BNY MELLON

CAR Consultation
Securities and Markets Supervision Division
Central Bank of Ireland
Block D
Iveagh Court
Harcourt Road
Dublin 2
By Courier & Email: CARconsultation@centralbank.ie

04 November 2013

Re: CLIENT ASSET REGULATIONS AND GUIDANCE CONSULTATION PAPER

Dear Sirs,

This response is 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 ("Central Bank's") Client Assets and Guidance Consultation Paper CP71 (the "CP"). We are supportive of the objectives that the Central Bank's proposals aim to achieve.

BNY Mellon's response is in respect of client asset requirements, as they relate to our various lines of business, including transfer agency, custody and any other relevant lines involving the holding or control of customer assets. Where aspects of the proposal relate to certain discrete lines of business, this is noted in our comments: otherwise, our comments may be read broadly.
A broadly applicable point we believe should be kept in mind is that regulatory or rules-orientated regimes have been implemented in states other than Ireland to varying degrees of specificity and in varying ways. Some of these are more longstanding, or comprehensive, or detailed than others.

However, they all tend to have certain attributes in common:

1. all seem intended to prescribe clear rules to protect clients' interests in their assets regardless of where, or under what circumstances, these assets are held (e.g., securities held internationally via cross-border chains of custody or cash held in deposits of banks or their branches located in other states – where different rules may apply); and

2. they are imposed in a broader national legal context (i.e., over-arching legal principles): in common law countries these include, in addition to any applicable legislation, fiduciary principles such as rules of agency or bare trusteeship that have developed through case law.

As a result, the Client Asset Regulation and Guidance Consultation should be applied with these other attributes in mind. Our recommendations below are intended to ensure legal certainty around the limits of what is possible or practicable as well as coherence with laws and regulations of other countries and the national and common law of Ireland. This is with a view to ensuring client asset protection in keeping with the Central Bank's goals.
Finally, we ask that the Central Bank confirm that the requirements are not to apply to custodians with respect to their holding financial instruments for investment funds, as has been the case heretofore, and appears to be the intention of the proposed regulations. The requirements do not immediately appear to add to investor protection with respect to such an activity, which is already subject to substantive requirements (including those set out in EU law).

Q1. **Do you agree that the Client Asset Core Principles encompass the key fundamental principles in protecting and safeguarding client assets? If not, please explain why.**

BNY Mellon strongly supports increased certainty, clarity and transparency of client asset protection measures. BNY Mellon, as noted in our detailed responses below, support most of the Central Bank's specific proposals, however, we have also noted certain aspects of the proposals that are not proportionate or may present particular challenges making them difficult to implement in practice. In some cases, specific proposed requirements do not conform to market infrastructure or normal processing requirements. In others, the costs of implementation may be disproportionate to any benefits to clients. We make recommendations below as to how to achieve the Central Bank's objectives in the most cost-effective manner so that disruption to both clients and industry is minimised whilst client asset protection is assured.

Q2. **Do you agree with the proposed wider scope in respect of 'client funds'? If not, please explain why.**

BNY Mellon agrees with this wider scope of 'client funds'. This said, as we note in more detail below, it is important to be clear as to whom the firm owes its duties: in the context of obligations imposed upon collection accounts, it is stressed that a transfer agent's duties are to the investment fund or its agent (e.g., a management company who, in addition to the transfer agent, may itself be an FSP).

Q3. **Do you agree with the approach proposed to deal with instances where client funds are received but the firm has not identified the client or the necessary client paperwork is not complete? If not, please explain why.**

BNY Mellon agrees with the proposed approach, except, as an FSP, BNY Mellon has concerns with respect to the timing where paperwork necessary to determine identity is not complete. It is not unusual, particularly in the hedge funds space (where the dealing frequency is not daily), for paperwork pertaining to identification of the client for AML purposes to take a number of days to complete. Return of client monies pending completion of the paperwork where correspondence is on-going with the client is not practical in this regard. A period of 10 days with latitude in circumstances where there is expectation of imminent receipt would be more realistic. We believe it would be appropriate to require that the Firm's CAMP set out timeframes for the return of client funds."

