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Sent by email to: fundspolicy@centralbank.ie

27th January 2016

Re: Consultation on Central Bank Investment Firm Regulations 2015 – Consultation Paper CP 97

Dear Sir/Madam,

Irish Funds welcomes the opportunity to comment on this Consultation on Central Bank Investment Firm Regulations 2015 and have set out below our comments on the draft Regulations. Initially we have made some general observations followed by comment on specific proposals.

General Comments:

1. *Structure and layout of the Regulations*

In respect of outsourcing, the proposed Regulations are an improvement in terms of user-friendliness, on Annex II to Chapter 5 of the AIF Rulebook ("Requirements on Outsourcing of Administration Activities in Relation to Investment Funds"). The definitions and clarifications provided within the Regulations are welcomed.

2. *Proposed capital changes*

We believe that capital planning using a CRD framework is very resource intensive and should only be used selectively where it is clear that it is warranted. This is particularly the case given the recent EBA report to the European Commission on the application of CRD IV to investment firms which recommends a different approach going forward.

At the very least Irish subsidiaries of Asset Managers which can evidence that they are CRD compliant should be exempted from any future requirement or at least given an ability to opt out when they can illustrate compliance at a parent level. Additionally, one of the aims of CRD IV for investment firms is to ensure that failing firms hold enough financial capital and other resources to cover the risks and costs associated with their respective businesses. Where subsidiaries of Asset Managers comply with this at a European group level, then sufficient capital is already held to meet the needs of an Irish subsidiary in a wind down and other scenarios. Therefore, provided that provision has been made to ensure adequate capitalisation of the Irish subsidiary, this should provide ample regulatory comfort.

Moreover, even in the case of less complex structures which do not have cross-border parents the typical asset manager business model and particular risks do not justify performing a separate and distinct ICAAP.

We believe that any CRD type capital budgeting requirements would be onerous and would in effect be imposing on Irish AIFMs the same capital calculations and requirements as exist for MiFID firms at present. As Ireland would be the only country in Europe with this requirement, it would create a significant cost and staffing disadvantage and represent regulatory "gold-plating". We understand that there is already some evidence in the UK and other European countries of the handing back of MiFID licenses in favour of an AIFM license. We would expect that any relatively onerous capital calculation methods would place Ireland at a clear disadvantage to competitor jurisdictions.

3. *Annual return of outsourced activities*

The requirement to make an annual return of "outsourced activities" would not appear consistent with current regulatory requirements for other industries. Typically, the requirement is that an entity reports "material" outsourced activities. In particular we would refer to the EBA Guidelines on Outsourcing 2006, Section 4.3 paragraph 2, "An outsourcing institution should adequately inform its supervisory authority on any material activity to be outsourced."

4. *Conditions for release of Final NAV by Outsourcing Service Provider (OSP)*

We are concerned with the proposed inclusion, in Central Bank Regulations, of detailed conditions under which the release of a Final NAV by an OSP will be permitted. Our concern emanates from the presumption (possibly even prescription/interference) by the Central Bank regarding the preferred operating and process models of globally authorised entities. Insisting that any one element or process be completed in a prescribed manner is inappropriate in our view. Instead, we believe the emphasis should be on the integrity and efficacy of the chosen model/process as an integrated whole. We accept that the Irish Administrator, as the contracting party, needs to be able to demonstrate that it has the required resources, sophistication and commitment to ensure that the outsourced services are properly delivered.

The supervision by the Irish Administrator of an outsourced service/service element is a fundamentally important element of any model. The rules should not prescribe any one activity or part of an activity to be carried out in the jurisdiction. The oversight and control of outsourced activities is an increasingly substantive part of the process carried out in Ireland. The key test therefore is for each regulated entity to be able to demonstrate, to the Central Bank's satisfaction, that the procedures, systems and controls contained in any particular model/process are sufficient to ensure the Fund Administrator has oversight and control of the outsourced activities. This should be possible not only in the context of intra group outsourcing but also in the context of third party outsourcing.

5. *Preliminary NAV release by Outsourcing Service Provider;*

In 2015 we welcomed the publication of the Central Bank Outsourcing Application Template ("the template") as it provided Fund Administrators with guidance on the matters to be documented when requesting approval for new outsourced activities. However, it is important that any potential ambiguity between the current proposed Regulations and the template, for example with respect to

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the release of the Preliminary NAV, is avoided. Within the template, there is a specific section to be completed where a Preliminary NAV will be released by an OSP. It therefore follows that Preliminary NAV release by the OSP must be approved by the Central Bank. However, neither Annex II of the AIF Rulebook nor the Regulations make reference to Central Bank approval being required for Preliminary NAV release by the OSP. We suggest that the requirements of the Regulations and the template are aligned to ensure consistency and clear understanding on the outsourcing approval process. Furthermore, we recommend that the template be made more prescriptive and/or guidance issued on what information should be provided in completing the template. This would further assist Fund Administrators in addressing the Central Bank's expectations and requirements from the outset of an application and might help provide the Central Bank with more detailed information at the outset rather than having to follow-up with subsequent requests.

