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Via e-mail: [invfirmspolicy@centralbank.ie](mailto:invfirmspolicy@centralbank.ie)

Investment Firms Regulations Consultation  
Market Policy Division  
Central Bank of Ireland  
Block D Iveagh Court  
Harcourt Road  
Dublin 2

**Consultation Paper 97 – Consultation on Central Bank Investment Firm Regulations 2015- “CP97”**

Dear Sir/Madam:

State Street Corporation (“State Street”) appreciates the opportunity to respond to CP97 issued by the Central Bank of Ireland (“Central Bank”) and the proposed requirements therein.

Headquartered in Boston, Massachusetts, with branches and subsidiaries throughout the European Union (“EU”), State Street specialises in providing institutional investors with investment servicing, investment management and investment research and trading. With USD 27.3 trillion in assets under custody and administration and USD 2.2 trillion in assets under management, State Street operates in 29 countries and in more than 100 markets worldwide<sup>1</sup>. Our European workforce of 9,000 employees provides services to our clients from offices in ten EU Member States and includes over 2,000 employees and 5 locations in Ireland. This response is provided on behalf of the following State Street Fund Administration entities authorised by the Central Bank

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<sup>1</sup> \* *Assets under management include approximately \$25 billion as of September 30, 2015, for which State Street Global Markets, LLC, an affiliate of SSGA, serves as the distribution agent.*

As of Sept 30, 2015.

- State Street Fund Services (Ireland) Limited
- International Fund Services (Ireland) Limited
- State Street AIF Management Company (Ireland) Limited

We welcome the opportunity to provide feedback on the proposed Central Bank Investment Firm Regulations which form part of the Consultation Document. As noted the Central Bank proposes publishing an Investment Firms rulebook which will consolidate into one document all of the conditions and requirements which the Central Bank imposes on investment firms. The Central Bank proposes to issue the rulebook in the form of Central Bank regulations under the 2013 Act. The proposed consolidated rulebook will be referred to in our response as the “proposed Central Bank Investment Firm Regulations”. While we welcome the initiative to consolidate into one document all of the conditions and requirements which the Central Bank imposes on investment firms we would question the intention to issue all such requirements in the Central Bank regulations under the 2013 Act. Some of the requirements contained in the proposed Central Bank Investment Firm Regulations are very detailed and process driven in their nature and we would question their suitability for inclusion in regulations. Instead we consider it to be more suitable to introduce the new requirements by way of regulations combined with guidance, with the process driven requirements such as conditions under which the Final NAV release may be outsourced and key requirements included in the guidance.

### **General Observations**

Other large fund jurisdictions such as the United Kingdom and Luxembourg impose responsibilities on regulated service providers in relation to the outsourcing they undertake. These are principles-based requirements which require the regulated entity to retain responsibility and ensure there is sufficient oversight, control, reporting, escalation and supervision of the outsourcing provider. The regulators in such jurisdictions have not sought to impose specific requirements in relation to certain operational processes such as the Final NAV release in the manner the Central Bank of Ireland is seeking to do through some of the requirements contained in these Regulations. If the Central Bank permits Fund Administrators to outsource only in circumstances where key requirements in relation to retained responsibility, control and oversight are adhered to this should obviate the need for the Central Bank to specify particular operational processes which may or may not be outsourced.

The insertion of the detailed requirements in relation to the outsourcing of the Final NAV Release would appear to indicate that the Central Bank retains the position that some element of the operational process must be retained within the Fund Administrator itself. This does not recognise that the oversight and control of outsourced activities is in of itself a substantive operational process undertaken by experienced staff within the Fund Administrator.

Technological developments facilitate the incremental improvement of processes over time and the focus within Fund Administration companies continues to move from process driven tasks to qualitative tasks which ensures oversight and control remains within the Irish regulated Fund Administrator. The requirements in relation to process driven tasks should not be hardcoded into the Regulations as this would mean that even minor changes would require legislative amendment.

