IRISH FUNDS INDUSTRY ASSOCIATION

Submitted via email to:
authorisationstandards@centralbank.ie

25th October 2013

CP 67: Response to Consultation on Authorisation Service Standards

Dear Sirs,

We welcome the opportunity to participate in the public consultation process relating to "*CP 67: Consultation on Authorisation of Regulated Firms, Funds and Intermediaries: Process Improvements and Service Standards*" (the "Paper").

Our submission is limited to a consideration of the Central Bank's proposals set out in the following sections of the Paper:

- *3. Process Improvements Strategy for High Volume Processes;*
- *9. Investment Firms Authorisation*;
- *10. Application Fees*;
- *11. Authorisation Performance and Draft Service Standards .*

We would like to set out our comments firstly in respect of sections 3 and 10 of the Paper.

Following that, we will set out some general observations regarding the proposed introduction of a two week time period within which the Central Bank can *"return incomplete applications"*, which is a feature of the application processes/services standards set out in both sections 9 and 11 of the Paper with which we are concerned.

We will then conclude with comments on the individual features of the particular processes/standards proposed, in turn, in sections 9 and 11 of the Paper.

Section 3. Process Improvements Strategy for High Volume Processes

We note that the aim of the Regulatory Transactions Strategy ("**RTS**"), referenced in Section 3 of the Paper, is *"to deliver more effective and efficient regulatory processes; and to improve the quality of both regulatory information and service to all stakeholders"*. We welcome the Central Bank's aspirations towards the achievement of these goals.

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We do, however, have some concerns regarding the new secure portal through which applications are intended to be submitted and the Central Bank's aspirations generally towards introducing a *"high degree of automation"* pursuant to the RTS.

Our concerns are underpinned by current experience of the Central Bank's Online Reporting System (the "ONR System"), particularly as regards the level of filing errors and the extent of time delays that have been experienced when trying to make submissions using the system. The ONR System has also suffered numerous 'site crashes' which has meant that documents cannot be accessed or filed while the system is 'down'. [A separate schedule is attached to this submission which sets out in more detail some of the issues relating to the ONR System causing concern.]

In addition, while it is noted that the Central Bank is seeking to promote dialogue with stakeholders through the proposed new online secure portal, we would observe that significant delay and confusion has been experienced to date when corresponding with the Central Bank through the existing *"Submit a Request"* portal on the ONR System. We would look for assurance therefore that any new online portal for authorisations will have improved technical and user support systems in place and a program that enables it to manage large flows of activity at any one time.

We note also the Central Bank's expectation, as stated in the last two paragraphs of page 12 of the Paper, that the public procurement process for a software solution to underpin the RTS will conclude in Q.3 2013 and that the Central Bank will be in a position to deliver a solution for the funds sector by Q.1 2014. We would suggest that the Central Bank consider permitting an introductory period where the new software solution might be used in tandem with the current hardcopy filing process so that the risk of applications being delayed, as stakeholders and the Central Bank become accustomed to the new automated processes, is reduced.

Section 10 Application Fees

We note that the Central Bank has decided to follow through with its proposals to introduce application fees notwithstanding certain reservations raised by stakeholders in response to *CP61*: *Consultation on Impact Based Levies and other Related Matters*.

Given this determination, we welcome the indication that *"an opportunity for further review and consultation in relation to the appropriate quantum of application fees"* will be provided in advance of the introduction of such fees in 2014. Particularly at this time of' economic recovery, and with a view to avoiding any potential impediment to Ireland's sustained competiveness, the matter of establishing an appropriate quantum for new fee structures should be rigorously assessed against how competing jurisdictions offer equivalent services.

We would also draw the Central Bank's attention to our concerns, set out elsewhere in this submission, regarding various aspects of the timelines proposed for the new processes/service standards. For example, our comments set out immediately below in relation to the proposals in sections 9 and 11 to introduce an initial two week period within which the Central Bank can return an application that is 'incomplete'. Obviously, where a new fee is being introduced, where previously an application was processed without being subject to a separate charge, it would be important that applicants see an improvement in the processing of applications. We would, submit therefore,

that any potential 'add-on' to the time currently taken to process applications within the Central Bank should be avoided.