Specific Comments:

Below we provide comments on the relevant paragraphs within the Draft Regulations, using the source numbering and/or paragraph references.

Paragraph 2 - In the absence of a definition of "administration activities" uncertainty may arise as to the actual meaning of the term. For example, where basic tasks such as printing are outsourced, will the Regulations apply in full?

Paragraph 4(d) - The wording in the proposed Regulation seems excessively broad, and would include all manner of minor proceedings. It is suggested that the Central Bank consider reinserting the word "significant" into the proposed wording of the Regulations.

Paragraph 8(3) - This paragraph proposes that the Compliance Officer will have responsibility for compliance with all legal and regulatory requirements. This is inconsistent with other Central Bank guidance on the role of the Compliance Officer which states that "The appointment of a Compliance Officer is designed to supplement, not supplant, the responsibility of the Board and of senior management to ensure compliance with legislation and applicable guidelines"[1]. Furthermore, the remit of the Compliance Officer in many organisations is functionally restricted to financial services law/regulation. The wording, as currently proposed, would impose responsibility for all legal requirements upon the Compliance Officer such as company law, health & safety law, tax law, employment law, etc.

In the context of the Fitness and Probity regime, we would question the need for Regulations 8(2) - 8(4).

Paragraph 11(3) - This requires that a firm, which records any telephone conversation, retain it for "at least six years". The current Prudential Handbook requires that calls are retained for a period of "at least six months" (s. 5.2). This is a significant change to the retention period. The rationale for the increased retention period is unclear, when the change potentially introduces a significant increased cost to firms.

Paragraph 13(4) - This sets out a schedule of reports, including reporting frequency and states that the Central Bank may impose more frequent reporting: "Notwithstanding the reporting frequencies set out in the Schedules to these Regulations, the Bank may impose more frequent reporting". It is

[1] See CBI's Appointment of a Compliance Officer Guideline to the Insurance industry, 2010.

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not clear whether the Central Bank intends that the additional reporting frequency be applied to specific firms, or across all reporting firms. In addition, this power seems to be purely at the Central Bank's discretion, with no criteria to consult prior to the imposition of additional reporting. We would suggest that any additional reporting should be preceded by consultation with industry.

Paragraph 14 - States that a Fund Administrator shall comply with the requirements on outsourcing of administration activities in relation to investment funds to which it "directly or indirectly" provides fund administration services. It is not clear what scenarios the Central Bank has in mind when using the term "indirectly".

Paragraph 22 – This appears to be a new requirement where a Fund Administrator which provides administration services to investment funds not authorised by the Central Bank shall ensure that the prospectus issued by any such investment fund does not imply in any way that the investment funds is authorised by the Bank. While the Fund Administrator could create a control/check to seek to meet this obligation on a best endeavours basis. However, as the Fund Administrator is not the owner of the prospectus, we do not believe it reasonable to make the Fund Administrator directly responsible for the content of the prospectus.

Paragraph 39 – The first 2 sentences of Annex II 3.2 are replicated in paragraph 39 with one change - "the NAV for dealing purposes" has been changed to "the final NAV". The interpretation of the "NAV for dealing purposes" was the point at which investors received their statements. In the draft Regulations the "Final NAV" is defined as "a net asset value calculated for the purposes of dealing in an investment fund provided to investors, published or otherwise…" We would ask that the Central Bank confirm the proposed new definition still means that the NAV for weekly/monthly dealing funds is only final when the investors receive their statements.

Paragraph 40 - Provided the Fund Administrator's review of the NAV is completed the following day we do not believe it necessary to apply any conditions/restrictions.

These proposed conditions are significantly more extensive than those required under Annex II of the Central Bank of Ireland ("CBI") AIF Rulebook. Notwithstanding our earlier comments on these proposals we understand the primary purpose of these changes is to set out clearly the limited circumstances in which a Fund Administrator may outsource the check and release of Final NAV calculations and to specify the conditions Fund Administrators must comply with. However, where the Central Bank has currently (prior to the publication of this Consultation Paper) approved an arrangement/arrangements for the release the Final NAV we believe that these existing approvals should remain in force and a waiver granted. We do not believe it should be necessary to impose further conditions on existing arrangements where the Final NAV release has operated successfully over a period of time. To do so would create unnecessary disruption, cost and inconvenience to the parties involved with little or no benefit in terms of a reduction in operational risk.

The conditions listed cover investor requirements but does not recognise client specific SLAs. For example, where an existing US client launches an Irish regulated fund, the client wishes, as much as possible, to deal with the same US based administration team on the Irish entity as on their other funds. Client SLA is T+3 EST 5pm. American based office completes NAV preparation and review on T+3 at EST 1pm and sends Preliminary NAV to the investment manager for review. Investment manager approves for release at EST 4pm. Ireland review will not take place until T+4 so SLA will be missed.

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Additionally, if a client requires a T+1 GMT 8am NAV on a portfolio which contains European and/or American listed securities the only solution (outside of normal Irish Business hours extending beyond 6pm) is NAV completion and release from an Asian office. In this instance a local (Irish) review would be completed on the same day.

