



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

2018

Investment Firms Questions and Answers

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Investment Firms

Questions and Answers

This document sets out answers to queries which may arise in relation to the Central Bank Investment Firms Regulations, MiFID II and MiFIR. It is published in order to assist in limiting uncertainty. It is not relevant to assessing compliance with regulatory requirements. In addition to being published in *‘Markets Update’* it will be posted on the Central Bank website and will be updated there occasionally as required. You should check the website from time to time in relation to any matter of importance to you to see if the position on a query has altered. The Central Bank reserves the right to alter its approach to any matter covered in this Q&A at any time.

In this document:

“***AIFM Regulations***” refers to the European Union (Alternative Investment Fund Managers) Regulations 2013 (S.I. No. 257 of 2013).

“***Capital Requirements Regulation***” refers to Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012.

“***Central Bank Investment Firms Regulations***” refers to the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Investment Firms) Regulations 2017 (S.I. No. 604 of 2017).

“***Client Asset Regulations***” refers to the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) Client Asset Regulations 2015 for Investment Firms (S.I. No. 104 of 2015).

“***Commission Delegated Regulation 2017/565***” refers to Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

“***Commission Delegated Regulation 2017/590***” refers to Commission Delegated Regulation (EU) 2017/590 of 28 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the reporting of transactions to competent authorities.

“***Investor Money Regulations***” refers to the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) Investor Money Regulations 2015 for Fund Service Providers (S.I. No. 105 of 2015).

“***MiFID II***” refers to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.

“MiFID II Regulations” refers to the European Union (Markets in Financial Instruments) Regulations 2017 (S.I. No. 375 of 2017).

“MiFIR” refers to Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012.

“UCITS Regulations” refers to the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (S.I. No. 352 of 2011).

Part 1 - the Central Bank Investment Firms Regulations

General

ID 1001

Q. Who do the Central Bank Investment Firms Regulations apply to?

A. The Central Bank Investment Firms Regulations apply to:

- MiFID investment firms;
- Investment business firms who are not fund administrators;
- Fund administrators;
- Management companies authorised pursuant to the UCITS Regulations;
- Alternative investment fund managers authorised pursuant to the AIFM Regulations;
- Fund service providers; and
- Market operators.

ID 1002

Q. Does the Central Bank require investment firms which take action to re-register as a company type recognised under the Companies Act 2014 to submit amendments to their constitution?

A. No. However, where companies re-register as DACs a copy of the new certificate of incorporation should be submitted.

ID 1022

Q. Does the definition of “administration services” include support services relating to the administration of an investment fund?

A. Yes. The definition of administration services includes support services relating to (i) the performance of valuation services (ii) fund accounting

services and (iii) acting as a transfer agent or a registration agent for an investment fund.

General supervisory requirements for investment firms

ID 1003

Q. As an investment firm I am required to state on headed paper that I am regulated by the Central Bank. What form should this statement take?

A. The statement, which should be included in all advertisements, electronic communications and on websites should be in the form of:

[Name/Trading Name of regulated entity] is regulated by the Central Bank of Ireland.

ID 1032

Q. When is the first return of the Management/Annual Accounts (upload and data entry) specified in Part 1 of the Schedule of the Central Bank Investment Firms Regulations, due to be submitted to the Central Bank by fund administrators?

A. The obligation on fund administrators to submit Management/Annual Accounts (upload and data entry) applies to reporting year ends falling on or after 3 January 2018. The return must be submitted 1 month after the firm reporting year end.

Firms are not obliged to submit this return for reporting year ends that fall before 3 January 2018.

Outsourcing requirements for fund administrators

ID 1004

Q. Do the fund administrator requirements outlined in Part 4 of the Central Bank Investment Firms Regulations apply to non-Irish funds?

A. Yes the requirements in Part 4 apply to both Irish and non-Irish administered funds.

ID 1005

Q. What are the 'performance and quality standards' referred to in Regulation 21(1)(k)?

A. Performance and quality standards include, but are not limited to, matters such as having a detailed service level agreement (SLA) in place, continuously monitoring and checking the quality of the outsourced activities and reviewing the systems and processes that an outsourcing service provider has in place and any audits carried out. In addition, firms should have standard operating procedures (SOPs) in place for outsourcing administration services.

