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Central Bank Outsourcing - Cross-Industry Guidance on Outsourcing
Supervisory Risk Division
Central Bank of Ireland
PO Box 556
Dublin 1

26 July 2021

Re: Cross-Industry Guidance on Outsourcing-Consultation Paper 138

Dear Sir/Madam,

The Irish Funds Industry Association (Irish Funds) is the voice of the funds and asset management industry in Ireland. Founded in 1991, Irish Funds represents fund managers, depositaries, administrators, transfer agents, professional advisory firms and other specialist firms involved in the international fund services industry in Ireland.

Irish Funds' more than 145 members service or manage in excess of 14,000 funds with a net asset value of €5.3 trillion. Irish Funds objective is to support and complement the development of the international funds industry in Ireland, ensuring Ireland continues to be a location of choice for the domiciling and servicing of investment funds.

Irish Funds welcome the publication of the Central Bank of Ireland's ("the CBI") paper entitled Cross-Industry Guidance on Outsourcing ("the Draft Guidance") and appreciate the opportunity to provide comment and feedback on this important matter. We believe the Draft Guidance is timely and appropriate particularly given the increasing focus on outsourcing developments at both a global level (with IOSCO) and European regulatory level (EBA and ESMA). We support the CBI's efforts in continuing to actively contribute and engage with international colleagues and institutions before concluding any new significant requirements that may apply at a national level. Irish Funds notes this approach ensures a consistent international outsourcing framework and avoids diverging regulatory requirements across jurisdictions (particularly European).

While acknowledging the cross sectoral scope of the Draft Guidance, we have identified a few issues/concerns/questions within the paper, in respect of which, Irish Funds request the CBI to further consider/clarify and/or engage on. Irish Funds has identified proportionality and scope as two key aspects of importance within the outsourcing environment that requires further discussion and consideration, particularly as it applies to the Funds industry. We would welcome the opportunity to engage on this with the respective supervisors/regulators of our industry.

We believe there are relationships and activities undertaken by firms that are the subject of delegation arrangements, recognised in EU Directives/Regulation, as opposed to outsourcing arrangements, which are subject to national regulatory requirements. While the Draft Guidance uses the term outsourcing to include delegation, we believe delegation

arrangements which are explicitly provided for in EU legislation should be the subject of discrete consideration. We have outlined below examples of instances where we believe it appropriate to consider an activity as delegated rather than outsourced. For the purposes of our response to this Draft Guidance, we have primarily focused our observations in the context of outsourced activities.

The Outsourcing Environment

Before providing comment on specific aspects of the Draft Guidance we felt it appropriate to recap on some of the key drivers of outsourcing and the outsourcing environment, which we appreciate are acknowledged by the CBI in several instances.

As widely accepted amongst regulators and fund industries alike, outsourcing is not merely a cost efficiency measure. Cost may be a consistent factor in a firm's determination of its outsourcing arrangements, however, it is important to understand that it is not the only, or most important factor. Irish Funds emphasises that whilst certain risks arise in the context of outsourcing, outsourcing can also act as a means of reducing risk. Accordingly, in the performance of any outsourcing risk assessment, it is important on balance to consider not only the risks that arise but also those that are in fact reduced.

The collective investment schemes, which we service as an industry, are distributed globally to investors. Global operating models are essential to support investor needs across jurisdictions. A global operating model, utilising firm wide intragroup companies and external providers, allows firms to (i) deliver the 24/7 servicing that clients and their investors demand, (ii) establish and continue to develop deep centres of operational expertise and specialist function (e.g. technology), and (iii) support investors with services in the appropriate language and time zone.

Some of these benefits of outsourcing also mitigate the operational risk that regulated firms would otherwise have. As an example, trade input and data processing centres can allow for greater efficiency, STP and system controls. In many cases, the use of centralised functions or regional service centres, hereafter collectively referred to as Centres of Excellence (CoE) will reduce instances of 'unique' processes being developed in single locations (which increase error and continuity risks). Furthermore, the use of centralised locations and CoE can allow for stronger resiliency across locations and greater breadth of operating model. The corporate infrastructure of global organisations is designed to service their global client base. The use of CoE by a global organisation allows it to leverage the time zone benefits whereby these CoE can perform activities and provide pertinent information to the local legal entities in advance of the start of their business day, and support delivery of services to clients at a preferred delivery point in their business day. This approach avoids the need to establish and maintain multiple replica teams at local legal entity level.

While it is well understood that the risks of outsourcing need to be appropriately and proportionately managed, it is important that those risks are set against the benefits that outsourcing delivers to the ultimate investors.

The local (Irish) legal entities in our industry have established governance and oversight frameworks which oversee the quality and consistency of service received from their CoE and which are designed to be regulatory compliant.

The EBA Guidelines on outsourcing arrangements (EBA Guidelines) recognise the ability to leverage centralised functions in the oversight of outsourcing arrangements and we would ask the CBI to incorporate this into any final requirements they may deem appropriate.

Having considered the Draft Guidance, Irish Funds would note the following areas of concern, and request review of the Draft Guidance in these particular areas;

1. Supervisory convergence (General)
2. Intragroup Arrangements (Part B, Section 2)
3. Delegation v Outsourcing (Part B, Section 3)
4. Outsourcing Policy (Part B, Section 4)
5. Outsourcing Risk Assessment & Management (Part B, Section 5)
6. Due Diligence (Part B, Section 6)
7. Contractual Arrangements (Part B, Section 7)
8. Provision of Outsourcing Information to the CBI (Part B Section 10)
9. Management of Cloud Service Providers (CSPs) (General)
10. Proportionality (General)
11. Adoption Period (General)

1. Supervisory Convergence (General)

It is the view of Irish Funds that the Draft Guidance is not fully aligned with the EBA Guidelines. There are additional requirements above the EBA requirements, which seems inconsistent with the intended approach outlined in the Consultation Paper.