It is important that some of the prescriptive features included in this Regulation do not inadvertently prevent organisations from structuring their operations in a manner they deem to be the most appropriate and effective structure for their business. For example, if a Fund Administrator decided to set up their Transfer Agency operation in a separate but group affiliated corporate entity they should be able to do this without such a structure giving rise to an inordinate amount of supervision and oversight, together with the attendant costs. Furthermore, the requirements, as currently drafted, would seem to prevent such a structure in certain instances. The Regulations should not prevent such corporate structures and, in fact, should specifically provide for them.

## **Detailed Comments**

### **Regulation 4(a)**

The requirement to notify the Central Bank as soon as practicable in relation to the commencement of legal proceedings by or against the firm should be limited to a requirement to notify the commencement of legal proceedings by or against the firm in relation to services provided. The Fund Administrator should not, for example, be required to notify the Central Bank in relation to the commencement of proceedings in relation to junior staff members regarding matters unrelated to the provision of services. We therefore propose that the provision is amended as follows:

A firm shall notify the Central Bank as soon as practicable of the following:

- (a) the commencement of any *material* legal proceedings by or against the firm *as it relates to services provided*;

### **Regulation 4(b)**

The addition of a requirement to notify the Central Bank as soon as practicable in relation to “anything relating to the firm of which the Central Bank would reasonably expect notice, or which may impact on the reputation or good standing of the firm;” is not sufficiently clear and may have the effect, that due to the lack of clarity of the requirement, firms notify all matters to the Central Bank. The impact of this is that material matters which urgently require the Central Bank’s attention may get hidden in the volume of matters reported. We therefore propose that the provision is amended to revert to the existing requirement, as follows:

(b) any situations or events which impact, or potentially impact, on the firm to a significant extent or anything relating to the firm of which the Bank would reasonably expect notice, or which may impact on the reputation or good standing of the firm;

### **Regulation 7**

The requirement has been amended to impose a requirement on firms to provide the Central Bank with a copy of an internal audit report which refers to the firm. We propose the requirement is amended as follows:

A firm which has an internal audit function, or which is a member of a group which has such a function, must provide the Bank as soon as practicable with a copy of any internal audit report which includes a **material** finding that **[affects/impacts]** refers to the firm.

### **Regulation 8(3)**

While this is an existing requirement, the opportunity should be taken to clarify the compliance officer's responsibility in this regard. The compliance officer has a responsibility for the oversight and reporting in relation to compliance with legal and regulatory requirements and the provision should reflect this. We propose the requirement is amended by either of the two options noted below :

- Suggest that the wording is changed to be consistent with Guidance Note 4/07: "A compliance officer must be appointed and must be responsible for the compliance function and for any reporting on a frequent basis, and at least annually, to the senior management on matters of compliance indicating in particular whether the appropriate remedial measures have been taken in the event of any deficiencies."

or

- Amend the current wording as follows: The compliance officer will have responsibility for oversight and reporting of compliance with all legal and regulatory requirements and for co-operation and liaison with the Central Bank.

### **Regulation 25**

There is a small typographical error that requires amendment

A Fund Administrator shall ensure that its directors ~~to~~ disclose to the Fund Administrator any concurrent directorships which they hold on the boards of investment funds and/or related entities which supply services to such investment funds.

### **Regulation 36**

As noted earlier in our response, this requirement would appear to prevent the outsourcing of transfer agency services to other affiliated entities of a Fund Administrator. We believe that this could inhibit corporate structures. We suggest that this requirement is amended to the following:

*“Core administration activities shall not be outsourced unless the Central Bank has expressly specified that it has no objection to the outsourcing.”*

More detail on the circumstances where the Central Bank may have “no objection” to the outsourcing of core administration services could be given in separate Guidance.

### **Regulation 39**

We believe it would be beneficial if the requirement governing the review prior to the release of the final NAV was clarified. It currently states that such review will be undertaken by a “senior staff member”. This term is undefined and can mean different things within different organisations. On this basis we would propose it is amended to state that such review will be undertaken by a **“sufficiently experienced staff member”**.

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...”.

Can the Central Bank provide clarifications that this definition continues to mean that the NAV for weekly/monthly dealing funds is only final when the investors receive their statements?