BNY Mellon also seeks clarification from the Central Bank as to how this proposed approach should be read in light of the requirements set out in the Criminal Justice (Anti-Money Laundering and Terrorist Financing) Acts 2010 and 2013.

Q4. **Do you agree that the Regulations should apply to funds that have been lodged into a Collection Account? If not, please explain why.**

BNY Mellon agrees that the Regulations should apply to funds that have been lodged into a Collection Account. However, we believe it is important to retain legal certainty about different firms' respective roles and obligations. For example, investment fund transfer agents may be considered FSPs under the regulations, but they do not themselves have a legal relationship with investing and redeeming investors whose monies may be held in the Collection Accounts. Transfer agents act solely as the agent of issuers (e.g., investment funds), like any other registrar for an issuer (such as for listed securities). Transfer agents are retained to perform various services by parties acting for an investment fund (e.g. the manager). The subscription documents and prospectus of investment funds contain duties and obligations to subscribing and redeeming investors. Transfer agents may be retained to give effect to these duties and obligations, including with respect to cash in the process of subscription or redemption (or payment of income or dividends), but the legal duties in these respects ultimately fall on the investment funds themselves and those who handle this cash in the distribution chain who may not be subject to the Regulations.

More legal certainty would be facilitated through better definitional clarity: throughout the document there are references to "Firm" and "FSP" and "Investment Firm". We believe the concerns around who is responsible for which aspect of Collection Accounts can be addressed if an Investment Firm such as a management company is understood to be an FSP which retains responsibility for the establishment or structure of these accounts. This would not diminish the transfer agent's responsibilities but instead would recognise that the transfer agent's duties are owed to another party (i.e. an Investment Firm), under appropriate contractual arrangements, who in turn may have onward obligations to beneficial owners of the Collection Account.

As alluded to above, in the introductory part of this response, this approach would be consistent with the law of agency (or trusteeship) where agents or trustees appoint sub-agents or sub-trustees. Each agent or trustee, under common law principles, has fiduciary duties to its "principal", even if this principal is itself an "agent" or "trustee" with onward, but separate, fiduciary duties to its own underlying principals.

Q5. **Do you agree for the purpose of segregating client assets and determining which clients are impacted if a third party fails, a firm should be able to identify where each individual client's assets are held? If not please explain why.**

BNY Mellon agrees with the requirement that a firm be able to identify which client assets are held in a pooled account with each third party for each individual client of that firm. However, we believe it is important to be clear on whom the obligation falls. For example, investment fund transfer agents may be considered FSPs under the regulations, but their clients are the investment fund or the manager who retains them, who in turn will have duties to transacting investors under the terms of subscription documents and the prospectus. Any information that the transfer agent has as to beneficial owners of pro rata portions of Collection Accounts would depend on the information the investment fund and/or its distribution agents provide to the transfer agent. It should be clear that transfer agents would have a duty to identify client assets of subscribing or redeeming investors on a basis agreed with the investment fund or its agent, which will retain the primary duty to these investors.

BNY Mellon also believes it should be made clear that any determination as to ownership of client assets in pooled accounts should be made on an end-of-day basis, as it is not possible intra-day.

Q6. **Do you agree that a client's required margin should be better protected under the client asset regime? If not, please explain why. If you agree, please outline how this could be best achieved.**

BNY Mellon agrees with this proposal where client margin is delivered under a security financial collateral arrangement (per the Financial Collateral Directive as implemented under national law). However, we believe that title transfer arrangements as conceived under the Financial Collateral Directive should be respected and facilitated in order to preserve legal certainty in respect of these arrangements, especially since they are expressly contemplated in the context of EMIR and they may have consequences for arrangements that are put in place with CCPs. Title transfer arrangements should disclose clearly, to those providing the margin, the circumstances under which the margin is held and will be returned, but they should not be invalidated under a client asset protection regime as the margin would not constitute client assets. Instead, if limits on these arrangements are to be imposed, it would make more sense to do so directly through regulation of the relevant investment firms in the conduct of their business.

