BNY MELLON

UCITS Consultation
Markets Policy Division
Central Bank of Ireland
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By Courier & Email: fundspolicy@centralbank.ie

28 March 2014

Re: Consultation Paper 77: *"Consultation on Publication of UCITS Rulebook"*

Dear Sirs,

We refer to the above and confirm that this response is submitted on behalf of BNY Mellon Fund Services (Ireland) Limited, BNY Mellon Investment Servicing (International) Limited and BNY Mellon Trust Company (Ireland) Limited ("BNY Mellon").

BNY Mellon is grateful for the opportunity to submit comments in response to the Central Bank of Ireland's ("CBI") Consultation in relation to the proposed Consolidated UCITS Rulebook.

BNY Mellon is aware of the IFIA response to CP77 and is in support of the comments and concerns raised therein.

Question 1
The Central Bank has previously placed significant reliance on the Promoter to underpin the formal regulatory regime by ensuring that only sizable entities with relevant experience could establish UCITS in Ireland, entities who could support UCITS in difficulty. To this end, the Central Bank has had a promoter approval process. We eliminated the promoter approval process for Irish authorised AIFs and placed reliance instead on the alternative investment fund manager ("AIFM"), taking into account the obligations on AIFM which the AIFMD imposes on them. In conjunction with this, we also elaborated in more detail the obligations of directors when an AIF gets into difficulties. We are proposing to take a similar approach for UCITS where we propose to also eliminate the promoter approval process. We will instead place reliance on the regulatory regime for UCITS management companies and will also elaborate the obligations of directors when a UCITS gets into difficulties. Do you agree with this approach?

Response:

BNY Mellon welcomes this proposed approach which we note brings the UCITS regime in line with that in operation for AIFMD under the CBI-released AIF Rulebook.

Question 2

UCITS are permitted to invest in transferable securities and financial derivative instruments which are listed or traded on stock exchanges or regulated markets. Guidance Note 1/96 sets out the Central Bank's approach to the determining whether a market meets the criteria for 'regulated markets' set out in the UCITS Regulations. Since the introduction of Commission Directive 2007/16/EC on eligible assets, there has been some overlap between matters covered by that Directive and Guidance Note 1/96. The Central Bank is removing this duplication by withdrawing that guidance note. As a result, the Central Bank will no longer review submissions on proposed regulated markets and will no longer publish a list of permitted markets for UCITS. Do you agree with this approach?

Response:

BNY Mellon also welcomes this approach by the CBI.

Question 3:

To aid the Central Bank's supervision of UCITS management companies and depositaries, it is proposed to extend the current financial reporting requirements. Currently UCITS management companies and depositaries are required to submit half-yearly management accounts covering the first six months of the financial year and audited annual accounts. It is proposed to require the additional submission of half-yearly management accounts covering the second six months of the financial year. Do you believe that the proposal would add significantly to the current reporting burden placed on UCITS management companies and depositaries?

Response:

The objective of this requirement is not clear to BNY Mellon and we would be grateful to receive clarification as to the value the CBI seeks to gain by this additional requirement.

BNY Mellon would respectfully proffer that the additional requirements proposed do not appear to provide additional comfort to the CBI over and above that afforded under the current regime, although given that we may not be fully aware of the CBI's rationale for proposing this requirement, we cannot give any complete opinion on the matter.

In the absence of such clarity, we make this submission on the assumption that the primary reason for this additional requirement would be to allow the CBI to assess the financial position of each regulated entity in a shorter time period than currently afforded by the current regime.

We note that currently, regulated entities must file unaudited financial statements covering the first six months of the financial year, within two months of the period-end, and audited financial statements for the full financial year within four months of year-end. Capital adequacy returns have to be filed with each of these sets of financial statements.

With respect to the proposed requirement to submit additional half-yearly management accounts covering the second six months of the year, we are unaware of any jurisdiction in which separate six monthly accounts are required for the second six months of the financial year for any reason, including for submission to a supervisory authority.

We are aware however, that a number of jurisdictions require the filing of "Prudential Returns" in advance of the submission of final audited financial statements – and, depending on the CBI's rationale in considering this requirement; this might be a more appropriate solution in terms of achieving the CBI's objectives.

Therefore BNY Mellon proposes, as one possible alternative to the approach outlined in CP77, that the proposed amended requirement be revised to require the filing of the capital adequacy return based on the unaudited annual financial statements within two months of year-end. For the avoidance of doubt, we are not suggesting that the unaudited financial statements would be submitted at this time.

BNY Mellon further proposes that a final capital adequacy return would be filed with the finalised audited financial statements together with a reconciliation between the two if there had been any adjustments made with explanations thereof.

BNY Mellon believes that the proposal outlined above would ensure the CBI is fully aware of the financial standing and liquidity position of each regulated entity, without requiring the submission of unaudited accounts within two months of year end, followed by final audited accounts within a further two months.

However, we would again respectfully request that the CBI re-consider the potential benefit gained from such additional requirements.

We hope that you will find this submission of benefit in your determination of CP77.

Yours sincerely,

Joe Duffy
Ireland Country Executive
BNY Mellon