### **Regulation 40**

*(a) The fund is daily dealing;*

#### **Comment**

This requirement should be removed. The focus of the circumstances where the Final NAV may be released by the Outsourcing Service Provider should be on the investor and market requirements in this regard. Provided the Central Bank’s requirements are met the Outsourcing Service Provider should be permitted to release the Final NAV for funds which deal weekly or monthly and which require the price to be released same day outside of normal Irish business hours.

*(b) The outsourcing service provider who releases the Final NAV is an entity within the administrator’s group and the administrator and the outsourcing service provider share the same systems, controls, staff training, procedures and processes for the valuation of each fund’s NAV;*

#### **Comment**

This provision is too narrow and does not reflect the commercial reality of where third party administrators may outsource functions to a regulated entity outside their group. In particular it does not take account of sub-administration arrangements between regulated entities which are a feature of

the Irish market.

*(c) The prices for investments used for valuation purposes are not available from markets before 5pm Irish time in order to facilitate a release of the final NAV within normal Irish business hours;*

**Comment**

As noted above the focus of the circumstances where the Final NAV release may be released by the Outsourcing Service Provider should be on the investor and market requirements in this regard rather than the investment strategy undertaken by the relevant fund. Provided the Central Bank's requirements are met the Outsourcing Service Provider should be permitted to release the Final NAV price. Imposing a requirement such as this, which differentiates on the basis of the underlying investments, would mean standard operating models could not be utilised as potentially Asian Equity funds would have to be valued in Ireland on the current day and European and US funds valued in the US on the current day. This would prevent the use of a consistent operating model process flow with pricing for all assets completed after US markets close and would therefore increase operational risk.

*(d) 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 due to the existence of one of the following circumstances:*

*(i) The Final NAV is required to be received by the underlying investor in the Asian Market by T+1 Asian time;*

*(ii) The fund is a US Money Market Fund with trade date settlement;*

*(iii) The fund is an ETF which needs to release the NAV to the primary market and to investors in the secondary market outside of normal Irish business hours (8am-6pm); and*

**Comment**

If the Central Bank deems a requirement such as this necessary it should be sufficient to state 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 it avoids a finite list of circumstances which may over time evolve. This is particularly important given the proposed inclusion of these requirements in a statutory instrument which may not be amended with the same ease as the current approach.

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

1. The list above is incomplete as it omits US investors needing T NAV prices (NSCC). We have existing clients who are already approved by the Central Bank to release current day NAV's for this reason.
2. The list above does not deal with other Global regions - Australia, Middle East

### 3. Asia is not defined anywhere

Furthermore the requirements should provide for circumstances where the investors are themselves fund structures, based in Asian or US time zones that need the most recently calculated price of the target fund to provide a fair value for that target fund investment in the underlying fund structure.

#### **Regulation 42**

It is necessary that this provision takes account of previously approved outsourcing models whereby the share register is maintained and the transfer agency function is undertaken by another affiliated entity within the Fund Administrators group entity regulated by the Central Bank of Ireland and is subject to detailed contractual arrangements in this regard. On this basis we would propose the provision is amended to state as follows:

*The Fund Administrator **or an affiliated entity within the Fund Administrators group regulated by the Central Bank of Ireland** must maintain the shareholder register for each investment fund **and have the ability to reproduce the full register at any time.**~~and ensure that the~~ The Fund Administrator must ensure that it has oversight of the register.. ~~and control of the register. and can reproduce the full register at any time.~~*

#### **Regulation 43**

For reasons of clarity the following provision which is included in 3.4 of Chapter 5 of the AIF Rulebook should be inserted in Regulation 43:

*It is not necessary to notify the Central Bank when additional investment funds are added to a previously cleared outsourcing arrangement.*

#### **Regulation 45**

This is a new notification requirement not previously included in either the AIF Rulebook or the Prudential Handbook for Investment Firms and it is therefore of the utmost importance that it is sufficiently clear what the notification requirement is and what objective the Central Bank is seeking to achieve. If the Central Bank will need to consider its “approval” of this notification, it needs to make that clear and discuss this further with industry.