Whilst acknowledging that delegated activities should be subjected to risk management frameworks that are equivalent with those used to manage outsourcing arrangements, we suggest that requiring Irish Fund Service Providers to comply with overlapping requirements of outsourcing guidelines would neither be effective or consistent with the EBA Guidelines which could ultimately result in the creation of regulatory arbitrage and inconsistent levels of investor protection. We will explore this in more detail later in this letter.

One of ESMA's key priorities is to promote supervisory convergence, in general, and most recently in the supervision of costs. Failure to ensure convergence in the supervision of costs and the supervisory expectations of Irish Fund Service Providers is likely to create a competitive disadvantage for products regulated in Ireland.

To that end, we would note the following illustrative examples:

1.1. Offshoring Risk Assessments & Restrictions (Part B, Section 5.5)

CBI sets out specific considerations which firms should use to risk assess offshoring in section 5.5, including specific 'country' risks – i.e. Physical climate risk, Cultural or language issues and Employment conditions in offshore jurisdictions.

Regulated firms may, if appropriate, be restricted from offshoring activities, where for example, the ability of the CBI to supervise is either severely constrained or non-existent. Firms must also inform the CBI of circumstances where such issues (as outlined above) may arise before committing to any offshoring arrangements in respect of the outsourcing

of critical or important functions or services. In addition, section 5.5.1 (b) states that firms must also inform (by way of notification to) and engage in dialogue with the CBI in sufficient time to permit appropriate supervisory consideration of those risks.

Due to the detailed descriptions of offshoring risk considerations, firms may have to enhance their risk assessments as these are not all covered in the EBA Guidelines (e.g. Cultural or language issues, employment conditions in offshore jurisdictions). This will create the requirement for regulated legal entities in Ireland to create unique risk assessments over and above what is set out in the EBA Guidelines. We request alignment with the EBA Guidelines in this respect. Irish Funds also recommend, that the risks listed under 5.5 (a) in assessing country risk, be considered by firms only “as appropriate” to the outsourcing arrangement which would enable proportionately to be applied.

Furthermore, in respect of the potential offshoring restrictions outlined in section 5.5.1, we would recommend the CBI provide clarity on jurisdictions that are out of scope from being restricted based on current information sharing requirements.

1.2. Service Level Agreements (Part B, Section 7)

The CBI expects that arrangements with outsourced service providers (OSPs) are governed by formal contracts or written agreements, preferably that are legally binding. These should be supported by Service Level Agreements (SLAs).

Clarification is required as to whether this is applicable to critical or important arrangements only. We note that the opening paragraph of section 7 and section 10.2 (q) would suggest that this applies to all agreements. Irish Funds recommends firms to have the opportunity to document in their Risk Framework where formal contracts and/or SLAs are required. Where such agreements are deemed necessary by the firm, the approach outlined in the EBA Guidelines, paragraph 75, should be adopted.

1.3. Testing of Exit strategies (Part B, Section 9.1)

Exit strategies differ depending on the nature of the outsourcing arrangement and any testing of same will therefore need to be determined based on the strategy. For example, regular testing of strategies that involve transfer to an alternative third-party provider may present challenges, given any such transfer would first require contracts to be executed between the regulated firm and the alternative service provider. Irish Funds would therefore request the removal from the Draft Guidance of the requirement that exit strategies are “regularly tested” and instead adopt language per the EBA Guidelines “where appropriate, sufficiently tested (e.g. by carrying out an analysis of the potential costs, impacts, resources and timing implications of transferring an outsourced service to an alternative provider)”.

Irish Funds also recommends the requirement to have a documented exit strategy in place to align to the language per the EBA Guidelines “Institutions and payment institutions should have a documented exit strategy when outsourcing critical or important functions that is in line with their outsourcing policy and business continuity plans”.

1.4. Provision of Outsourcing Information to the CBI (Section 10.2/Appendix 3)

The CBI have referenced in section 10.2 of the Draft Guidance and further in Appendix 3 of the Draft Guidance specific data fields which the CBI requires firms to maintain in their outsourcing register.

Irish Funds would note differences between the list of requirements in section 10.2 and the Appendix 3 of the Draft Guidance.

Furthermore, we would note differences in the data requirements between both sections 10.2/Appendix 3 of the Draft Guidance and the EBA Guidelines part 54 and 55. These differences will be outlined in the table contained in Appendix 1 of this letter.

Irish Funds would recommend alignment of data fields in the register to those set out in the EBA guidelines.

2. Intragroup Arrangements (Part B, Section 2)

Irish Funds advocates that there is, and should continue to be, a distinction drawn between the manner in which a firm can address the risks arising in the context of third party outsourcing arrangements and the manner in which the risks can be addressed in the context of intragroup outsourcing arrangements. Accordingly, Irish Funds believes that this flexibility should be provided for within the Draft Guidance.

We acknowledge that outsourcing to intragroup entities requires appropriate governance and that the risks associated with intragroup and external third party outsourcing are often similar in principle, however how those risks can be addressed is to be differentiated in practise.

In section 2 of the Draft Guidance, the CBI notes that intragroup outsourcing '*can also present unique risks*' however, has not further specified the nature of the risks referred to in this regard. In the interest of clarity, Irish Funds requests the CBI to make clear the additional risk it perceives there to be in this regard so that Irish Funds can assess this issue comprehensively.

Irish Funds draws the CBI's attention to s.22(2)(d) of the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Investment Firms) Regulations 2017 (IFR), wherein the legislation provides that a Fund Administrator is required to ensure that their outsourcing policy '*recognises that the management of intragroup outsourcing must be proportionate to the risks presented by these arrangements*'.

