

Our Ref: CARCONS/JH/cma

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Dear Sir

**Re: Public Consultation on Central Bank of Ireland's Client Asset Regulations and Guidance – Consultation CP71**

The Chartered Accountants Regulatory Board (CARB) is a body established by the Institute of Chartered Accountants in Ireland to regulate its members in accordance with the provisions of the Institute's Bye-Laws independently, openly and in the public interest.

CARB welcomes the opportunity to comment on the above named consultation paper which was issued in August 2013. CARB supports the purpose of the consultation paper which is available at [www.centralbank.ie/regulations/poldocs/consultation-papers/pages/default.aspx](http://www.centralbank.ie/regulations/poldocs/consultation-papers/pages/default.aspx) and is supportive regarding most of the proposed regulations.

We attach several comments which require clarification or denote our concerns. We have not answered each question on an individual basis but have restricted our response to comments confined to those relevant to us as a regulatory body.

We would be happy to meet with you and discuss the issues raised.

If you have any further queries, please do not hesitate to contact me.

Yours sincerely

Heather Briers

Director

Chartered Accountants Regulatory Board

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## Comments on Client Asset Regulations (CAR) and Guidance – Consultation Paper CP71

1. On page nine, the Central Bank is proposing to adopt a wider scope for client funds. As many of the firms regulated by CARB hold general client money which is not in respect of investment services (for example, taxation receipts and payments) confirmation is required that these monies are not expected to be dealt with in accordance with the CAR unless they are mixed monies.
2. In addition, confirmation is required that these regulations apply to the receipt and payment of insurance premiums.

### Principal of Daily Calculation

3. Pg 18 states that *“given that each investment firm varies in size and business model, it is not possible to put forward a threshold level for shortfall funding that would be material for all investment firms.”* Could the above use of the term “material” create confusion with the term “materiality” used in the context of the Client Asset Examination assurance engagement? We consider that it would be of value to include more detail about “materiality” in the regulations and not confine it to guidance.

### Principal of Client Disclosure and Consent

4. Pg 19 refers to the *“extent to which any client assets have been the subject of securities financing transactions”* and Pg 20 refers to *“where client assets are be passed to other persons;”* Hypothecation/rehypothecation can be a complex and misunderstood area – see [http://media.corporate-ir.net/media\\_files/IROL/24/248677/mediareleases/2008a/MediaRelease2008\\_59.pdf](http://media.corporate-ir.net/media_files/IROL/24/248677/mediareleases/2008a/MediaRelease2008_59.pdf) for an example of where things have gone wrong. There is scope for the Consultation Paper to provide guidance in this area.

### Risk Management

5. The risk management principle could also refer to governance and could highlight the importance of ensuring that client asset policies and procedures are incorporated into the overall compliance, risk management and assurance framework.
6. Pg 22 states that *“Appointing a person as the CAOR (“Client Asset Oversight Officer”) would not distract from the overall responsibility of the firm’s governing body to safeguard client assets. In most cases, the Central Bank would expect a director to be nominated for the CAOR position.”* Considering that client asset processes span a number of functions across a firm, we consider it is important to ensure the right people are involved (across functions such as front office, compliance, operations, legal, finance, treasury, IT) with clear allocation of duties and accountability and proper oversight. We would anticipate that most firms would expect their Investment Business Compliance Principal to undertake this role.
7. Pg 22 provides details of the responsibilities of the CAOR, which highlight the importance of awareness and training amongst operational staff in relation to client asset requirements. For example,
  - a. The CAMP is updated *“as information upon which the client asset management plan is based, changes;”* The CAOR would need to be notified by staff of information which may impact the CAMP.

8. Pg 22 refers to *"reporting to the Board in respect of any issues raised by the external auditors in relation to client assets;"* Relevant issues raised by the internal auditors should also be reported, where applicable.

#### **Client Asset Examination (CAE)**

9. Pg 25 refers to an assessment by *"the"* firm's external auditor in the first paragraph and to *"an"* external auditor in the third paragraph. It is not clear whether it is intended the assessment be carried out by the firm's appointed external auditor or whether anyone who would qualify to be appointed as external auditor could perform the assessment. If the latter is the case, and bearing in mind that CAE is intended to provide assurance, it is important that independence requirements etc. are met by the auditor appointed to perform the assessment.
10. In addition to the annual CAE, are there ongoing breach reporting obligations imposed on the auditor performing the CAE, particularly if the auditor is not the external auditor of the firm's financial statements?
11. No reference to materiality is included on Pg 25 in the description of the matters to be included in the assessment. Wording such as *"in all material respects"* might be useful, in addition to guidance on applying materiality.
12. The third paragraph of Pg 25 refers to an assessment *"as at the period end date"*? Considering the matters to be included in the report, would an assessment *"for the period"* be more appropriate?
13. Pg 25 refers to an assessment of the *"adequacy of the processes and systems in place"*? As assurance is required, should the wording instead refer to an assessment of the *"controls"* as set out in the firm's CAMP? Further, if assurance is required on both design effectiveness and operating effectiveness of controls, should the wording on Pg 25 be expanded accordingly?
14. Matter (e) on Pg 25 refers to *"risks faced by the firm in holding client assets with regard to the nature and complexity of the business of the firm"*. As assurance is required, we would question the appropriateness of the subject matter and the suitability of the criteria to evaluate or measure the subject matter.
15. Pg 26 refers to *"positive confirmation requests, from a representative sample of clients as determined by the auditor, of client asset balances at the randomly selected date during the year, not to be at period end date."* Has consideration been given to how effective this procedure is likely to be, the practicalities involved and what the expected response rate would be (particularly if the client base is predominantly retail and clients only receive statements of position infrequently (e.g. annually))?
16. Pg 26 refers to an assessment of the CAMP *"from an independent external expert (not being the firm's external auditor)"*. The CP does not explain the logic for excluding the firm's external auditor from performing this assessment. For a small firm, the expense involved in engaging a separate external expert may not be proportionate.
17. Pg 26 states that *"If is of paramount importance that the independent expert engaged by a firm is somebody of relevant expertise that will provide value to a firm resulting in an*

*assessment that will inform a firm."* What framework will the independent expert use for reporting – is assurance required? How should "*independent*" be defined – is this the same definition used in an assurance framework? What qualifications does an Independent External Expert have to have?

18. We note that, under regulation 8.(7), a firm which is permitted to hold client assets, claims not to have held client assets for the period in question, the firm shall arrange that the external auditor shall only determine that the firm does not and did not during that period, hold any client assets and the firm shall ensure that the external auditor shall provide this report to the firm and to the Bank not later than 4 months after year end. We are concerned that many of the firms regulated by CARB, who are permitted to hold client assets by virtue of their category of authorisation but do not hold any, will have to incur the expense of engaging an external auditor.