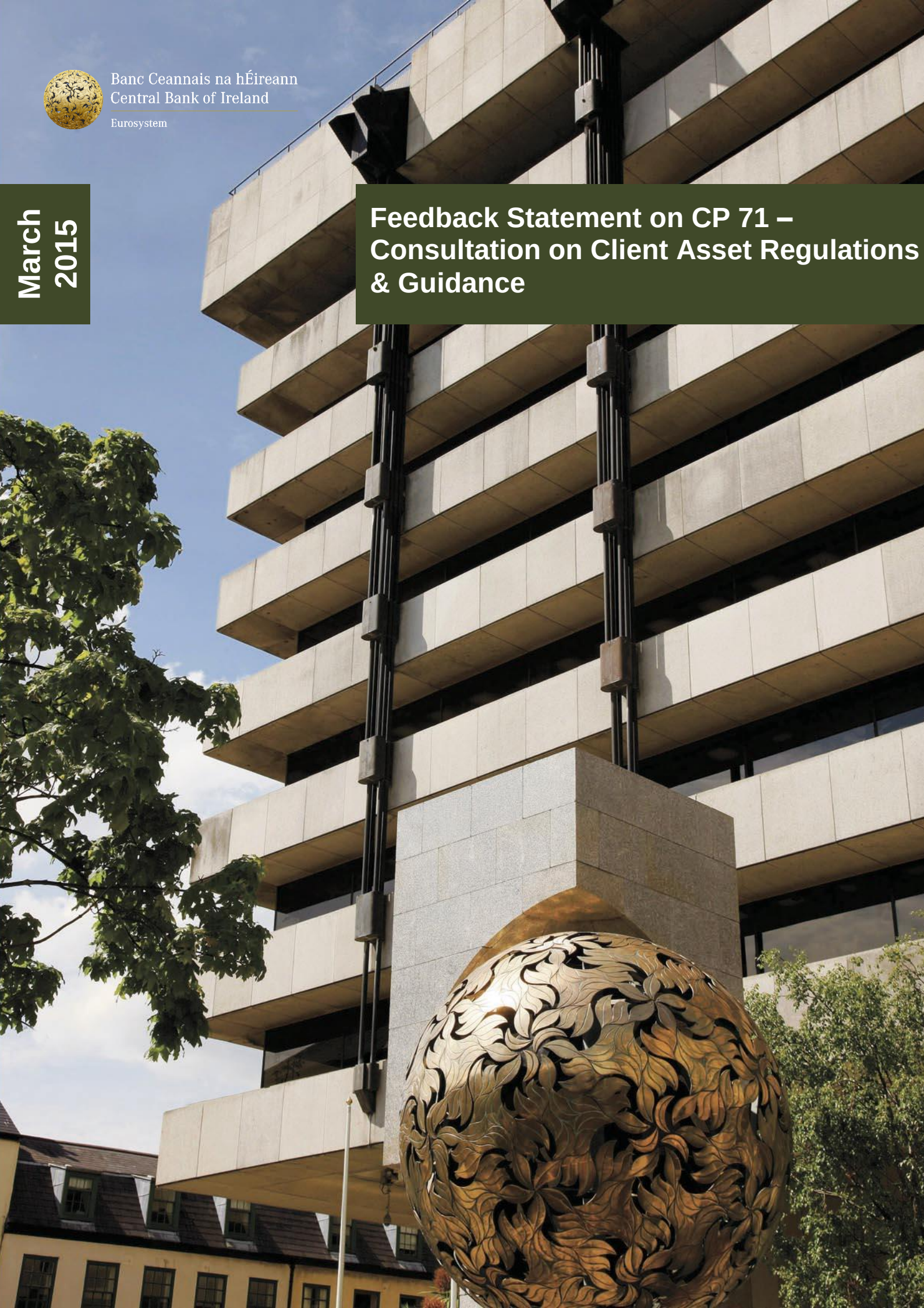

Banc Ceannais na hÉireann
Central Bank of Ireland
Eurosystem

March 2015

Feedback Statement on CP 71 – Consultation on Client Asset Regulations & Guidance

Contents

Introduction

1. On 2 August 2013, the Central Bank of Ireland ("Central Bank") published Consultation Paper CP 71 ("CP 71") on proposed Client Asset Regulations and Guidance for investment firms[1] and fund service providers ("FSPs").