Furthermore, we note in section 5.1 of Consultation Paper 138, that the CBI states '*it is acknowledged that the manner in which the guidance is applied may however differ for intragroup arrangements*'. Accordingly, Irish Funds appreciates the CBI's willingness to accept the adoption of practical risk management and governance solutions in the context of intragroup arrangements, provided of course that the application of such solutions do not result in any greater degree of risk.

Notwithstanding the stated intention of the CBI to afford the industry a degree of flexibility with respect to intragroup arrangements, upon review of the requirements within Schedule 1 of the Draft Guidance, this flexibility is not sufficiently provided for. In the view of Irish

Funds, the level of prescription adopted by the CBI erodes any discretion a firm might have sought to apply in the execution of its oversight of intragroup arrangements. In the view of Irish Funds, a requirement to adopt the same prescriptive requirements in respect of both external third-party and intragroup outsourcing arrangements results in an overly burdensome expectation that is not a proportionate management of the risks arising in the context of the two sets of arrangements.

Irish Funds accepts that whilst the principle of proportionality should not be interpreted to mean the requirements do not apply; in Irish Funds' view, the principle does advocate for the requirements to be applied proportionately to the risks presented by such arrangements.

In this regard, we would note the following points:

- Where firms have in place global data programmes and cyber security solutions to protect sensitive data these represent the most robust means of managing such risks. Such risks are unlikely to be further mitigated against by the adoption of additional local entity level measures. Irish Funds believes that outsourcing requirements need to take account of this and be applied in a proportionate manner to ensure the firms have the ability to avail of group programmes, which apply expert resources and technology to address such risks.
- With respect to exit strategies whereby firms adopting intragroup outsourcing will typically rely on a global resiliency model as opposed to triggering an exit scenario. In Irish Funds' view, this practice is proportionate to the risk and there is no elevation of risk arising simply due to the adoption of a different manner of address of this risk. In addition, other regulatory bodies recognise the limitations with developing and executing exit strategies for certain intragroup arrangements and waive the need for such testing. In their recent paper on Outsourcing and Third-party Risk, the Financial Stability Board ("FSB") noted that "Developing and executing exit strategies can be challenging in practice in the case of certain intra-group arrangements". Some jurisdictions (e.g. Germany) allow the establishment of specific processes to "be waived in the case of outsourcings within a group or within a network of affiliated FIs" on proportionality grounds.¹ We believe this approach is appropriate. Furthermore, we note the recent approach of the Prudential Regulation Authority ("PRA"), which acknowledges that for intragroup arrangements, firms' exit options might be considerably more limited than in other scenarios but that entities should take reasonable steps to try to identify options.² EBA Guidelines point to exit strategies that are "in line with business continuity plans"³.
- Many firms in Ireland will utilise their global operating model wherein multiple outsourcing activities are performed in a centralised location as part of their intragroup arrangements. This may result in a form of concentration risk insofar as one location is required to perform several services for the outsourcing party. Irish Funds wishes to outline two considerations in respect of this perceived risk.

¹ FSB, Regulatory and Supervisory Issues Relating to Outsourcing and Third-Party Relationships, Nov. 2020, p.28.

² PRA, at 11.5 - <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/consultation-paper/2021/march/ps721.pdf?la=en&hash=6C70BEE48B89D7965D43894DB848FC41CD5EC6C0>

³ EBA paragraph 106

Firstly, a firm at the outset of its authorisation, acquires the responsibility for the performance of its services singly. As such, the concentration risk pertaining to the use of a single service provider can be no higher than the concentration risk that is already present at the outset pursuant to the firm itself. On the contrary, the incorporation of outsourcing, even only to one service provider, reduces concentration risk on the basis that there is now one entity performing the service (i.e. the OSP) and another in reserve to do so (i.e. the firm). Whereas a firm, who has no engagement with a service provider whatsoever, shall perform such service itself without any reserve facility in operation. In incorporating outsourcing therefore, even in a concentrated manner, the service risk is reduced.

Secondly, irrespective of the lack of any enhanced concentration risk in the context of one service provider, the arguments previously outlined in the context of COE/global operating models are very much relevant to intragroup arrangements. As previously outlined, such firms have several risk mitigating techniques that can be adopted in an intragroup context, including direct access to the service provider in the event of an incident, common application of policies, standards and controls, shared service expertise and advanced technological solutions.

For these reasons, Irish Funds maintains that the overall risk arising in the context of intragroup arrangements is lower than the risks arising in the context of external third party arrangements, and the Draft Guidance should recognise the two different risk profiles.

The industry welcomes this opportunity to align the Draft Guidance to existing sectoral legislation/guidance. Irish Funds notes the Draft Guidance omits to provide direction in respect of outsourcing requirements pertaining to Branches. Irish Funds notes in this regard that the EBA Outsourcing Guidelines state “*Branches are non-independent parts of an institution and therefore services provided by a branch are not outsourcing*” however, this is not accounted for in the Draft Guidance. Irish Funds requests the CBI to consider the inclusion of a similar clarifying point in the Draft Guidance such as, “*Branches are not independent parts of an institution, services provided by one branch to another branch within the same institution should not be considered an outsourcing arrangement*”.

Notwithstanding the flexibility provided for in section 5.1 of the consultation paper, Irish Funds would note however, the prescriptive nature of the Draft Guidance does not afford firms the appropriate discretion in the performance of its oversight of intragroup outsourcing arrangements in a meaningful way. Irish Funds recommends the sentiment of the statement in 5.1 of the consultation paper to be reflected in the Draft Guidance, namely, that there is a need to allow for proportionality in an intragroup context, given the risk and resilience benefits such arrangements can provide. This should translate into the Irish entity being able to rely on certain things undertaken by the parent entity for the purposes of its Irish obligations (examples of such activities are set out under 3.6 in the PRA).