General Comments in relation to "Complete/Incomplete" Applications

Both the proposed new two-tier process for MiFID and IIA authorisation applications described in Section 9 and the proposed service standards for the authorisation of funds, described in Section 11, contemplate the introduction of a two week period, following the first filing of an application for authorisation, within which the Central Bank can return the application by reason of it being 'incomplete'.

The proposal appears to be that applications will only be reviewed during this initial two week period for the purpose of determining whether or not it is complete and that the Central Bank's review of the substance of an application will only commence once it has been determined that the application is *in fact* 'complete' (see, by way of example, *pg 26 paras 1 & 2*).

We are concerned that this process will potentially, and almost certainly in the initial stages of its introduction, lead to significant increased delays in the processing of authorisation applications through the Central Bank.

Referring to the cross-border notification procedure introduced under UCITS IV, for example, where the Central Bank has 10 days within which to return an 'incomplete' application, it is our experience that the Central Bank will in most cases take the full measure of the 10 day period before advising that the application papers are in some, even quite minor respect, incomplete. Following re-submission, any further error noted, even if present in the application papers first submitted, can sometimes take a further 10 days before being notified to the applicant.

The current expectation in respect of most authorisation applications is that first comments on an application will be issued by the Central Bank within two weeks of the application first being filed.

If an application is incomplete due, for example, to one of the ancillary documents being accidently omitted or because a section of a Central Bank form that was expected to have been completed was not completed, this is generally raised by the Bank in first comments. We see no reason why this approach cannot continue to be applied.

We welcome the fact that the Central Bank has committed to publishing guidance on what will constitute a 'complete' application. If, however, the intention is that the Central Bank may take up to two weeks to advise whether an application is incomplete - particularly if an application can be deemed to be incomplete for some non-material reason - and then a further two weeks, following submission of a 'complete' application, to issue first comments, we would be firmly of the opinion that any such process would inevitably damage applicants' perception of the Irish regulatory environment.

Section 9. Investment Firms Authorisation

With regard to Section 9 of the Paper, we would have the following observations:

1. Can the Bank provide clarification around the proposed timeline for the introduction of the new two tier process for MiFID and IIA authorisation applications.

   In this regard, we note that the Paper (*at pg 24 para 3*) states that the intention is to introduce the new process in Q4 2013, but goes on to note (*at pg 28 para 2*) that the Central Bank will engage in a separate consultation process in relation to the new application process in September and October 2013, which consultation we assume has yet to commence. As submissions to CP67 itself are only due by 28 October, there appears to be some overlap between consultation and implementation and we would assume that time will be taken to consider the outcome of the consultations before implementing any proposed new process.

2. We note that it is intended to process applications according to two separate workstreams: **Level 1** for more *"straightforward applications"*; and **Level 2** for firms which present *"a heightened level of regulatory risk or business model complexity"*. The Central Bank's intention in doing this is *"to improve the turn-around time for more straightforward MiFID applications";* however the vast majority of such applications are by their very nature likely to require assessment pursuant to the more complex Level 2 process. There is a danger that there will be delays in processing applications unless there is clear, unambiguous guidance from the Central Bank from the outset as to how applications should be assessed in order to determine which Level of process is to be applied.

3. We note that the Level 2 process will require a *"legal opinion"* as to the MiFID/IIA activities in respect of which the applicant firm requires authorisation. It would be of concern to legal advisors to understand clearly what the Central Bank will be seeking in this context. To whom is it to be addressed and who may rely upon it? Clearly, any requirement for formal legal opinions is likely to add significantly to the time and cost to an applicant of preparing an application.

4. With regard to the proposed timelines for the Level 2 process, we note that after the preliminary meeting with the applicant, the Central Bank will have two weeks to inform the applicant of the documentation required for a complete application. On receipt of the application the Central Bank will have a further two weeks within which to advise the applicant whether its application is complete. Only on receipt of a complete application will the Central Bank commence its review of the application.

   We query why the Central Bank will require two weeks after the preliminary meeting to inform the applicant as to what information and documents are required for a 'complete' application, particularly in circumstances where it is intended to publish guidance as to what constitutes a 'complete' application. Surely the published guidance should itself define with sufficient precision and clarity the requirements of a 'complete' application. It is difficult for us to address this point in the absence of the Central Bank's proposed guidance.