2. Having considered the responses received to CP 71, the Central Bank took the decision to introduce a separate set of regulations for investment firms and FSPs[2]. The decision to separate the regulations reflects the fact that the business model operated by investment firms differs significantly from the business model operated by FSPs in several key respects, including, inter alia, the international nature and mobility of the Funds industry, the quantum of monies flowing through collection accounts and the indirect relationship that typically exists between FSPs and investors.

3. On foot of the above decision to introduce separate regulations for investment firms and FSPs, the Central Bank entered into a further period of consultation with representatives of the Funds industry to address challenges raised in response to the CP 71 consultation. A series of consultation meetings were held to work through each of the core client asset principles with the objective of clarifying operational and legal issues anticipated by the Funds industry and assessing the applicability of the client asset principles to FSPs. This consultation resulted in a number of changes to the original CP 71 proposals as outlined throughout this document.

4. The Central Bank also decided to develop separate guidance documents in relation to the Client Asset Regulations and the Investor Money Regulations. These are respectively titled "Guidance on Client Asset Regulations for Investment Firms" and "Guidance on Investor Money Regulations for Fund Service Providers".

5. This feedback statement summarises the responses received to CP 71 along with the Central Bank's comments and decisions.

6. Both sets of regulations[3] were signed on 25 March 2015 and set out the obligations that investment firms holding client assets and FSPs holding investor money will be required to comply with under the new regime. The guidance should be used as a tool to assist

[1] Refer to Appendix 1 for meaning of investment firms and FSPs

[2] Throughout this document, the regulations applicable to investment firms holding client assets and FSPs holding investor money will be referred to as the "Client Asset Regulations" and the "Investor Money Regulations", respectively.

[3] SI No 104 of 2015 and SI No 105 of 2015 issued respectively pursuant to Section 48 of the Central Bank (Supervision and Enforcement) Act 2013

investment firms and FSPs in the interpretation of these regulations.

7. When the Client Asset Regulations come into operation, the Client Asset Requirements issued on 1 November 2007 will be revoked.

8. The commencement date for the Client Asset Regulations will be 1 October 2015 and the commencement date for the Investor Money Regulations will be 1 April 2016.

9. The closing date for receipt of comments was 31 October 2013 and 26 responses were received. The responses* received can be broken down as follows:

- Funds Industry 11
- Stockbrokers 3
- Investment Firms 6
- Accounting Bodies/Firms 3
- Credit Institutions 1
- Pension Trustees 1
- ICCL 1

*Individual responses are available on the Central Bank's website

10. Nothing in this feedback statement should be read with, seen as a clarification of or a supplement to either set of regulations and guidance. This feedback statement is published to promote an understanding of the policy formation process within the Central Bank and is not relevant to assessing compliance with regulatory requirements.

11. The Central Bank is grateful to all parties who responded to CP 71 and wishes to thank them for their consideration.

Securities and Markets Supervision Division
Central Bank of Ireland
30 March 2015

Feedback on questions posed in CP 71

Question 1: 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.

12. There was broad support for the proposed Core Principles. One respondent commented on the gap in industry in how firms treat regulated and unregulated products.

13. FSPs highlighted the potential operational/cost implications for the funds industry as this will be the first time there will be specific regulations covering investor money held in a collection account.