Q7. **Do you agree that the records should be retained for six years? If not please explain why.**

BNY Mellon agrees with this proposal. However, we feel that a longer time frame should be prescribed to produce these records: one day is unrealistic, especially if records are maintained in physical form. In any case, third-party vendors may be retained to hold these records (both hard and soft-copies), which may require more time to produce them. We believe this timeframe should be "as soon as possible" and record retention policies and procedures, including timeframes for retrieval, should be described at some level in the firm's CAMP.

Q8. **Do you agree with the new approach proposed in respect of Facilities Letters and Confirmations? If not please explain why.**

BNY Mellon is concerned that the proposed requirements for a Funds Facilities Letter should take into account (in "(b)") that it is not really possible to "separate" these funds from those of a bank since deposits by their nature are on the bank's balance sheet liabilities to the clients of the firm that places them with the bank. As a result, clients will always be exposed to the credit risk of the bank and may be unsecured creditors in an insolvency of the bank, depending on the national depositor protection regime that applies.

On a separate note, as regards both forms of proposed letters (both the Funds Facilities Letter and the Financial Instruments Facilities Letter), we are also concerned that it is not always possible to obtain Confirmations and enter into the kinds of described agreements "in advance" as the proposal would require. We recommend requiring that these documents be obtained within five business days following the opening of relevant accounts.

More specifically, we fear that the combined effect of Proposed Rule 3.5, 3.6, 3.7 and 3.9 will impose an inflexible three-step process that will not be possible to implement in practice. Instead, we recommend that an initial Facilities Letter should be put in place with the third party (as appropriate) which covers all client assets, including (where relevant) funds: these letters would need to be tailored to the specific circumstances. There would be no subsequent need for additional documentation so long as reconciliations continue to be carried out as appropriate. We request confirmation that existing CAR Letters will be grandfathered in under the new regime.

We are also concerned about the requirement that the third-party confirm its "liability" pursuant to Rules 3.6(g) and 3.7(h). This requirement, that the third-party's liability must be outlined in the event of loss of client funds whether caused by fraud, wilful default or negligence, risks creating an inconsistency with superceding or contradicting legal documents many of which contain "integration" clauses so that all the parties' responsibilities and liabilities are documented. We believe high level principles as to minimum protection are sensible, but undue prescription as to form or content could risk creating legal uncertainty. Moreover, we believe that firms should be able to rely on the extent of regulation of third-parties by their own competent authorities: high level requirements as to equivalency, similar to those imposed in relation to safekeeping and administration of assets placed with third parties under MiFID, should be sufficient.

The requirement to remove assets within one business day is not practical or realistic, especially in respect of financial instruments. It typically takes much longer to ensure transfer of these assets to another party safely. BNY Mellon recommends revising this proposal so that the timeframe is changed to "within a reasonable timeframe", the circumstances relating to which would be described in the firm's CAMP.

Q9. **Do you agree that in the interest of protecting client assets, where a third party has not designated a client asset account/Collection Account as requested by the firm, these client assets should be withdrawn from the third party without delay? If not, please explain why.**

BNY Mellon believes that one day is too short a period to expect the firm to verify that the assets are held in an appropriately designated account following the initial lodgement of the client assets with a third party. Cash statements cannot be reviewed until the next business day and reconciliation processes can take more than a day. We recommend five business days at a minimum.

Custody statements, relating to financial instruments held in custody, may not be issued as frequently as daily. This requirement in the context of financial instruments should be consistent with the appropriate reconciliation period (see, "Principle 3" proposals, below).

Q10. **Do you agree with the approach for reconciling client asset accounts that hold client funds? If not please explain why. If there are other types of accounts that do not readily conform to the frequency of reconciliations cited above, please provide details of same.**

BNY Mellon agrees that the frequency of the reconciliations should be determined with reference to the frequency of the transactions going across the accounts, though no less frequently than monthly. However, it may not always be possible to obtain a statement from the third party in order that the reconciliation can be performed within the proposed timeline. This is mostly likely to be the case in the context of term deposit accounts or accounts which have very infrequent transactions and for which a statement may only be available on an infrequent basis. We request clarification that the reconciliation should be performed within one business day of receipt of the statement of account from the third party provided that the third party sends the statements to the firm within a reasonable period of time after the business day to which the reconciliation relates.