3. Delegation v Outsourcing (Part B, Section 3)

Irish Funds acknowledges the CBI’s views in relation to the concept of delegation. We also note that the CBI considers that the obligations of regulated firms with regard to the use of delegates are well covered in the relevant sectoral legislation, regulations and guidance.

As noted above, we agree that appropriate governance and risk management measures need to be in place in respect of delegated arrangements and that these must function effectively. However, we believe that there is empirical evidence to suggest that the existing rules governing the delegation of activities covered in relevant sectoral legislation, regulations and guidance are indeed functioning effectively and are more than sufficient to ensure that regulated firms can demonstrate that they have appropriate oversight of such delegated arrangements.

For example, in accordance with its obligations under the UCITS Directive and the AIFMD, for financial instruments that may be held in custody, a depositary shall hold all such financial instruments that may be registered in a segregated account opened in the depositary's books and all financial instruments that can be physically delivered to it. To comply with this obligation and to enable Irish UCITS and AIFs to access regulated global capital markets, a depositary is permitted to delegate its safekeeping duties to third parties that operate a global network of sub-custodians who can hold assets in markets where they have direct access to the local central securities depository (CSD). We would highlight that a depositary must do so with an "objective" reason as opposed to a "subjective" reason which would be more akin to an outsourcing arrangement.

In this context, Irish Funds believes it is necessary to draw distinction between the delegation of safekeeping duties and the delegation of supporting tasks that are linked depositary tasks other than safekeeping, such as administrative or technical functions. In accordance with recital 42 of the AIFMD, these supporting tasks are not subject to the specific limitations and requirements set out in the AIFMD on the delegation of tasks other than safekeeping. Furthermore, ESMA's Q&A on the application of the UCITS Directive further clarifies that supporting tasks can be entrusted to third parties subject to certain conditions where the execution of the task does not require any discretionary judgement, interpretation or expertise and the tasks are standardised and pre-defined. As these supporting tasks are activities that could be undertaken by the depositary itself, the "subjective" decision to delegate clearly meets the definition of outsourcing (refer to section 3.1) and should be treated as such. However, the objective reasoning for the delegation of safekeeping duties to third parties operating a global custody network infrastructure does not and should not be considered as an outsourcing arrangement.

A depositary must demonstrate that it has exercised all due skill, care and diligence in the selection and the appointment of a third party to whom its safekeeping duties have been delegated to. To comply with these and other requirements set out in the relevant directives and regulations, a depositary must implement and apply an appropriate documented due diligence procedure and control framework for the selection and ongoing monitoring of these third parties. A depositary must also monitor the third party's performance and its compliance with the depositary's standards and ensure that the third party exercises a high standard of care, prudence and diligence in the performance of its safekeeping tasks. At all times, where a depositary has delegated custody tasks and the financial instruments held in custody by a third party are lost, the depositary should be liable to return equivalent assets unless it can prove that the loss has arisen as a result of an external event beyond its reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary. Whilst these requirements may not be as detailed in parts as those in the proposed Guidance on outsourcing, when one incorporates the standard market practices adopted by Irish depositaries on a policy basis, the oversight standards employed are largely

equivalent. Global sub-custodians are highly experienced, independently regulated and expansively audited, ensuring an effective and appropriate risk management regime.

The global sub-custody model, as it stands today, complies with all aspects of European regulatory requirements and allows for the initial and ongoing due diligence and oversight of each of sub-custody appointment, thereby leveraging a deeply experienced function within the global custody network. These networks have been developed in line with internationally recognised standards and meet European regulatory requirements and best practices.

If Irish depositaries were required to revise their operating models so as to adhere to additional requirements set out in the proposed Guidance as well as other applicable sectoral guidelines on outsourcing in relation to such delegations, it would undoubtedly introduce an additional layer of cost and operational complexity for Irish authorised funds without reasonable justification. Such a move would create an uneven playing field for Irish authorised funds at a time when the European Securities and Markets Authority (ESMA) has launched a common supervisory action on the supervision of costs and fees of UCITS. Ensuring greater convergence in the supervision of costs is an integral part of ESMA's broader efforts on the cost of retail investment products and is key to improving investors' confidence in financial markets and reducing costs associated with obtaining financial products.

Irish Funds believes that it is imperative the proposed Guidance on outsourcing clearly distinguishes between delegation arrangements that meet the definition of outsourcing and those that do not and would welcome the opportunity to engage in discussions with the Central Bank to establish a shared understanding.

3.1. Definition of Outsourcing

Irish Funds would draw the CBI's attention to the EBA Guidelines, in which outsourcing is defined as:

“an arrangement of any form between an institution, a payment institution or an electronic money institution and a service provider by which that service provider performs a process, a service or an activity that would otherwise be undertaken by the institution, the payment institution or the electronic money institution itself”

In the case of depositaries, it is not possible for a regulated firm acting as a depositary to hold assets in custody in many external markets and, as such, the delegation of safekeeping to a global custodian and its network of sub-custodians/agents is more akin to utilising a global network infrastructure for the safekeeping of financial instruments.

Furthermore, the EBA affirms in its guidance that, as a general principal, global network infrastructures, clearing and settlement arrangements between clearing houses, central counterparties and settlement institutions and their members and correspondent banking services should not be considered as outsourcing.

More recently, in its supervisory statement SS2/21 on “Outsourcing and third party risk management” published in March 2021, the Prudential Regulation Authority (“PRA”) in the U.K. affirms that certain arrangements, including custody services, among regulated financial institutions, including between firms that are not part of the same group and

between firms and financial market infrastructures, do not fall within the definition of outsourcing.

The PRA expects firms that are parties to these arrangements, either as service providers or as service recipients, to “leverage applicable, existing regulatory requirements to manage relevant risks and promote an appropriate level of resilience.”