   We would also submit that the two week period in which the Central Bank is reviewing the completeness of an application can also be used to review the substance of the application itself, since in only very rare instances, if at all, will the substance of an application be rendered 'unreviewable' due to some omission.

We would suggest that this approach should also be applied to applications assessed in accordance with the Level 1 procedures.

5. The Paper states with respect to both the Level 1 and Level 2 application process that *"with the exception of minor changes, the Central Bank will not review more than* [two in the case of Level 1/three in the case of Level 2] *submissions before reaching a decision"* on the application.

   Clarity is needed as to what is meant by this statement. What happens to an application that, for whatever reason, becomes subject to changes not considered by the Central Bank to be "minor" at a point where a third review (or fourth in the case of Level 2 applications) is required?

6. Page 28 paragraph 1 of the Paper notes that *"applications which have not been actioned by the applicant for an agreed period of time will be considered dormant and will be returned"*. The Central Bank should clarify whether it is intended that any application that is returned due to being considered *"dormant"* would, in circumstances where it is subsequently to be resumed, be treated as if it were a new submission; noting that in certain circumstances, such an approach may lead to increased costs for applicants and inefficiencies due to the duplication of work within the Central Bank.

7. Page 28 paragraph 1 of the Paper notes that *"any significant change to the business plan or shareholder structure of the applicant during the process will result in the return of the application and the applicant must resubmit the application"*. It is quite conceivable that such changes could occur during the course of an application for quite legitimate reasons (e.g. a change in director or the introduction of a significant new shareholder). We would submit, therefore, that any process which results in applications having to be resubmitted or reassessed in such circumstances would not be of benefit to either the applicant or the Central Bank.

Section 11 Authorisation Performance and Draft Service Standards

General Comment
By way of general comment on Section 11 of the Consultation Paper we note that this includes details of proposed target turn-around times for the processing of applications made by Firms (section 11.1) and Funds (section 11.2).

As defined in the Consultation Paper, "Firms" include, for example, banks, insurance undertakings, MiFID firms and fund service providers. In turn "Fund Service Providers" are defined to include UCITS Managers, AIFMs, Non-UCITS Managers, self-managed investment companies (UCITS and AIFs). The proposed turn-around times to process complete applications in respect of Firms is 100% within 6 months and 75% within 3 months of becoming complete. We would suggest that SMICs, in particular, should be carved out of the definition of Firms. SMICs should at least fall under the proposed target turnaround times suggested for Funds as described in section 11.2. Indeed reference to Funds in section 11.2 covers "umbrellas" as well as sub-fund application so perhaps the Central Bank's intention is that SMICs will be covered under 11.2. If this is the case then we would ask for clarification of this.

Further, we would suggest that the proposed target turn-around times for the processing of applications made by Fund Service Providers (other than SMICs which as mentioned should properly be dealt under 11.2) generally

should be considered separately from Firms. For example, it would not appear logical that the target turn-around time for a bank would be the same as that for a UCITS/Non-UCITS manager.

Section 11.2 Funds

The Central Bank has proposed two options for service standards in respect of the authorisation of funds. In our view, Option 1 is to be preferred.

We will address first the reasons underpinning our opinion that Option 2 should not be adopted.

Option 2:

1. Option 2 incorporates a mechanism in accordance with which applications will be *"deemed to have lapsed"* in circumstances where the Central Bank has not received a response from the applicant within specified time periods following the issue of comments/questions. In the case of clone applications, the time period specified is two weeks. In the case of applications for authorisation of non-clone umbrellas/sub-funds, this period is extended to four weeks.

   We note that the precise consequences of an application lapsing are not described in the Paper. It is difficult therefore to assess exactly the practical implications of such a process for applicants – e.g. are applications *"deemed to have lapsed"* solely for the purpose of the Central Bank assessing its own performance against the relevant service standards or will the new process have real practical consequences for applicants in terms of the speed with which their applications are ultimately processed within the Central Bank?

   If the latter, will the entire review process have to be undertaken anew following an application lapsing or will comments already issued continue to stand so that it is only the priority accorded to resuming review of the application following receipt of responses that is compromised?

