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**By Email**

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Central Bank of Ireland  
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9 February 2016

**Re: Consultation on Central Bank Investment Firm Regulations 2015  
Consultation Paper 97  
("CP 97")**

Dear Sirs

We refer to CP 97 and welcome the opportunity to provide our views on the proposed Central Bank Investment Firm Regulations (the "Proposed Regulations").

We are of the view that the Regulations present an opportunity to clarify certain aspects of the regulatory relationship between firms authorised as:

- investment business firms under the Investment Intermediaries Act 1995 (the "IIA"), and which come within the meaning of an investment intermediary as defined in Part 7 of the Handbook of Prudential Requirements for Investment Intermediaries, ("Investment Intermediaries"); and
- investment firms authorised under the European Communities (Markets in Financial Instruments) Regulations 2007 (the "MiFID Regulations").

As the Central Bank is aware there is a significant degree of regulatory overlap in terms of the regulatory permissions for both Investment Intermediaries and for investment firms authorised under the MiFID Regulations ("MiFID firms"); in most cases Investment Intermediaries and MiFID firms are authorised to provide the investment business services<sup>1</sup> or investment services<sup>2</sup> of (1) receipt and transmission on behalf of clients of orders in relation to one or more investment or financial instrument<sup>3</sup>, and/or (2) investment advice in respect of one or more investment or financial instrument for which the relevant firm has an authorisation from the Central Bank. The Consumer Protection Code 2012 (the "Code") provides further commonality in that both Investment Intermediaries and MiFID firms must comply with its requirements in particular the suitability obligations of the Code when providing advice on certain investment instruments.

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<sup>1</sup> as defined in the IIA

<sup>2</sup> as defined in Schedule 1 Part 1 of the MiFID Regulations

<sup>3</sup> investment instrument as defined in section 26(1)(a)(i) of the IIA (clarified in the Handbook of Prudential Requirements for Investment Intermediaries) and financial instrument as defined in Schedule 3 Part 3 of the MiFID Regulations

The MiFID Regulations recognise the necessity in certain circumstances for one investment firm<sup>4</sup> to rely on another investment firm where both are providing investment services to a mutual client. As the Bank is aware Regulation 103 implements Article 20 of the Markets in Financial Instruments Directive<sup>5</sup>. Regulation 103 relates to the provision of services through the medium of another investment firm as set out below:

*“103. (1) An investment firm which receives an instruction to perform investment or ancillary services on behalf of a client through the medium of another investment firm may rely on client information transmitted by the other firm.*

*(2) The other investment firm remains responsible for the completeness and accuracy of the information transmitted.*

*(3) An investment firm which receives an instruction on behalf of a client to perform investment or ancillary services, through the medium of another investment firm may rely on any recommendations in respect of the services or transaction that have been provided to the client by that other investment firm.*

*(4) The investment firm which mediates the instructions remains responsible for the appropriateness for the client of the recommendations or advice provided.*

*(5) An investment firm that receives client instructions or orders through the medium of another investment firm remains responsible for concluding the service or transaction in accordance with these Regulations.”*

The purpose of this submission is to request that the Central Bank provide clarity for Investment Intermediaries and MiFID firms via the Proposed Regulations when both are working in tandem to provide investment services to mutual clients. An example of when it should be possible for both firms to work in tandem is set out below.

Consider a MiFID firm that has appointments with Investment Intermediaries via written agreements. The MiFID firm offers model portfolios managed on a discretionary basis. The Investment Intermediaries are, in this example, authorised to advise on all of the investment instruments within these model portfolios. The client wishes to be advised by the Investment Intermediary with regard to his/ her investment decisions. The Investment Intermediary conducts a suitability review and has come to the conclusion that (i) the model portfolio service; and (ii) a specific model within the model portfolio service offered by the MiFID firm is suitable for the client.

In order to proceed to invest the client in the recommended model portfolio it is very important that each party is clear about how the arrangement will work in practice. On the basis of section 103 the MiFID firm is relying on the Investment Intermediary to assess suitability for the model portfolio discretionary managed service and the choice of model for the client. The relationships should be clearly documented as set out below.

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<sup>4</sup> investment firm as defined in the MiFID Regulations

<sup>5</sup> See Appendix 1

### **1. Intermediary Agreement between the Investment Intermediary and the MiFID firm**

The suitability provisions within the agreement should clearly set out that:

- the Investment Intermediary is responsible for (i) assessing whether the model portfolio service and the choice of model portfolio are suitable for the client; and (ii) assessing the ongoing suitability of both the model portfolio service and the model portfolio based on the clients personal and/or financial needs and investment objectives; and
- the Investment Intermediary will ensure the clients understand the role of the Investment Intermediary and the role of the MiFID firm.

### **2. Agreement between the Client and the MiFID firm**

The suitability provisions within the agreement should clearly set out:

- a description of the investment mandate of each model portfolio;
- while the MiFID firm is responsible for providing the discretionary management service in accordance with the investment mandate of the model portfolio, the Investment Intermediary is responsible for (i) assessing whether the model portfolio service and the choice of model portfolio are suitable for the client; and (ii) assessing the ongoing suitability of both the model portfolio service and the model portfolio based on the clients personal and/or financial needs and investment objectives; and
- the MiFID firm will not provide any advice on the suitability of the model portfolio service and the choice of a suitable model portfolio for the client and shall accept no liability to the client arising from an inaccurate assessment of suitability by the Investment Intermediary.

### **3. Agreement between the Client and the Investment Intermediary**

The suitability provisions within the agreement should clearly set out:

- that the role of the Investment Intermediary is to (i) assess whether the model portfolio service and the choice of model portfolio are suitable for the client and (ii) assess the ongoing suitability of both the model portfolio service and the model portfolio based on the clients personal and/or financial needs and investment objectives;
- that the role of the MiFID firm is limited to managing the investments in accordance with the mandate of the model portfolio.

It is our view that section 103 of the MiFID Regulations enables firms to operate as set out above. It would be helpful if the Proposed Regulations clarified this definitively in order that both MiFID firms and Investment Intermediaries may continue to meet the needs of their client's and keep abreast with the pace of developments in an ever evolving financial market, where Investment Intermediaries recognise the time required to effectively manage portfolios on an advisory basis and that by outsourcing investment management to a MiFID firm they can provide a more effective service to their clients.



We would be happy to meet with you to discuss this submission.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Ger Knowles", written over a horizontal line.

Ger Knowles  
Group Head of Regulation & Compliance

cc: Simon Sloan, Securities and Markets Supervision, Central Bank of Ireland  
Ray Hanniffy, Market Policy Division, Central Bank of Ireland