In conclusion, Irish Funds advocates for the clear exemption of certain delegated activities, including the safekeeping duties of a depositary, from the proposed Guidance where the risks associated with such arrangements are covered by relevant sectoral legislation, regulations and guidance, ensuring that the activities are managed effectively with appropriate oversight. Such an exemption would be in line with the EBA guidelines on outsourcing recognising that “global network infrastructures”, such as those provided by global custodians, do not fall within the definition of outsourcing. Ensuring convergence in the supervision of costs for Irish authorised funds and the supervisory expectations of Irish Fund Service Providers is of paramount importance to ensure that there is a level playing field in the EU. Anything less risks the creation of regulatory arbitrage and inconsistent levels of investor protection.

4. Outsourcing Policy (Part B, Section 4)

Irish Funds notes that part B, section 4.2 specifies a detailed list of requirements which should be included in the firm’s Outsourcing Policy.

The objective of many firm’s policies is to outline the key principles in the relevant area rather than providing specific detail on processes.

Irish Funds recommends that the Draft Guidance is updated to allow regulated firms to document the requirements set out under Part B Section 4.2 under an Outsourcing Framework that consists of an Outsourcing Policy and any other relevant ancillary documentation such as procedures.

5. Outsourcing Risk Assessment & Management (Part B, Section 5)

Irish Funds would highlight the following areas for the CBIs consideration in relation to Part B, section 5 of the Draft Guidance.

5.1. Data Security –Availability and Integrity (Part B, Section 5.3)

The Draft Guidance currently sets out the requirement to ring-fence data. Creating an offline copy of data is one control for data integrity however, it has significant limitations, including the inability to quickly restore data in the event of a major ICT-related incident. Firms are increasingly moving toward data immutability as the most advanced method available for ensuring data integrity while allowing for recovery within RTO (Recovery Time Objective). We recommend that reference to offline data ring-fencing be removed from the Draft Guidance.

The Draft Guidance list a series of controls for data in transit, rest and memory. While we recognise these controls, we do not believe that all the controls listed are always applicable.

For instance, 5.3 (g) data segregation (in a multi-tenant cloud environment) may not be applicable for certain data or applications, for example publicly available data. Equally, segregation does not guarantee the confidentiality, integrity or availability of data hosted in a public cloud environment. While a firm might choose to isolate its applications and data, we do not believe this specific control should be prescribed as it may limit the ability of firms to take advantage of the unique offerings available in the public cloud environment and therefore hurt its ability to innovate.

We recommend that the CBI update the final sentence in the second paragraph under section 5.3 from “including the following” to “such as the following”.

5.2. Concentration Risk (Part B, Section 5.4)

The Draft Guidance defines concentration risk as “the probability of loss arising from lack of diversification of OSPs”.

We would note that probability is a factor of more than the concentration itself, but of the resilience of the OSP and the controls the financial institution has in place. This is particularly the case for cloud services under the shared responsibility model in which the financial institution remains accountable for all factors and responsible for several elements that contribute to the resilience of the service.

We would also refer to point (e) (vi) in section 5.4 which ask firms to consider the contribution of outsourcing to ‘broader systemic concentration risk’ for the sector. We do not believe this is in the power of financial institutions to do as they lack the information necessary to make this assessment. We note that this factor is not given in the EBA Guidelines, and that this point was specifically noted on by the EBA in their commentary on page 108 of their Final Guidelines regarding paragraph 59.

6. Due Diligence (Part B, Section 6)

Irish Funds accepts the need for firms to conduct appropriate and proportionate due diligence reviews on all existing and prospective OSPs.

Irish Funds seeks clarity in respect of the two lists of Due Diligence requirements outlined in Section 6 and how such requires should be applied. Specifically, confirmation is requested as to whether the first list of considerations (noted in part B, Section 6 (a-j)) is applicable to initial Due Diligence only and whether the second list (noted in Part B, Section 6 (a-p)) is applicable in respect of ongoing Due Diligence reviews only.

Section 6.2 c) refers to the necessity for due diligence assessment to take place inter alia “in advance of the termination/rollover date” of the contract. However, at present at least, once an OSP satisfies the due diligence review, their appointment is typically for an indefinite period as opposed to being for a fixed time period. Irish Funds believes that a contractual expiry date is not required. By extension, Irish Funds does not believe it is necessary to have this additional form of due diligence performed as there is already interim inspection in the form of annual due diligence.

Irish Funds requests further clarity in this regard and believes it would be highly beneficial for these requirements to be aligned to section 12 of EBA Guidelines.

7. Contractual Arrangements (Part B, Section 7)

As per our comments in Section 6, Irish Funds does not believe it is necessary to include within the contractual arrangement an “end date” for OSP services, as referred to under Section 7.1 b). We believe a contract of indefinite duration is an appropriate and most time efficient appointment to adopt. The contractual arrangements can be amended upon request of either party and parties are entitled to terminate the contract upon sufficient notice in the event such contract is considered no longer desirable. Irish Funds believes that Regulated firms should determine the appropriate duration of a contractual appointment of an OSP and as such, firms should not have to apply an end date to contracts in all instances.

Irish Funds refers to point (s) pg. 32 of Section 7.1 (s) which states that in a situation where “Recovery & Resolution” arises, such issue cannot be considered grounds for termination. Irish Funds requests the CBI to clarify the meaning of the term “recovery and resolution” and to explain why such term is capitalised on the basis that there is not defined meaning adopted. Furthermore, Irish Funds explains that parties to an OSP contractual arrangement as generally entitled to terminate such contracts upon notice without “grounds”. Irish Funds request the CBI to clarify the rationale for including this requirement, noting also that it is not included in the EBA Guidelines.

8. Provision of Outsourcing Information to the CBI (Part B, Section 10)

Irish Funds highlights the following areas for the CBIs consideration in relation to section 10 of the Draft Guidance.