SLAs and SOPs should be reviewed at least on an annual basis by the relevant control function to ensure that adequate management of all outsourced administration services is in place.

ID 1006

Q. What are the "key performance indicators" referred to in Regulation 21(1)(o)(i)?

A. Examples of key performance indicators (KPIs) include price, delivery times, error rates and reconciliation breaks. KPIs should be agreed between the fund administrator and the outsourcing service provider. KPIs should be subject to review at least on an annual basis by operational teams within the fund administrator.

ID 1007

Q. As a fund administrator am I required to carry out periodic due diligence visits in relation to all of my outsourcing service providers?

A. The extent to which periodic visits are required will depend on the nature, scale and complexity of the outsourced task. For example, such periodic visits may not be necessary where a basic task, such as printing, has been outsourced.

ID 1008

Q. I have an existing outsourcing arrangement which I have notified to the Central Bank. Can changes to that arrangement be notified to the Central Bank as part of my annual outsourcing return?

A. No. Any change to existing outsourcing arrangements, other than the addition of new investment funds, must be notified to the Central Bank in accordance with the procedure outlined in Regulation 18, using the notification template. This includes proposals to transfer activities to a different legal entity or to a different location, whether in Ireland or abroad, within the same legal entity. Further information in relation to this matter is set out in the website guidance on the Central Bank Investment Firms Regulations.

The Central Bank may request up to date details of all outsourcing arrangements including the impacted investment funds or require additional reporting by fund administrators at any time.

ID 1009

Q. The Central Bank's guidance on outsourcing requirements provides that fund administrators with existing, previously cleared, outsourcing arrangements in respect of the check and release of the final NAV, that do not meet with the criteria outlined in the guidance, are not required to change those arrangements. How does this apply where an investment fund changes its fund administrator?

A. The Central Bank does not currently intend to use a change of fund administrator as an opportunity to object to a previously cleared outsourcing arrangement of this nature solely on the grounds that it does not meet the criteria outlined in the guidance. However, in the event of a change of fund

administrator, the new fund administrator must still follow the procedure set out in Regulation 18 and submit a new outsourcing proposal notification to the Central Bank for review and assessment before entering into this outsourcing arrangement.

ID 1010

Q. As a fund administrator I am required to notify existing clients who may be impacted by my proposed outsourcing arrangement. When must I do this?

A. You must notify all impacted clients of an outsourcing arrangement (including chain outsourcing) in sufficient time before the commencement of the operation. In addition, client notification records should be sufficient to evidence that clients have been notified of the outsourcing arrangement. Such records should be available for inspection by the Central Bank and where the record is retained in electronic form it should be capable of being produced in a timely manner for review.

ID 1011

Q. Can I submit an outsourcing proposal notification to the Central Bank notwithstanding that the 'go live' date has not been confirmed?

A. You should only submit an outsourcing proposal when it has an estimated or known 'go live' date and should not submit a proposal if the 'go live' date has yet to be determined.

ID 1012

Q. When providing a notification to the Central Bank under Regulation 18 what details should I provide about the staffing arrangements within the outsourcing service provider?

A. Details of the staffing arrangements within the outsourcing service provider should include details (at a minimum) on training arrangements

and the number of staff, and should outline whether staff members will be part of:

- an Ireland dedicated team;
- an activity dedicated team; or
- an investment fund specific team.

ID 1013

Q. When providing a notification to the Central Bank under Regulation 18 what details should I provide about my oversight of the outsourcing service provider?

A. You should include, where relevant, information on areas such as the tolerance levels you will apply to the review of exceptions closed out by the outsourcing service provider.

Where the outsourcing proposal notification relates to the check and release of the final NAV, you should provide the following:

- items to be included in the check by the outsourcing service provider prior to release of the final NAV; and
- items to be included in your check the day following the release of the final NAV by the outsourcing service provider.

ID 1014

[No longer relevant]

ID 1015

Q. As a fund administrator what date should I reference when submitting the annual outsourcing return, in order to comply with Regulation 25(1)(c)?

