior staff member within the fund administrator.

Own funds and capital adequacy requirements for fund administrators

ID 1018

Q. What is the meaning of “after distribution of profits to shareholders” in Regulation 29(a)?

A. The reference to “after distribution of profits” means after payment of dividends or any other distributions to shareholders.

ID 1019

Q. Can fund administrators use their own risk taxonomies for the risk assessment and capital planning process?

A. Yes, provided fund administrators can demonstrate that they have:

- (a) assessed the relevancy of all of the risks listed in Regulation 44;
- (b) determined which risks are material to their individual business models; and
- (c) established processes and procedures to mitigate these risks in accordance with the Central Bank Investment Firms Regulations and related guidance.

The relevance of various risks may change over time and therefore fund administrators should revisit their assessments on an appropriately frequent basis.

ID 1020

Q. Are all fund administrators required to monitor liquidity risk?

A. Yes. While liquidity risk may be considered as a low risk for some fund administrators, an operational or environmental event may cause the liquidity position of a firm to change rapidly.

ID 1021

Q. Are fund administrators required to have separate wind down plans if they are part of a group structure which has the feasibility to cater for the continuation of fund administration services should operations fail locally?

A. Yes. While fund administrators which are part of larger group structures may be able to leverage off group infrastructure and support in various situations, fund administrators cannot exclusively rely on group support when considering wind-down planning. Any assumptions in terms of group support should be clearly stated in various wind-down scenarios and consideration should be given as to the likelihood of a scenario where group support may not be available.

Part 2 – MiFID II and MiFIR

Words and expressions used in Part 2 of this document shall have the same meaning as set out in MiFID II, MiFIR and relevant EU instruments issued thereunder.

ID 1026

Q. Is it intended to delay the application of MiFID II requirements in Ireland?

A. No. The MiFID II Transposing Regulations, which transpose MiFID II into Irish law, will come into operation on 3 January 2018 and relevant EU Regulations associated with the MiFID II regime will also have direct effect in Ireland from 3 January 2018.

ID 1027

Q. Will the Central Bank exercise forbearance in relation to non-compliance with MiFID II requirements after 3 January 2018?

A. No. The Central Bank expects firms subject to MiFID II to be in compliance with the requirements of MiFID II from 3 January 2018.

ID 1028

Q. Are the record keeping requirements as set out in Annex I of Commission Delegated Regulation (EU) 2017/565 correct since there appears to be a number of errors in the cross-references?

A. A number of errors in the cross-references in Annex I have been identified. The Central Bank has brought this matter to the attention of ESMA and the European Commission. Any amendment to the Regulation must be initiated by the Commission through the EU legislative process. In the meantime, regulated entities subject to MiFID II should retain all records necessary to evidence their compliance with MiFID II rules.

ID 1029

Q: Will the existing ESMA guidelines remain in force when MiFID II comes into force or will they no longer be relevant?

A. Since these Guidelines were issued by ESMA, it is for ESMA to confirm the intended status of these Guidelines after MiFID II enters into force on 3 January 2018. The Central Bank has engaged with ESMA in this regard and will continue to seek clarification before the MiFID II implementation date.

ID 1030

Q: What is the Central Bank's approach in respect of investment firms engaged in MiFID activities that may be seeking to re-locate to or otherwise establish operations in Ireland as a result of the UK's decision to exit the European Union?

A. The Central Bank has published a 'Brexit FAQ' on our website which sets out the Central Bank's approach on a cross-sectoral basis to these matters.

ID 1031

Q: I am seeking authorisation as an investment firm and consider that I fall within the definition of "local firm" as defined in Article 4(1)(4) of the Capital Requirements Regulation. Has the Central Bank issued any guidance on how to interpret that definition?

A: There continues to be uncertainty around the precise meaning of "local firm" as defined within European legislation. The Central Bank will continue to seek additional clarity at European level.

If you meet the following criteria, the Central Bank is likely to accept that you are within the scope of local firm:

- Engage solely in dealing on own account on derivatives markets and on cash markets, but in the case of the latter, only to hedge positions in derivatives;
- Do not have external clients;
- Do not act as a market maker;
- Engage solely in exchange traded instruments; and
- Will access clearing on a client or indirect client basis only.

A market maker is an investment firm subject to a contractual or regulatory obligation to make and publish two way prices, on a continuous basis and shall include any investment firm which is a market maker within the meaning of MiFID II.

The Central Bank is not excluding the possible recognition of other investment firms from the definition of local firm. However any such firm will be required to provide full information on its activities in order to allow the Central Bank to assess the nature of the business undertaken for other members of the relevant market.

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