Q11. **Do you agree that client financial instruments should be reconciled at least monthly or should the reconciliation be performed in a lesser time period? If so, please explain why.**

BNY Mellon agrees with the proposal.

Q12. **Do you agree with the time allocation of ten days to complete these reconciliations or should it be performed in a lesser time period? If so, please explain why.**

BNY Mellon agrees with the proposal, however, we believe provision should be made for a lengthier period of time if outlined in the firm's CAMP.

Q13. **Do you agree that an investment firm should immediately make good or provide the equivalent of any shortfall in client financial instruments? If not, please explain why.**

BNY Mellon requests that the term "immediately" be clarified. Reconciliations could yield a number of discrepancies that may at first appear as a shortfall but, after investigation, may not be a shortfall after all. We request a grace period for investigation prior to this rule taking effect.

More importantly, it should be recognised that shortfalls could arise due to events that are beyond the reasonable control of the firm. In accordance with the global system of holding securities, intermediaries are not in the business of providing insurance or guarantees. We believe that intermediaries should not be forced to recognise this kind of risk to their balance sheets where no fault on their part has caused the shortfall. Legal agreements with clients should disclose the scope of liability for making good any "shortfalls" by the firm, including the circumstances under which they may not be liable for these shortfalls (e.g., sovereign events, force majeure, events beyond the reasonable control of the firm, etc.).

Q14. **Do you agree that a Collection Account should be reconciled each time a transaction occurs on that account? If not, please explain why.**

BNY Mellon agrees with the proposal, however it should be clarified that a reconciliation should be performed on a close-of-day basis, by close of business on the following day, as it would not be possible to perform an intra-day reconciliation. This approach would accommodate normal processing requirements.

Q15. **Do you agree that it is appropriate for a firm to report material reconciling items with the level of materiality determined by the firm? If not, please explain why.**

The objective of this requirement is not clear to us. We feel that arbitrarily reporting material reconciling items does not add any additional protection to investors and such protection will be achieved through the processes and procedures currently in place. Daily reconciliations will be done on the accounts, details of which will be outlined in the CAMP and periodically evaluated on a regular basis. Full reconciliations can be made available to the Central Bank as requested and are reviewed on an ongoing basis as part of the audit programme. We would request further clarity from the Central Bank in this regard.

Q16. **Do you agree with the components of an investment firm's Client Money Requirement and Client Money Resource? If not, please explain why.**

BNY Mellon agrees with the proposal, however, in the context of pooled accounts (such as Collection Accounts) we request clarification that the requirement to ensure that funds of one client should not be used for another client should be determined on an end-of-day basis in order to accord with normal intra-day processing standards and clearance mechanisms. For example, where clients pay to the client money account on settlement date in relation to the purchase of units, the cash may be received after settlement is paid to the fund. Conversely, payment to a client for cancelled units from the client money account may occur prior to the receipt from the fund.

Q17. **Do you agree with the Central Bank's approach to the computation of the Client Money Requirement and Client Money Resource for FSPs? If not, please explain why.**

As outlined above, BNY Mellon requests confirmation that the determination as to any individual client funding requirements be made on an end-of-day basis as this would accord with the commonly accepted approach in bank processing to cleared funds. Also, BNY Mellon seeks clarification that the prohibition on liens or charges would be confined to Collection Accounts. In other contexts, a firm should be able to take a lien or charge over client assets so long as this right is agreed by the relevant client(s) in accordance with applicable law and regulation.

In addition, we point out that summing up the Client Money Requirements and the Client Money Resource for all Collection accounts held by a Fund Service Provider and translating them into base currency would be of little additional value due to the various ways and locations in which these accounts may be held. We recommend keeping the focus on reconciliations of each Collection Account on an end-of-day basis as the most effective way to ensure that proper amounts are recorded in these accounts.

While BNY Mellon accept the proposal to introduce a client money calculation, we feel that further consideration is required to enable firms and FSPs to complete them accurately using the correct sources of information. Re G5 (3) and (8), this states that the resource level should be based on the sum of all of the firm's client assets/collection accounts in credit.