   If Option 2 was to be considered, it would be essential that these matters be clarified by the Central Bank in advance so that applicants can be fully informed.

   The concept of applications lapsing by reference to the timeliness of responses to Central Bank comments/questions does not appear to recognise that legitimate reasons for delayed response exist, which should not result in an applicant being automatically relegated, as it were, to the 'back of the queue'. For example, key persons driving an application for authorisation might, for a variety of legitimate reasons such as illness etc., be unexpectedly unavailable at key periods and not therefore in a position to feed into the response process within the specified time period. The parameters of applications, in the case of new sub-fund authorisations for example, may often have to be unexpectedly reconsidered at some length midway through the process due to changing demands of key investors for whom the product is being established. Such legitimate delays can often result in the need for the processing of the application by the Central Bank to be expedited, as far as possible, once the issue causing the delay has finally been resolved, particularly where the original deadline for completion cannot be pushed out. The realities of doing business, therefore, require a regulatory review process where the reviewer retains a level of discretion as

to how applications are processed, rather than one which mechanically adjusts the priority accorded to the assessment of applications.

2. The target timeframes proposed for Option 2, both for the processing of complete clone umbrella/sub-fund applications (**A2.2**) and for the processing of applications other than in respect of clone products (**A2.3**) appear to be longer, in some cases significantly longer, than the timeframes within which those applications are currently processed.

   Currently, for example, legal advisors would normally expect applications for authorisation of non-clone sub-funds to take on average no more than 6 weeks from the date of first filing with the Central Bank to approval. However, in accordance with the proposed service standard A2.3, the Central Bank anticipates processing only 90% of 'complete' non-clone sub-fund applications within 3 months of receipt. For applications for authorisation of clone sub-funds, the proposed service standard, A2.2, anticipates processing the same percentage of 'complete' applications within 2 months of receipt by the Central Bank.

   The proposed timeframes might be considered more reasonable if applied exclusively to the processing of complete clone/non-clone umbrella authorisations. Indeed, given that sub-fund authorisations almost always take less time to process than umbrella authorisations, we would suggest, both in respect of Option 1 and Option 2, that separate service standards should apply to umbrellas and sub-funds.

Option 1

The services standards proposed in Option 1 are more consistent with the manner in which fund authorisation applications are currently measured by applicants, in that the focus is on the time it takes to process applications within the Central Bank. It is, therefore, in our opinion, the preferred standard.

Again, however, we would express a preference for different service standards (with different timelines) to be applied to applications for authorisation of clone/non-clone sub-funds and clone/non-clone umbrellas.

We would also re-iterate our concerns, set out above, in relation to the proposal to introduce a time period specifically for the assessment of whether an application is or is not complete.

As to the specific time periods proposed under Option 1, we note that the standard for processing clone umbrella/sub-fund applications (**A2.2**) is 100% within 3 weeks of becoming 'complete' and for processing non-clone umbrella/sub-fund applications (**A2.3**) is 100% within 6 weeks of becoming 'complete'. We would submit that, given the service standards under Option 1 address only the time taken to process an application within the Central Bank, there is scope to decrease the proposed 3 week/6 week thresholds. As stated on page 16 of the Paper, the current average authorisation time for funds (within the Central Bank) is only 3.5 weeks.

Alternative Approach

Notwithstanding our comments above in relation to the specific proposals put forward by the Central Bank under Section 11 of the Consultation Paper, we suggest that the Central Bank might consider an alternative approach in

relation to the proposed target turn-around times for the processing of applications made by Fund Service Providers and Funds. We note the Irish Stock Exchange commits to providing comments on listing applications within defined periods at each stage of the review process (i.e. within 3 days of receipt of initial draft of the listing particulars and within 2 days of receipt of subsequent drafts). While recognising that the scope of the Central Bank's review of Fund and Fund Service Provider applications is different, and indeed more involved, we feel that a reasonable time commitment in respect of the issuing of first comments and successive sets of comments on applications would be more effective in achieving the Consultation Paper's goals of improving consistency of decision making, turnaround times and transparency.

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

Yours faithfully,

Pat Lardner
Chief Executive