A. You should provide the date of the clearance letter received from the Central Bank to outsource the relevant activities.

ID 1033

Q. I do not engage in outsourcing. Do I need to submit an annual outsourcing return?

A. Yes. All fund administrators are required to submit an annual outsourcing return. If you have not entered into any outsourcing arrangements, you should submit a nil file.

ID 1034

Q. Am I required to include administration activities which I have outsourced to another legal entity in the annual outsourcing return where these activities were never previously carried out directly by the firm in Ireland?

A. Yes.

ID 1023

Q. As a fund administrator, am I required to carry out a stress test to assess the cost of my continuing to provide administration services under alternative arrangements if a disaster recovery scenario impacts either me or an outsourcing service provider?

A. Yes. You should assess what budget might be required to cover the costs of a disaster recovery scenario where an alternative outsourcing service provider and/or an alternative location is required. The budget should cover the costs of the fund administrator, the outsourcing service provider in distress, and any other service provider to whom an emergency transfer of activities is required (including to the fund administrator itself).

This issue should be addressed in your capital planning process but reference to stress testing may also be included in your outsourcing policy, business continuity planning policy or take back / resilience testing policy.

ID 1024

Q. Do I need to receive approval from the Central Bank in advance of outsourcing a service to a new location and/or a new outsourcing service provider due to a business continuity event?

A. You must notify the Central Bank immediately when you become aware of any situation which may result in an change to an outsourced service which requires the service to be moved to a new location and/or a new outsourcing service provider.

Following this notification, the Central Bank will, taking into consideration whether the outsourcing service provider has sufficient capability to perform the service, issue a temporary response to the fund administrator.

Each arrangement will be reviewed on a case by case basis and if the new arrangement is to continue over the longer term, the Central Bank may revisit its approval.

Final NAV

ID 1016

Q. Is the definition of final NAV in the Central Bank Investment Firms Regulations applicable to all investment funds including those which deal on a less than daily basis (e.g. weekly or monthly dealing)?

A. Yes. The definition of final NAV in Regulation 2 applies irrespective of the dealing frequency of the investment fund.

ID 1017

Q. Where a final NAV is checked and released by an outsourcing service provider, must this be available to all investors in the investment fund?

A: Yes.

ID 1025

[No longer relevant]

Own funds and capital adequacy requirements for fund administrators

ID 1018

Q. What is the meaning of “after distribution of profits to shareholders” in Regulation 29(a)?

A. The reference to “after distribution of profits” means after payment of dividends or any other distributions to shareholders.

ID 1019

Q. Can fund administrators use their own risk taxonomies for the risk assessment and capital planning process?

A. Yes, provided fund administrators can demonstrate that they have:

- (a) assessed the relevancy of all of the risks listed in Regulation 44;
- (b) determined which risks are material to their individual business models; and
- (c) established processes and procedures to mitigate these risks in accordance with the Central Bank Investment Firms Regulations and related guidance.

The relevance of various risks may change over time and therefore fund administrators should revisit their assessments on an appropriately frequent basis.

ID 1020

Q. Are all fund administrators required to monitor liquidity risk?

A. Yes. While liquidity risk may be considered as a low risk for some fund administrators, an operational or environmental event may cause the liquidity position of a firm to change rapidly.

ID 1021

Q. Are fund administrators required to have separate wind down plans if they are part of a group structure which has the feasibility to cater for the continuation of fund administration services should operations fail locally?

A. Yes. While fund administrators which are part of larger group structures may be able to leverage off group infrastructure and support in various situations, fund administrators cannot exclusively rely on group support when considering wind-down planning. Any assumptions in terms of group support should be clearly stated in various wind-down scenarios and consideration should be given as to the likelihood of a scenario where group support may not be available.

Client Assets and Investor Money

ID 1035

Q. Will existing documentation need to be redrafted due to changes in terminology as a result of the integration of the Client Asset Regulations and the Investor Money Regulations into Parts 6 and 7 of the Central Bank Investment Firms Regulations?

A. No. Any future updates to documentation should amend relevant references.

ID 1036

Q. Is the auditor who performs the client asset examination or the investor money examination required to be the same auditor who audits the financial statements of the investment firm or fund service provider?