This could be challenging in two different areas:

1. If a client asset/collection account is in debit, would this balance and associated client records need to be reconciled separately?

2. Firm/FSPs would require operating models to consolidate all client records and bank accounts on one calculation. This could be particularly challenging where client assets are reconciled in multiple accounts, locations or where a firm may outsource to one or more TA. This would present a complex operational process for Firms/FSPs, due to transaction volumes and varying types of processes being included in the one calculation. This would inevitably lead to difficulty for a firm/FSP to adequately control the record keeping and therefore increase the risk to the investor as a result.

Consideration should be given to an alternative method of reconciliation/calculation which would be completed at bank account level and holding separate internal records for each of these accounts. This would still provide accurate record keeping in the event of insolvency. The calculation should also take into consideration any required funding to settle shortfall positions.

Q18. **Do you agree that a firm's Client Money Resource should only contain what it is required to hold for its clients on a given day? If not, please explain why.**

BNY Mellon agrees with the principle that a firm's Client Money Resource should only contain what it is required to hold for its clients on a given day. However, we note that a collection account deemed a client asset account may be subject to receipts of monies which are not client monies (e.g. commissions). We believe this is another reason why it is important to identify to whom the FSP (as a transfer agent) owes its duties, and under what circumstances. The same holds true with respect to un-funded subscriptions: how these are addressed should be left to the determination of the transfer agent and the party for whom it acts (e.g., a management company), each bearing in mind its own client money resource obligations and fiduciary duties.

Finally, we believe that a firm, such as an Investment Firm operating as a broker, should be allowed operate a buffer and accept the risk of losing 'excess' funds should it become insolvent: this of course would need to be recognised as effective under relevant insolvency law.

Q19. **Do you agree that the reporting of an investment firm's Client Money Resource shortfall should be investment firm specific based on its materiality appetite? If not please explain why.**

BNY Mellon agrees with the proposed approach: we believe it strikes the right balance will avoid an inflexible approach that may be ineffective for many firms. With regard to when the firm should report a shortfall, we believe it is appropriate to require notification by the close of business the following business day that a material shortfall is determined to have occurred. If an investigation of a potential material shortfall is on-going, we recommend notification of the investigation after two business days following the identification of the potential shortfall. We believe this approach allows the firm time for investigation in recognition of the likelihood that potential shortfalls may not on further investigation turn out to be actual shortfalls.

We are of the view that the funding of any shortfall would be the responsibility of the Investment Firm as such shortfalls would be outside of the FSP's control.

Q20. **Do you agree that a statement should be provided on an annual basis or should it provided on a more regular basis?**

BNY Mellon agrees with the proposal, so long as Collection Accounts are carved out appropriately in recognition of a transfer agent's role and to whom it owes responsibilities: we believe that transfer agents should be permitted to leverage off of the annual statements of holdings already issued to investors (again – a primary responsibility of the investment fund that appoints the transfer agent through its agent, the management company), which should include appropriate wording pertaining to Client money regulation and protection.

On a separate note, we point out that any securities financing arrangements involving client assets would require express consent by these clients as lenders under appropriate legal agreements: we would like to avoid unnecessary duplication or redundancy of documentation with clients.

Q21. **Do you agree that a) to g) above will provide clients with sufficient information regarding their holdings? If not please explain why, providing details of additional information which should be included.**

BNY Mellon agrees this information should be sufficient, in addition to existing legal documents and period client statements. In the context of Collection Accounts, in recognition of respective roles and responsibilities of transfer agents versus management companies and others involved in the distribution process, investment fund documentation and application forms should be permitted to contain necessary disclosures and consents regarding the Client Money process and circumstances under which these funds are held.

Q22. **Do you agree that a Fund Service Provider should issue a receipt to the client? If not, please explain why and put forward an alternative approach that will provide confirmation to a client that his/her money is deposited in a Collection Account.**

Firstly, we do not believe the need for receipts each time a shareholder pays monies in is necessary or appropriate. Such a requirement would be excessive in view of the fact that wire payments – subject to their own requirements relating to the remitting bank that the investor instructs – are the predominant method by which subscription monies are delivered. Furthermore, in keeping with the investor's agreement with the investment fund (and its agent responsible for distribution), an investor will receive a contract note directly on settlement from the FSP on behalf of the investment fund. Depending on the settlement cycle, this will occur usually within a 2-3 business days. We would ask for leeway to ensure that normal industry practice for reconciliations has time to complete.

