

Levy Consultation CP61,  
Industry Funding,  
Financial Control Division,  
Central Bank of Ireland,  
PO Box 9708,  
Dame Street,  
Dublin 2.

22<sup>nd</sup> February 2013

Dear Sir/Madam,

The Irish Funds Industry Association (the “IFIA”) is the industry association for the international investment fund community in Ireland, representing the custodians, administrators, managers, transfer agents and professional advisory firms involved in the international fund services industry in Ireland. The IFIA welcomes both the publication of, and the opportunity to comment on, the Central Bank of Ireland’s Consultation on Impact Based Levies and Other Related Matters (CP61). Below are our responses to a series of questions, posed in the Consultation Paper and other general comments on the content of the Consultation Paper. All responses and questions refer to the numbering used in page 21, Section 8, Summary of questions of the Consultation Paper.

## **General Comments**

The industry represented by the IFIA covers the activities which create, operate, administer, oversee and audit investment funds which are held by investors of many different types from around the world. The entities which provide these services are variously regulated and the end investment funds which are the outcome of this activity operate largely within legislative and other frameworks which focus on the “product”. The €1.2 billion euro of Irish domiciled funds (or products) which fall under the regulation of the Central Bank are created by a very wide range of international investment managers. As such there are a wide range of “firms” involved in the industry, most of whom have limited impact under the definition of systemic risk or customer loss but all of whom contribute to Ireland’s reputation as a centre of excellence in investment fund services and the resulting employment created here.

In approaching both the general themes and specific questions posed in the consultation the IFIA considers that a systematic approach to regulation and its costs is to be welcomed, and the Irish funds industry has been a proactive and constructive participant in the development of an internationally respected regulatory environment for cross border investment funds.

Ireland’s good standing and strong reputation as a well regulated jurisdiction is of significant importance to the funds industry in promoting the jurisdiction internationally. This good standing and reputation is judged in a number of ways, including the efficiency and effectiveness with which regulated entities and clients of the jurisdiction interact with the regulatory framework. In welcoming a robust and structured regulatory approach we also believe that the significant sums being invested in this framework should be assessed against metrics and performance indicators which the Central Bank should develop and share with all stakeholders. The IFIA would welcome the opportunity to work with the Central Bank in

developing appropriate metrics which could assist in providing regulatory certainty and an assessment of the various regulatory processes, which combined comprise the regulatory environment.

We acknowledge that the regulatory system and associated levies cover a very wide range of regulated financial services activities and therefore it is not the case that a single system will be optimal for all sub-sectors.

One area of clarification which is welcomed is, following a meeting with the Central Bank on the 12th February 2013, it was confirmed that the effect of the updating of the resource allocation for low impact fund service providers would be to reduce the estimated levy for this category from the €29,820 referred to in the Consultation paper to no more than €10,000.

## **Responses to Consultation Questions**

### **1. Do you agree with the Central Bank's proposal to use firms' impact categorisation under PRISM as the basis for the setting of the levies it charges regulated entities on an annual basis? If you disagree, what would you propose instead?**

At an overall level the IFIA agrees with the use of regulated firms' impact categorisations under PRISM as the basis for setting of annual levies. While agreeing overall we note the following:

- As stated in the consultation paper, risk based supervision seeks to align supervision resources to those firms whose failure poses most risk to the economy. In the case of the funds industry there is less direct linkage with the domestic economy. While this does not lessen the need for supervision it should be understood that the nature of this type of internationally traded financial service is significantly different to others which have much more direct systemic impact on the Irish economy.
- The funds industry and the cost of regulating it emanates from a very large number of individual funds (5,219 Irish domiciled funds (including sub-funds) together with 8,464 non Irish domiciled funds (including sub-funds)). The decision-making, subsequent implementation and oversight/assurance which occur are carried out by a range of participants, not all of who are subject to regulatory levies so the burden of regulatory levies falls on a relatively small population of service providers. The increases in levies for some firms, while significant, are understood in the context of the current 50% funding by industry. Should the model move to 100 per cent funding in the future we would suggest that the approach be re-visited.
- As referenced in the table within paragraph 3.3 there is a broad range of supervisory resource allocation within each "impact category". Therefore firms within the same impact category could be utilising supervisory resources at either end of the scale, yet each are required to pay the same levy. This highlights an inequity in the use of the "impact category" as the basis for setting the rates. To better understand the proposed approach it would be useful for the Central Bank to provide further information to enable regulated entities to understand the costs, direct and indirect, and how these are allocated to the respective sectors.
- Given the question which appears later in the consultation in relation to application fees for demand driven services we assume that should this come into effect these costs, which are currently included in the overall totals, would be stripped out thereby reducing the impact on existing regulated entities. We have provided further detail in response to the specific question contained in the Consultation Paper.

- We note the comment in paragraph 3.6 that it is unlikely that the adoption of impact categories will necessitate changes to the fourteen industry categories. Should such a change be necessary we would wish that this didn't have the impact of "cross-contaminating" existing categories in terms of cost.
- Additionally, should changes to the balance of the annual funding requirement allocated to each industry category occur as mentioned in paragraph 3.7 industry would request additional information/insight from the Central Bank in the interests of transparency.

