

Investment Firms Regulations Consultation
Markets Policy Division
Central Bank of Ireland
New Wapping St
North Wall Quay
Dublin 1

27 September 2017

Dear Sir/Madam

Consultation on Second Edition of the Central Bank Investment Firms Regulations including changes related to MiFID II: Consultation Paper CP111 (“CP 111”)

We are writing in relation to the proposals in the above-mentioned consultation paper, CP 111. Our comments are limited to the proposals which pertain directly to the client asset examination and investor money examination to be performed by auditors. Therefore we restrict our comments specifically to proposed regulations 65 and 80.

We have observed some differences in wording between proposed regulation 65 in CP111 and regulation 9 of the *Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) Client Asset Regulations 2015 for Investment Firms*, S.I. 104 of 2015 (“the Client Assets Regulations”) and similar differences between proposed regulation 80 in CP111 and regulation 8 of the *Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) Investor Money Regulations 2015 for Fund Service Providers*, S.I. 105 of 2015 (“the Investor Money Regulations”). These changes in wording may have consequences for the performance of client asset examinations and investor money examinations, respectively, and we therefore consider it important to draw these to your attention. Our observations in this regard are set out below.

Compliance with the relevant requirements “throughout the period”

Both proposed regulation 65 and proposed regulation 80 in CP111 suggest a change in relation to the assurance opinion given by the auditor regarding compliance with the relevant requirements. The proposals seek that the auditor provides an assurance report as to whether the investment firm or fund service provider, respectively, was compliant with the relevant regulations, “throughout the period” to which the examination relates. Currently, the Client Asset Regulations (regulation 9(3)) and the Investor Money Regulations (regulation 8(3)), require the auditor to opine in relation to compliance with the relevant requirements “as at the period end date”. This change will have an impact on the work which the auditor plans and performs in order to form the required opinion. It is important that the Central Bank and the audit profession maintain

a mutual understanding of the nature and extent of the engagement. We therefore strongly encourage you to engage with us directly in relation to the implications of this change before the finalisation of the revision of the Central Bank Investment Firms Regulations 2017.

Change from “an external auditor” to “the external auditor”

Proposed regulation 65(1) in CP111 requires that:

“an investment firm shall arrange for the external auditor appointed in accordance with [relevant provision of the MiFID II transposing Regulations requiring the appointment of external auditor] to prepare a report, as part of, or in addition to, the report required under Regulation [relevant provision of the MiFID II transposing Article 8 of the Commission Delegated Directive of 7 April 2016]” [emphasis added]

By comparison regulation 9 (1) of the Client Asset Regulations requires that:

“an investment firm shall arrange for an external auditor to prepare a report ...” [emphasis added]

We understand that the reference to “*relevant provision of the MiFID II transposing Article 8 of the Commission Delegated Directive of 7 April 2016*” at regulation 65(1) in CP111 is to Schedule 3, regulation 7 of the European Union (Markets in Financial Instruments) Regulations 2017, (“S.I. 375 of 2017”). It seems that the auditor performing the client asset examination should be the same auditor who prepares the report required in accordance with Schedule 3, regulation 7 of S.I. 375 of 2017. It is not clear to us whether the change in emphasis in this regard also means that the auditor who performs the client asset examination will have to be the same auditor who audits the financial statements of the investment firm. While we note that this is not a current requirement under the Client Asset Regulations, in practice it is often the same auditor who performs both the client asset examination and the audit of the financial statements of the investment firm. We urge you to provide clarification as to your requirements regarding the auditor performing the client asset engagement.

We further note that a similar change is not proposed in the context of the auditor who performs the investor money examination for a fund service provider. Proposed regulation 80 in CP111 requires that:

“a fund service provider shall arrange for an external auditor to prepare a report ...” [emphasis added]

This is unchanged from regulation 8(1) of the Investor Money Regulations.

We would like to better understand the proposed change in approach for investment firms in this regard. For the avoidance of any future confusion regarding the appointment of auditors to perform client asset examinations, we would welcome clarity in this regard.

Submission of the auditor’s assurance report to the Central Bank

Regulation 9(4) of the Client Asset Regulations and regulation 8(4) of the Investor Money Regulations are clear that the investment firm or fund service provider, respectively, is responsible for providing the required auditor’s assurance report to the Central Bank. It is, however, unclear who has responsibility for the submission of the assurance report under the proposals in CP111. Proposed regulation 65(2)(d) requires that the auditor,

“submits the assurance report to the Bank in accordance with the timeframes referred to in Regulation 68(4).”

Regulation 68(4), however, requires that the investment firm shall,

“submit the assurance report to the Bank ...”

In relation to fund service providers and the assurance report arising from the investor money examination, proposed regulation 80(2)(d) and proposed regulation 83(3) are similarly at odds with each other.

It will be important for these inconsistencies to be resolved before the finalisation of the revision of the Central Bank Investment Firms Regulations 2017. We consider it appropriate to continue the practice established in the Client Asset Regulations and the Investor Money Regulations whereby the investment firm and fund service provider have responsibility for submission of the assurance report to the Central Bank.

We will be pleased to meet with you to discuss these comments in further detail should you consider it helpful. Please contact me directly in that regard. You can contact me at karen.flannery@charteredaccountants.ie or at (01) 637 7389.

Yours faithfully



Karen Flannery
Manager, Representation and Technical Policy on behalf of the Audit and Assurance Committee,
Chartered Accountants Ireland