In keeping with market practice globally, a non-acknowledgment is issued when a transfer agent receives monies with incorrect details, unclear instructions or other discrepancies, which transmitted to the sending bank, who will then contact the investor directly. For receipt of electronic funds, the industry is reliant on the client providing a client code and on the remitting bank to capture this client code on the transfer.

For these reasons, we do not believe the issuing of a receipt is necessary. Moreover, this requirement may actually cause disruption and undue cost if it results in increased unnecessary return of funds.

With respect to unallocated client funds, we believe the timeframe should be changed to "within a reasonable timeframe but no more than 10 business days", with the CAMP reflecting this accordingly. This will provide a more practical, efficient and risk-based approach to unallocated client funds which will safeguard client assets while improving the client service proposition.

Finally, as previously noted, not all investors are "direct" investors. Such receipts may also be sent to nominees and/or other agents.

Q23. **Do you agree that an investment firm should seek prior written consent from its client in respect of the circumstances listed in a) to h) above? If not please explain why, providing details of additional circumstances which should be included.**

BNY Mellon agrees such consent should be provided: however, there should be clear recognition that firms who act merely as non-discretionary agent (e.g., custodians) should not be required to obtain prior written consent for items (e) and (h): non-discretionary agents should not be substituted for those who have retained investment responsibility and who, as fiduciaries with discretionary responsibilities or as principals, should be expected to rely on their own assessments of risk in these respects (especially if these decision-makers are classified as "professional" or "eligible counterparties" under MiFID). It is reasonable to expect non-discretionary agents to disclose information of which they become aware that may bear on the risk of an investment in a local market, but these intermediaries should not be expected to ensure that all such risks are taken into account in a decision to invest in such markets.

Where an Investment Firm has responsibilities to investors investing in investment funds, we request that necessary consent could be included in the investment fund application form, with disclosure in the prospectus.

We do have a concern as to how existing clients would be treated from a consent perspective A full repapering exercise could result in costs being passed to the underlying investor and would be difficult to achieve operationally.

We would recommend, as an alternative, that a one-way communication or a negative consent would be more appropriate and achieve the intent behind the Regulations.

Q24. **Do you agree that a FSP should obtain prior written consent from a client in respect of the circumstances listed in a) to c) above and with the medium used to obtain this consent? If not please explain why, providing details of additional circumstances which should be included.**

BNY Mellon agrees with this requirement, however, it should be made clear that it is only relevant to the extent subscribing/redeeming investors have an interest in a Collection Account: these interests cease once cash is invested in the Investment Fund (and units are issued) or, following redemption of units, cash is remitted out of the Collection Account as instructed to the transfer agent. Any relevant consents in respect of these monies should be permitted in the investment fund application form. Again, this is in recognition of the respective roles and responsibilities of the parties involved in the distribution process and the transfer agent.

As per our response to Question 23, we do have a concern as to how existing clients would be treated from a consent perspective A full repapering exercise could result in costs being passed to the underlying investor and would be difficult to achieve operationally. We would recommend, as an alternative, that a one-way communication or a negative consent would be more appropriate and achieve the intent behind the Regulations.

Q25. **Do you agree that the CAKID will better inform the client with a greater understanding providing information in clear plain English that will equip the client to comprehend where and how his/her assets are held when deposited with a firm? If not please explain why.**

BNY Mellon does not believe clients will benefit from this form as it will still be seen as yet another document presenting confusing information. We believe the cost of providing this additional information in all cases would outweigh any perceived benefits. We believe greater protection will be afforded in the substantive requirements of the Regulation in ensuring client asset protection. We believe mandating the provision of this document would be especially confusing and costly in the context of a change of service providers for investment funds, such as transfer agents. Again, in recognition of the respective roles and responsibilities of the parties involved in the investment process, we recommend that any relevant information deemed necessary for this purpose should be required in existing investment fund documentation (e.g., within the Terms & Conditions, Prospectus and the KIID (where applicable)).