**2. Do you agree with the Central Bank's proposal to allocate the cost of financial regulation activity on a basis consistent with the allocation of supervisory resources to regulated entities? If not, what cost allocation methodology would you propose?**

We agree in principle but it is difficult to comment in the absence of a clear understanding of the relative weighting of components that comprise the PRISM rating given that this will drive other cost allocations.

Looking to paragraph 4.3, while logical it is not necessarily the case that a regulated entity which consumes a certain level of a supervision resource will necessarily consume other regulatory resources in similar proportion. This may give rise to inequalities in the way in which overall levies apply.

We note the comment in paragraph 4.5 that in determining the appropriate level of supervisory resources one of the factors is tasks and challenges facing the financial services sector, including the EU/IMF Financial Measures Programme. None of these measures relate to the funds industry.

**3. Do you agree with the Central Bank's proposal to apply a minimum levy per umbrella plus an additional levy per sub-fund subject to a maximum number of sub-funds (i.e. Option 2)? If not, what alternative approach would you propose and why?**

The maximum levy payable by an umbrella fund has consistently been maintained at circa €5,000, we believe it appropriate to maintain this consistency and would have a preference for Option 2: Minimum levy per umbrella plus additional levy per sub-fund subject to a maximum number of sub-funds. However, we note that this is premised on a consistent 50% industry funding model and reserve the right to revisit this threshold if/when such public/private funding ratio is altered.

**4. Do you agree that the credit union sector should be required to fund the relevant proportion (currently 50 per cent) of the cost of financial regulation that would apply under an impact based approach to the levy process? If not, what alternative approach would you propose and why?**

Not applicable.

**5. Do you agree that this change be phased in over a period of 5 years? If not, what alternative approach would you propose and why?**

Not applicable.

**6. Do you agree with the Central Bank's proposal to impose an application fee in respect of each industry funding category proportionate to the average time taken to consider an application for authorisation? If not, what alternative would you propose?**

We agree with the concept of activity or demand driven charging for the review of an authorisation request. In agreeing with the concept the following are important:

- While the objective of the application is to seek an authorisation the actual activity is to review the authorisation request.
- If the user is paying for this service then it is reasonable for them to expect clarity and certainty around the following:
  - The expected nature and duration of the process.
  - How the effectiveness of the process is being monitored and assessed.
  - The cost of the process and how it compares to other jurisdictions.
- Where an application fee is collected for a new authorisation, that the annual funding levy for that entity for the first year of authorisation would be reduced by a similar amount.

**7. Do you agree that such a fee should be payable at the time an application for authorisation is submitted and that it should be non-refundable in the event that an application for authorisation is withdrawn or refused? If not, what alternative would you propose?**

We believe it appropriate that any application/service based fee should be payable at the time an application for authorisation (or other demand-driven service) is submitted. Given the rationale and nature of such a fee it would be difficult to envisage circumstances where a refund would be appropriate, unless an application was withdrawn before any significant review commenced.

**8. Do you agree with the Central Bank's proposal to maintain the policy of imposing pro-rata levies in respect of the period in relation to which a regulated entity holds an authorisation from the Bank? If not, what alternative do you propose?**

We agree with the proposal to pro-rata levies as this would more accurately match levies to the period a regulated entity was subject to supervision/regulation.

**9. Do you agree with the Central Bank's proposal to impose a penalty on any and all firms who do not pay their levy within the time allowed? If not, what alternative course(s) of action would you propose to ensure that all regulated entities pay their Industry Funding Levy?**

We do not believe the existing process whereby unpaid levies in one year are added to the budgeted cost for the subsequent year, is appropriate or equitable. It is difficult to understand how it could be considered equitable to re-allocate unpaid levies upon those entities that would have properly and appropriately paid their levies for the relevant period. We note the Regulations provide that firms must pay their levies within 28 days however, given the nature of the investment funds sector where not all funds deal on a daily/frequent basis, we believe that regulated entities within the sector should be given at least two month's notice of the regulatory levy within which timeframe payment should be made. Where appropriate notice of the levy has been provided (ideally two months) and payment is not forthcoming it is open to the Central Bank to pursue whatever remedies will be available under the 2013 Industry Funding Regulations.

**10. Do you agree with the Central Bank's proposal to seek the power to unilaterally revoke the authorisation of those firms which continue to fail to pay their Industry Funding Levy? If not, what alternative would you propose?**

It is difficult to see how a regulated entity that continues to fail to pay their industry funding levy should continue to be authorised/regulated by the Central Bank. However, the revocation of authorisation could have significant implications for not just regulated entities but also their customers, as such we believe this should very much be a last resort and one which ensures customers/investors are not exposed. It might be useful to agree an appropriate escalation mechanism so that it is clear as to what would be involved in such a process.

**11. Do you agree with the Central Bank's proposal to remit 100 per cent of the value of monetary penalties to the Exchequer? If not, how would you propose to treat monetary penalties?**

We believe Option 2, similar to the UK's Financial Services Authority model, whereby monetary penalties are off set against the levies of the industry category to which they relate, to be the preferred model as it is the model which Irish regulated entities, and their parent organisations, are probably most familiar.

We would be happy to discuss any of the above with you further, should the need arise.

Yours faithfully,



Pat Lardner  
**Chief Executive**