A. No.

ID 1037

Q. I intend to comply with reporting requirements in relation to client assets as required under Article 63 of Commission Delegated Regulation 2017/565 by making statements of client financial instruments available in a secured area of my website, specifically dedicated to the individual client, and sending the client a notification of the availability of the document on the website. Is this sufficient?

A. Yes, if:

- Your reporting to clients, as required under Article 63, is consistent with the approach set out in Q&A No. 3 under the heading “suitability and appropriateness” of the ESMA Q&As on MiFID II and MiFIR investor protection and intermediaries topics; and
- You have and maintain evidence that the client has accessed the statement via the secured area of the firm’s website at least once during the relevant quarter.

Part 2 – MiFID II and MiFIR

Words and expressions used in Part 2 of this document shall have the same meaning as set out in MiFID II, MiFIR and relevant EU instruments issued thereunder.

General

ID 1026

Q. Is it intended to delay the application of MiFID II requirements in Ireland?

A. No. The MiFID II Regulations, which transpose MiFID II into Irish law, will come into operation on 3 January 2018 and relevant EU Regulations associated with the MiFID II regime will also have direct effect in Ireland from 3 January 2018.

ID 1027

Q. Will the Central Bank exercise forbearance in relation to non-compliance with MiFID II requirements after 3 January 2018?

A. No. The Central Bank expects firms subject to MiFID II to be in compliance with the requirements of MiFID II from 3 January 2018.

ID 1028

Q. Are the record keeping requirements as set out in Annex I of Commission Delegated Regulation 2017/565 correct since there appears to be a number of errors in the cross-references?

A. A number of errors in the cross-references in Annex I have been identified. The Central Bank has brought this matter to the attention of ESMA and the European Commission. Any amendment to the Regulation must be initiated by the Commission through the EU legislative process. In the meantime, regulated entities subject to MiFID II should retain all records necessary to evidence their compliance with MiFID II rules.

ID 1029

Q: Will the existing ESMA guidelines remain in force when MiFID II comes into force or will they no longer be relevant?

A. Since these Guidelines were issued by ESMA, it is for ESMA to confirm the intended status of these Guidelines after MiFID II enters into force on 3 January 2018. The Central Bank has engaged with ESMA in this regard and will continue to seek clarification.

ID 1030

Q: What is the Central Bank's approach in respect of investment firms engaged in MiFID activities that may be seeking to re-locate to or otherwise establish operations in Ireland as a result of the UK's decision to exit the European Union?

A. The Central Bank has published a 'Brexit FAQ' on our website which sets out the Central Bank's approach on a cross-sectoral basis to these matters.

ID 1031

Q: I am seeking authorisation as an investment firm and consider that I fall within the definition of "local firm" as defined in Article 4(1)(4) of the Capital Requirements Regulation. Has the Central Bank issued any guidance on how to interpret that definition?

A: There continues to be uncertainty around the precise meaning of "local firm" as defined within European legislation. The Central Bank will continue to seek additional clarity at European level.

If you meet the following criteria, the Central Bank is likely to accept that you are within the scope of local firm:

- Engage solely in dealing on own account on derivatives markets and on cash markets, but in the case of the latter, only to hedge positions in derivatives;
- Do not have external clients;
- Do not act as a market maker;
- Engage solely in exchange traded instruments; and

- Will access clearing on a client or indirect client basis only.

A market maker is an investment firm subject to a contractual or regulatory obligation to make and publish two way prices, on a continuous basis and shall include any investment firm which is a market maker within the meaning of MiFID II.

The Central Bank is not excluding the possible recognition of other investment firms from the definition of local firm. However any such firm will be required to provide full information on its activities in order to allow the Central Bank to assess the nature of the business undertaken for other members of the relevant market.

ID 1037

Q. Will the Central Bank reissue letters of authorisation to investment firms which are deemed authorised investment firms under Regulation 5(2) of the MiFID II Regulations?(i.e. MiFID I firms)

A. No.

The Central Bank maintains a register of investment firms authorised under MiFID II, including those deemed authorised under Regulation 5(2) of the MiFID II Regulations on its website.

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