Paragraph 40(a) - Is there a specific reason why weekly/monthly dealing funds have not been included here?

Paragraph 40(d) - Where weekly and monthly dealing funds have NAVs released outside of normal Irish business hours this raises the same question as above as to whether this can just be applied to daily dealing funds.

Additionally, if the Central Bank deems the requirements contained in this paragraph necessary we would suggest that this requirement would more appropriately be stated as follows:

"The administrator shall be able to demonstrate that release of the Final NAV outside of normal Irish business hours (8am – 6pm) is necessary in order to facilitate investor dealing and other market activity."

The above amended requirement achieves the Central Bank's objective while at the same time avoids a finite list of circumstances which may over time evolve. This is particularly important given the proposed inclusion of these requirements in a Central Bank Regulation which may not be amended with the same ease as the current regime.

On the list of circumstances themselves we would make the following observations;

- The list is incomplete as it omits US investors needing T NAV prices (NSCC). We understand that there are existing clients who are already approved by the Central Bank to release current day NAV's for this reason.
- The list is silent with regard to other Global regions for example Australia and the Middle East.
- "Asia" is not defined.

Paragraph 42 - Is the meaning of this paragraph still the same as it was in Annex II 3.3? We assume the Administrator needs to show maintenance of the share register by demonstrating oversight and the ability to reproduce the register at any time.

Paragraph 45 - Can the Central Bank explain the intention of this new requirement? Where NAVs (both preliminary and final) are prepared by the same team in outsourced locations and oversight of the Final NAV is performed in the State; is this step a question of notifying the Central Bank that these teams also complete preliminary NAVs, which would not have explicitly been done in the past?

Paragraph 47 - This proposed timeframe, in our view, does not create the sufficient level of certainty required by Firms when undertaking preparatory work for outsourcing (e.g. engaging third parties, providing training, etc). For example, the Central Bank could receive a proposal on the 1st of the month and not respond until the 31st of that month seeking more information from the firm. While it

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is accepted that the Central Bank needs to consider each proposal fully and the volume of proposals before the Central Bank may fluctuate during a period, for practical commercial reasons the industry requires a more certain approval process/timeline.

Paragraph 48 - This is the equivalent of 3.6 in Annex II however the second sentence in 3.6 with respect to having to resubmit an application if it has lapsed is not included in paragraph 48. Is there a specific reason for removing this?

Paragraph 50 - Requires Fund Administrators to submit an annual return to the Central Bank detailing specific information. Is the Central Bank proposing designing a specific template and loading this to ONR for firms to complete? Is there a generally understood list of "outsourcing models" as referred to in this paragraph?

Paragraph 50(d) - Specifically requires the names of the funds where the Administrator has outsourced the check and release of Final NAV. We assume this means the annual return does not need to include the names of the funds that have other services outsourced e.g. Transfer Agency, Middle Office Operations etc.

- Will single line descriptions of each "outsourcing model" being used suffice, e.g. 1. Reconciliation & TA only, 2. Reconciliation, TA and Preliminary NAV calculation, 3.Final NAV Calculation, Check and Release. Or will the return require more detail?
- An area which would benefit from clarification is the format of the return:
  - will the format be prescribed, (XML, text, file, email, etc..)
  - will the return be through ONR system

Additionally, what form will the return take? Will it be on a template provided by the Central Bank? Additional guidance to assist Fund Administrators in their new reporting obligations, including clear descriptions on the specific information to be included in the return and confirmation of the person(s) responsible for submission would be welcomed.

Paragraph 53 - We note and accept the position, as set out in the Regulations that no form of outsourcing is risk free. However, in the case of intra-group outsourcing within large international financial services organisations, where dedicated locations may act as centres of excellence for particular administration activities, it may not always be practical for those activities to be performed by the Fund Administrator. We believe that intra-group outsourcing (commonly referred to as "offshoring") would benefit from additional guidance from the Central Bank.

Paragraph 69 – We are unclear as to the value of both an Internal Audit and a Compliance review. Also, in respect of the Compliance review, it may be the case for some firms that another department/control function would have greater competence to complete the review. Moreover, while internal audit departments and staff work to Institute of Internal Auditors ("IIA") standards, there are no similar standards for compliance reviews. If a Fund Administrator does not have a dedicated "Compliance Function", is this review still required?

This is the equivalent of 6.5 in Annex II however paragraph 69 has changed to say that the Internal Audit and Compliance reports on new outsourcing arrangements must be sent to the Central Bank within 3 months of the reviews being completed. Does this mean the maximum deadline for

submission of these reports is 15 months after the start of operations? We would welcome clarification of the timeline here.

In relation to the sentence “The Bank may require additional periodic reports during the course of any outsourcing arrangement”:

- At what frequency does the Central Bank intend the additional periodic reports to be completed?
- Under what circumstances does Central Bank envisage a need for additional periodic reports, i.e., will these be individual circumstances or will this requirement be extended in the future to cover all Administrators and all arrangements?

We hope you find these comments helpful, and we remain at your disposal to discuss the issues raised in this response further.

Yours faithfully,

Chief Executive