Q26. **Do you agree with the need to provide the CAKID to both existing and new clients distinguishing clients of an investment firm and a Fund Service Provider as outlined above? If not please explain why.**

BNY Mellon does not agree that this is needed: we don't believe such a document will be read in practice in most cases.

Q27. **Do you agree with appointing a person to the role of CAOR which will be a pre-approved controlled function? If not, please explain why?**

BNY Mellon welcomes this development. We would recommend that it would be sensible for the industry to develop guidance on qualifications and experience that a CAOR would be expected to attain and maintain (e.g., accounting qualification(s), PQE, years spent in the industry, etc.).

Q28. **Do you agree with the responsibilities of the Client Asset Oversight Officer as provided for in a) to g) above? If not, please explain why, providing details of additional responsibilities which should be included.**

BNY Mellon feel that the Central Bank should avoid being unduly prescriptive in this area. The flexibility in the current fitness and probity regime better enables its application to different firms. A number of questions arise from the suggested approach:

- Presumably not all of these roles need to be performed exclusively by one individual as the CAOR: some functions could be supported by others?
- We believe some flexibility in respect of how the function is organised should be permitted.
- There may be scope for the addition of controlled functions beneath the role of CAOR. The proposed new role is a senior one. The person will have oversight of the client asset function. It is envisaged that he / she will be a board member or at the very least will have direct access to the board.

Q29. **Do you agree with the purpose of the CAMP and the minimum that should be included in this document? If not, please explain why, providing details of additional records which should be included.**

BNY Mellon agrees with the purpose of the CAMP and what should be included: we note that aspects of the CAMP would support operational aspects of the firm's ICAAP or equivalent documentation: we encourage avoiding unnecessary duplication or redundancy.

We believe that the CAMP should be the key control document exclusively used by the CAOR and his / her staff. However, it is important that the CAMP feed dynamically into a firm's existing governance documents (e.g. business plan, programme of activity, ICAAP etc.).

Q30. **Do you agree that Regulation 8.(3) provides for what should be included in a CAE? If not please explain why.**

BNY Mellon agrees that this Regulation provides for what should be included in a CAE.

Q31. **Should this review be carried out more frequent than annually? If so, please explain why.**

BNY Mellon does not believe this needs to be carried out more frequently than annually.

Q32. **Do you agree with the type of assessment that should be carried out on the firm's initial CAMP by an independent external expert?**

BNY Mellon does not agree with the proposal. The proposal will create additional expense for firms and will not always be necessary given that the Central Bank will have oversight of the CAMP.

Q33. **Do you agree that 3 months is sufficient time for a firm to obtain an assessment of the CAMP from an independent external expert? If not, please explain why.**

The initial review by an external expert does not serve any purpose. The Board and the CAOR are responsible for the CAR compliance and this is supported by Compliance, Internal Audit and External Audit. To add another independent body adds little value and distracts from ensuring accountability and responsibility of senior management. Where independent external experts are used (where deemed appropriate), given the scope and scale of the Regulations and the requirements of CAMP, BNY Mellon believes more time should be allowed for an assessment by the independent expert. We would be concerned as to the amount of time and work that would need to be factored into to this process, as well as the need to compete in the market for experts when all firms are seeking to comply with the same requirement at the same time.

Finally, we note that the Central Bank expects that the Regulations, contingent on the necessary approvals, will be in place by the end of QI 2014. BNY Mellon would suggest a lengthy transition period for the implementation of any proposals which are envisaged as causing system architecture to be updated within firms as experience shows us that drafting business requirements, design and implementation, user acceptance testing and regression phases of major projects usually take 12 months to conduct in a controlled manner without posing a risk to other key firm infrastructure. Given the centrality of operational processes affected by these changes and BNY Mellon's commitment to ensure the highest levels of client asset protection, to deliver some of the changes suggested any faster than this could be viewed as taking unnecessary operational risk.

I hope that you will find this submission of benefit in your determination of CP71.

Yours sincerely,

Joe Duffy
Ireland Country Executive
BNY Mellon