8.1. Notifications

Irish Funds notes that under the IFR, Fund Administration entities are required to submit outsourcing proposals to the CBI and the CBI is required to respond within one month if there are any objections to the proposal. The comments herein therefore apply to those activities that are not subject to IFR.

Irish Funds supports a notification approach and agrees with the CBI that it should not look to create a pre-approval process. However, we note that there are some statements that run counter to the suggestion that the process is not pre-approval. For example, section 10.1.1 sets out that sufficient time should be given ‘to permit appropriate supervisory consideration of the risks associated with the proposal’. Furthermore, the list of requests that firms may be required to undertake as part of early stage dialogue could be construed as effective ‘pre-approval’.

We would recommend that the CBI avoid the introduction of requirements that will effectively create a pre-approval process. Provided that firms have appropriate controls and governance requirements in place in line with existing regulations, additional roadblocks should not be put in place. This will be of particular importance for any outsourced functions that are time sensitive and could therefore have implications from a firm resilience perspective if they are held up as part of approval processes.

We would also recommend the following:

- Request Supervisory teams publish notification templates for submission of notification of proposed or changing arrangements; and
- Notification templates are consistent with the notification requirements as set out in the EBA Guidelines. Any additional information required by the Supervisory teams should be set out in separate sections to what is under the EBA Guidelines, paragraph 54; and
- The introduction of a set time limit in which the CBI can respond with requests for additional information. In line with IFR, Irish Funds would recommend a time limit of no greater than 30 days in which the CBI can respond.

8.2. Outsourcing Register

Although the register is broadly in line with EBA, EIOPA and ESMA Guidelines, it also includes additional information and data points as further detailed in Appendix 1.

Irish Funds request the removal of the additional information required and adoption of the EBA register instead. Firms should be able to rely on an EBA register that is consistent across all EU entities and prevent the need for local deviations.

While we understand the need to keep the register up-to-date, we would like clarification on the expectations from the CBI for firms to include future outsourcing arrangements in the register (e.g. shall this include outsourcing arrangements submitted to the CBI but pending authorisation, authorised outsourcing arrangements not yet activated etc.).

Data submitted as part of the Register shall be for a defined point in time (e.g. as of 31 December each year) rather than covering a period (e.g. from 01 January to 31 December each year). We request the CBI to clarify this point. Irish Funds also request clarification that the register will only include current outsourced arrangements.

The CBI has advised that submission of the data contained in the Registers will be by way of a periodic Regulatory Return, the frequency and timing of which to be specified. Irish Funds request confirmation as to whether this return will replace the current Annual Outsourcing Return (AOR) or be required in addition to the AOR?

Additionally, we request the CBI to advise on a transition period for the implementation and submission of the Register, allowing firms to collect all the necessary data.

9. Management of Cloud Service Providers (“CSPs”) (General)

The effective management, monitoring and mitigation of outsourcing risk, including the risks involved with outsourcing the storage of data to CSPs is recognised as a crucial component of any outsourcing framework.

As noted in the EBA Guidelines on outsourcing, the use of CSPs can offer financial institutions a number of advantages, such as access to innovation, greater resilience and security, economies of scale, flexibility, operational efficiencies and cost-effectiveness..

However, Irish Funds does recognise that there are also risks associated with these services which firms must control.

While we understand the need to ensure consistent data management, it should be acknowledged that the oversight of certain activities will not necessarily mirror the oversight framework applied to the outsourcing of core operations activities. Given the specialist nature of the services performed by CSPs, specialist consideration needs to be given to the oversight and management of such outsourcing arrangements.

In addition, we would note that much of what is expected from the CBI in terms of CSP management outlined in the proposed Draft Guidance, cannot be easily achieved by certain individual firms depending on size and capabilities.

Due to the size and number of CSPs and their potential systemic importance to industry, Irish Funds would support a harmonized, global approach to identify ways in which CSPs can provide the proper evidence and assurances of its security and resiliency programs to both financial regulators and institutions alike. However, we would not support the direct oversight of CSPs by the CBI and/or other individual national European regulators, as it would lead to a further fragmented regulatory environment. This in turn, could potentially lead to technology fragmentation, data localization, country-specific approvals and notifications for migration to the cloud which would slow or inhibit modernization and a complex global operational model for institutions that is more difficult to secure.

While we acknowledge that the intention of the Draft Guidance is to strengthen and consolidate the industry approach to the management of CSPs, we have identified a number of areas within the Draft Guidance, which we believe are challenging for financial institutions to conform to on an individual basis.

9.1. Exit strategies for CSPs

It is noted that throughout the Draft Guidance, there is an overarching emphasis on the availability of alternative suppliers and not on the technological resilience of CSPs. While we recognize that any company can fail, it should be noted that due to the nature of the main CSPs in the marketplace and the consistency of service provision achieved by these CSPs, the market, as a whole, has a strong record of resilience.

We consider that, while exit strategies are necessary, these should not be viewed as a short-term solution to service disruption, but as part of the firm's wider strategy to ensure it avoids vendor lock-in or has a roadmap in the event of a breakdown in the commercial relationship.

9.2. Testing for CSPs

Due to scale and size of the CSPs currently available in the marketplace, the expectations on financial institutions to perform stress and security penetration testing on CSPs should be reconsidered. It is not feasible for the regulated firm to perform this kind of evasive testing on another company and such testing would create significant risk to other users. Irish Funds recommends that the CSP be required to perform this testing and share evidence of the test and results with multiple financial institutions.

The regulated firm should retain the ability to conduct such testing on its own systems.