#### **Regulation 48**

This requirement was previously contained in Annex II, 3.6 of the AIF Rulebook and the second sentence of 3.6 stated the following:

*The Fund Administrator must resubmit the notification of the outsourcing proposals if it is intended to*

*proceed with them at a later date.*

This statement has been omitted from the proposed Central Bank Investment Firm Regulations. For reasons of clarity we would request that this is reinstated.

#### **Regulation 50**

The Annual Return is a new requirement and as above, we recommend that the requirement and objective are clarified. As noted in our opening remarks, we believe that separate guidance giving more detail on the regulations requirements would be helpful. We suggest that this guidance includes a template for the Annual Return which, amongst other matters, explains how much detail should be given when specifying “all outsourcing models being used”. Furthermore in relation to (a) it should be clarified that it is not necessary to provide details of the funds utilising these outsourcing models.

The timeframe for delivery of the Annual Return should also be specified.

#### **Regulation 55**

The requirement previously stated:

*The Fund Administrator must specify the internal units or individuals that are responsible for monitoring and managing each outsourcing arrangement.*

The proposed amended requirement states:

*The Fund Administrator must specify the persons that are responsible for monitoring and managing each outsourcing arrangement.*

It is more appropriate to specify the unit responsible for monitoring and managing outsourcing arrangements rather than specify named individuals which may change over time and on that basis we would suggest the proposed requirement is amended, as follows, to refer to the internal unit responsible for monitoring and managing each outsourcing arrangement.

*The Fund Administrator must specify the **internal units** that are responsible for monitoring and managing each outsourcing arrangement.*

#### **Regulation 56**

The requirement contained in (b) relates to due-diligence checks on the outsourcing service provider. This requirement was previously contained in Annex II, 4.6(b) of the AIF Rulebook and contained the following statement



“For example, such periodic visits may not be necessary where a basic task, such as printing, has been outsourced;”

This statement has been omitted from the proposed Central Bank Investment Firm Regulations. For reasons of clarity we would request that this is reinstated.

### **Regulation 69**

Regulation 69 addresses the requirement for the Fund Administrator to submit internal audit reports to the Central Bank. This requirement was previously contained in Annex II, 6.5 of the AIF Rulebook and contained the following statement:

“In particular and for all but the most basic outsourced tasks (e.g. printing),”

This statement has been omitted from the proposed Central Bank Investment Firm Regulations. For reasons of clarity we would request that this is reinstated.

Furthermore in the interests of simplifying the requirement and also noting that such reports may not always be finalised within the three months specified we suggest the requirement is reworded to state as follows:

The Central Bank requires that the Fund Administrator’s internal auditors and compliance function will examine the operation of the outsourcing arrangement ~~within the first 12 months of its operation and~~ send a copy of both their reports ~~must be sent~~ to the Central Bank within **eighteen months of the commencement of the outsourcing arrangement.** ~~three months of the examinations being completed.~~

### **Regulation 83 (2)**

Can you please clarify what is meant by “.....after distribution of profits to shareholders....”?

### **Regulation 86**

Tier 1 items, with the exception of audited retained earnings, need prior written permission from the Bank prior to being included as Tier 1 capital. In many cases firms utilise other forms of capital and reserves in order to meet their requirement, which would have been included within Financial Resources previously. This raises uncertainty for firms. For example, if a firm does not have retained earnings sufficient to meet its expenditure requirement, but is sufficiently capitalised by way of share capital and a capital contribution then it would not satisfy the expenditure requirement unless the Central Bank were to grant it written permission to include these items. Therefore firms which may

currently meet their requirement may not do so in the future, dependent on the Central Bank's approval of the use of resources in addition to retained earnings.

We propose that the items listed under 86 (1) (a,b and d) qualify as Tier 1 items with prior notification by the firm being given to the Central Bank instead of the requirement for prior written permission from the Central Bank.

**Regulation 97**

We propose the inclusion of an item in regulation 97(4) to subtract from total assets accounts used by the administrator for the day to day running of its business. This will ensure that regulation 97(4) is consistent with regulation 97 (3).

Please feel free to contact me should you wish to discuss State Street's submission in greater detail.

Yours faithfully,



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**Tadhg Young,**

Chief Operating Officer

State Street International (Ireland) Limited