9.3. Intragroup cloud services v Third Party CSP

The Draft Guidance does not allow for any differentiation between the use of intragroup Cloud providers and external Cloud providers. In line with the industry view on outsourcing in general to intragroup OSPs, we would re-emphasise that the use of intragroup Cloud providers and external Cloud providers do not hold the same risk. The CBI should therefore seek to adopt a risk-based approach allowing firms to account for the difference in risk between intragroup cloud services vs. external Cloud providers. This view does not detract from the need to ensure appropriate oversight.

In addition, we feel that clarification on whether the use of a CSP by either an internal or third party OSP constitutes sub outsourcing as per the definitions outlined in the Draft Guidance.

9.4. Contractual Arrangements and Service Level Agreements (Part B, Section 7.1)

Section 7.1 (g) states that contracts with CSPs must cover “...where relevant data will be kept and processed, including the possible storage location, and the conditions to be met, including a requirement to notify the regulated firm, in advance, if the OSP/CSP proposes to change the location(s)”.

Due to the nature of how CSPs operate and store their data, the financial institution often has little control over influencing the contract to the extent of determining the exact location where the data is stored at all times. Fine grained location is not typically revealed, rather locality is defined in a “region”. We suggest that the wording in the Draft Guidance is updated to reflect that location is defined as the region the data is stored and not a specific location.

As noted throughout, certain elements of the proposed Draft Guidance pertaining to the oversight of CSPs are more prescriptive than the EBA Guidelines and may result in existing practices, implemented under the EBA Guidelines, needing to be revised to ensure they remain relevant to CBI expectations.

Irish Funds notes differences throughout most of the measures noted in section 5.3 and also in reference to security architecture, safe harbour and encryption keys.

Irish Funds would recommend that the CBI fosters a harmonised approach for IT in the Financial Services sector and that the CBI should allow the EU DORA (Digital Operational Resilience Act) negotiations to conclude before implementing any new guidance or regulations.

10. Proportionality (General)

Irish Funds would like to clarify the expectation of the CBI in adopting the Draft Guidance based on the nature, scale and complexity of the regulated firm’s business.

The application of outsourcing oversight as outlined in IFR does not require firms to differentiate outsourcing based on critical or important activity whereas this is the approach adopted in the Draft Guidance. Irish Funds recommends additional clarity from the CBI as to how these two approaches will work in practice.

11. Adoption Period (General)

It is the Irish Funds position that the CBI should consider a transition period for the implementation of the entire Draft Guidance, noting that firms who fall within scope of the EBA, EIOPA and ESMA Guidelines will already have elements of the requirements in place.

Such a transition period will allow for a full assessment of the impact of changes upon both the firm's governance and operational framework and to existing contracting arrangements, where firm's may be required to migrate existing arrangements using normal contract cycles and recognising that this involves negotiation between parties.

Unless required through the other regulatory frameworks referenced in section 6 of the consultation paper CP138, Irish Funds would suggest a flexible and proportionate approach as envisaged in CP 140 Guidance on Operational Resilience.

12. Additional Clarifications not addressed in the Draft Guidance

12.1. While it is helpful that the definition on outsourcing provided by the CBI ("an arrangement of any form between a regulated firm and an outsourced service provider by which that service provider performs a process, a service or an activity that would otherwise be undertaken by the regulated firm itself, even if the regulated firm has not performed that function itself in the past"), is in line with EBA Guidelines, there are however, grey areas in relation to third party vendors.

Irish Funds suggests the Draft Guidance to be updated to include a definition of third party vendor relationships.

12.2. Throughout the COVID-19 pandemic, global firms have successfully transitioned the way people work from being predominantly an office-based environment to working remotely. Many Irish regulated firms and their OSP's are now considering establishing working remotely as a longer-term strategy and managing their office footprint accordingly. To date, Irish regulated firms continue to manage and oversee outsourcing arrangements at a specific office location level. However, as OSP's develop their remote working model, their staff may be designated as 'working remotely' or hybrid rather than working in specific approved office locations.

Irish Funds propose that the global trend towards working remotely and the impact on how Irish firms oversee OSPs be acknowledged in the Draft Guidance.

12.3. In Irish Funds' view it would be helpful for the CBI to clarify, in a designated section within the Draft Guidance, the requirements applicable to those outsourced arrangements

which are not deemed to be 'critical or important'. Having reviewed the Draft Guidance, Irish Funds understands that such requirements are limited to those set out in section 7.3 (b) and section 7.5 (b) on the basis that the CBI has used the language 'regardless of criticality or importance'; and section 10.2 on the basis that the CBI has stipulated that this section applies to *all* existing and future outsourcing arrangements. However, in Irish Funds view, it would be helpful for the CBI to make clear the requirements applicable to non-critical and non-important outsourced activities.

We hope you find these comments constructive. We believe it would assist your consideration of our response if we were to meet and talk you through the issues raised in this response and we would be available to meet at your convenience.

Yours faithfully,

Aoife Coppinger

Appendix 1- Outsourcing Register

CBI Draft Guidance section:	CBI Draft Guidance Wording	EBA Section	Differences Noted
10.2 a	A reference number for each outsourcing arrangement;	54 (a)	No Comment
10.2 b	The start date and, as applicable, the next contract renewal date, the end date and/or notice periods for the service provider and for the institution or payment institution;	54 (b) Not included	Extra requirement in Appendix 3 of the Guidance: <i>"For Fund Administrators the date when permission granted and the "Go Live" date"</i> This is also not included in 54 (b) of the EBA Guidelines. Irish Funds recommend removing this from the Outsourcing Register
10.2 C	A brief description of the outsourced function, including the data that are outsourced and whether or not personal data (e.g. by providing a yes or no in a separate data field) have been transferred or if their processing (of personal data) is outsourced to a service provider;	54 (c)	Extra Requirement in Appendix 3 of the Guidance <i>"The Guidance on Outsourcing for Fund Administrators requires: Details of Final NAV Model and the Funds which utilise the arrangement"</i> This is also not included in 54 (c) of the EBA Guidelines. Irish Funds recommend removing this from the Outsourcing Register
10.2 D	A category assigned by the institution or payment institution that reflects the nature of the function as described under point (c) (e.g. information technology (IT), control function), which should facilitate the identification of different types of arrangements;	54 (d)	No Comment
10.2 E	The name of the service provider, the corporate registration number, the legal entity identifier (where available), the registered address and other relevant contact details, and the name of its parent company (if any) the details should specify whether the OSP	54(e)	Not included in EBA 54 (e) "the details should specify whether the OSP is a regulated firm and if so, provide the name of the regulator;" Irish Funds recommend removing this from the Outsourcing Register

	is a regulated firm and if so provide the name of the regulator;		
10.2 F	The country or countries where the service is to be performed, including the location (i.e. country or region) of the data;	54 (f)	<p>Extra requirements in Appendix 3 of the Guidance specifies that the following items are tracked:</p> <ul style="list-style-type: none"> • The town/city where the where the service is performed • Identify sensitive business or data risk • Identify if data is offshored outside of EU/EEA <p>These are also not covered in 54 (f)</p> <p>Irish Funds recommend removing this from the Outsourcing Register.</p>
10.2 G	Whether or not (yes/no) the outsourced function is considered critical or important, including, where applicable, a brief summary of the reasons why the outsourced function is considered critical or important or not;	54 (g)	No Comment
10.2 H	In the case of outsourcing to a cloud service provider, the cloud service and deployment models, i.e. public/private/hybrid/community, and the specific nature of the data to be held and the locations (i.e. countries or regions) where such data will be stored;	54 (h)	No Comment
10.2 I	The date of the most recent assessment of the criticality or importance of the outsourced function.	54 (i)	No Comment
10.2 R	The firms within the scope of the prudential consolidation that make use of the outsourcing (i.e. the details of all of the firms / subsidiaries within a group using the service);	55 (a)	No Comment
10.2 S	Whether or not the service provider or sub-service provider is part of the group or is owned by firms within the group;	55 (b)	No Comment
10.2 T	The date/s of the most recent due diligence and risk assessments conducted including those involving services provided by	55 (c)	<p>EBA guidelines 55 (c) only refers to the Risk assessment.</p> <p>Irish Funds recommend removing the additional points on Due Diligence</p>

	sub-outsourcing providers and a brief summary of the main results;		and sub outsourcing providers from the Outsourcing Register.
10.2 U	The individual or decision-making body (e.g. the management body) in the institution or the payment institution that approved the outsourcing arrangement;	55 (d)	No Comment
10.2 V	The governing law of the outsourcing agreement;	55 (e)	No Comment
10.2 W	The dates of the most recent and next scheduled audits and reviews, where applicable - (to include reviews conducted by the regulated firms itself, its internal audit function and/or any independent third-party reviews);	55 (f)	No Comment
10.2 X	Where applicable, the names and details of any sub-contractors to which material parts of a critical or important function are sub-outsourced, including the country where the sub-contractors are registered, where the service will be performed and, if applicable, the location (i.e. country or region) where the data will be stored;	55 (g)	No Comment
10.2 Y	An outcome of the assessment of the service provider's substitutability (as easy, difficult or impossible), the possibility of reintegrating a critical or important function into the institution or the payment institution or the impact of discontinuing the critical or important function;	55 (h)	No Comment
10.2 Z	Identification of alternative service providers in line with point above;	55 (i)	No Comment
10.2 AA	Whether the outsourced critical or important function supports business operations that are time-critical;	55 (j)	No Comment
10.2 DD	The estimated annual budget cost	55 (k)	No Comment
10.2 EE	A record of terminated arrangements for an appropriate retention period.	N/A	Not included in the EBA register. Irish Funds recommend removing this from the Outsourcing Register.
10.2 BB	Confirmation and latest dates of the testing of business continuity plans. The status of the testing of these arrangements should be logged and tracked in the register/database	N/A	Not included in the EBA register. Irish Funds recommend removing this from the Outsourcing Register.

10.2 CC	Confirmation and dates of testing of OSPs business continuity plans;	N/A	Not included in the EBA register. Irish Funds recommend removing this from the Outsourcing Register.
10.2 BB	Confirmation and Dates of testing of firm's Exit Strategies. The review and testing of Exit Strategies should be documented in the database / register	N/A	Not included in the EBA register. Irish Funds recommend removing this from the Outsourcing Register.
10.2 J	Total number of outsourced service arrangements in place;	N/A	Not included in the EBA register. Irish Funds recommend removing this from the Outsourcing Register.
10.2 K	Total number of "critical or important" outsourced arrangements in place;	N/A	Not included in the EBA register. Irish Funds recommend removing this from the Outsourcing Register.
10.2 L	Total number of arrangements with CSPs;	N/A	Not included in the EBA register. Irish Funds recommend removing this from the Outsourcing Register.
10.2 M	Confirmation that the firm has an Outsourcing Risk Management Framework in place;	N/A	Not included in the EBA register. Irish Funds recommend removing this from the Outsourcing Register.
10.2 N	Confirmation that the firm has an Outsourcing Policy in place;	N/A	Not included in the EBA register. Irish Funds recommend removing this from the Outsourcing Register.
10.2 O	Confirmation that the Outsourcing Policy is approved by the Board or equivalent;	N/A	Not included in the EBA register. Irish Funds recommend removing this from the Outsourcing Register.
10.2 P	Details of provision by the firm of outsourcing service(s) to other regulated firms.	N/A	Not included in the EBA register. Irish Funds recommend removing this from the Outsourcing Register.
10.2 Q	Confirmation that Contracts / Written Agreements are supported by SLAs.	N/A	Not included in the EBA register. Irish Funds recommend removing this from the Outsourcing Register.