Central Bank:

- The proposed seven Core Principles have been retained for investment firms in the Client Asset Regulations.
- It is not feasible for the Central Bank to maintain a list of all products that fall to be regulated or unregulated; an investment firm should refer to the relevant legislation both domestic and European and seek its own legal advice if in doubt.
- Given the business model operated by FSPs, the Central Bank re-engaged with representatives from the Funds industry and, as outlined in the introduction, has developed a separate set of regulations and guidance with regard to the operation of collection accounts. This set of regulations and guidance will be known as the 'Investor Money Guidance on Regulations for Fund Service Providers' ("Investor Money Guidance"). The Investor Money Regulations are based on six Core Principles. In order to avoid confusion in relation to the use of the word 'Funds' and to reflect the FSP's indirect relationship with collective investment scheme investors, 'client funds' is now referred to as 'investor money' in the Investor Money Regulations.
- The set of regulations and guidance with regard to investment firms holding client assets will be known as the 'Guidance on Client Asset Regulations for Investment Firms' ("Client Asset Guidance").

Question 2: Do you agree with the proposed wider scope in respect of 'client funds'? If not, please explain why.

14. The majority of respondents opposed this proposal. There was a concern that the extension of the scope may result in firms that are not currently subject to the current client asset regime being brought into scope and assets currently outside of Central Bank regulation would also be brought within the remit of the Central Bank.

15. Other respondents favoured a wider scope for client funds, with one respondent suggesting that non-regulated investments should also be held and protected in client asset accounts.

16. Clarification was sought as whether the regulations would apply to the receipt and payment of insurance premiums.

17. The Funds industry queried whether the regulations would apply to non-Irish Funds and non-Irish domiciled Funds.

Central Bank:

- The Central Bank does not have the power to regulate assets that a regulated financial service provider receives or holds in respect of any activity that is not a regulated financial service. Such assets do not qualify to avail of statutory client asset protection. Therefore the Central Bank has not widened the scope of client funds or investor money. Money received by an investment firm in respect of any activity that is not a regulated financial service should not be deposited or maintained in a designated client asset account.
- Neither the Client Asset Regulations nor the Investor Money Regulations apply to the receipt and payment of insurance premiums.
- The Investor Money Regulations are applicable to a FSP that is authorised in the State and is holding investor money irrespective of whether the investor money is in respect of Irish or non-Irish Funds.

Question 3: 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.

18. While respondents welcomed the concept, the proposed timeframe of two business days to return client funds was viewed as too short; alternatives of three to ten business days were put forward. It was also suggested that the timeframe should be stipulated in the firm's Client Asset Management Plan ("CAMP").

19. Some respondents expressed concerns in respect of possible conflicts with Anti Money Laundering obligations if the time given was not sufficient.

Central Bank:

- Taking the views of respondents into consideration, the Central Bank has extended the proposed time allowed from two business days to five working days. This change has been reflected in both the Client Asset Regulations and the Investor Money Regulations.
- It is an investment firm's/FSP's responsibility to comply with all relevant legislation.

Question 4: Do you agree that the Regulations should apply to funds that have been lodged into a collection account? If not, please explain why.

20. While the Funds industry agreed with the concept, they raised some legal and operational issues which required further clarification before a proportionate client asset regime for collection accounts could be devised.

Central Bank:

- To address the concerns expressed by the Funds industry and as noted in Question 1 above, a separate and distinct regime has been developed for FSPs. The Investor Money Regulations and Guidance for FSPs holding investor money in collection accounts has been developed in conjunction with the Funds industry to better reflect how collection accounts are held and operated by FSPs.
- The Investor Money Regulations will apply to money received by the FSP from an investor where it is held in a collection account in the name of the FSP or a nominee of the FSP and where the FSP has the capacity to effect transactions on that collection account.

Question 5: 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.

21. The majority of respondents agreed that a firm should be able to identify where each individual client's assets were held.

22. A number of respondents pointed out that, in the event of the failure of a credit institution holding a client asset account on behalf of a firm, the normal practice would be for the firm to pro-rata any shortfall in the client asset account across all clients with funds in pooled accounts and not just the clients who had client funds in the failed credit institution. An exception to this general rule may occur where the client had specifically stated that his/her funds should not be lodged in the failed credit institution.

23. One Fund industry respondent commented that such information would have to come from the Investment Fund.

Central Bank:

- It is critical that regulated entities can accurately account for where its client assets are held. FSPs and investment firms should maintain detailed accurate records in order to allocate ownership of amounts maintained in pooled bank accounts and account for movements in that balance.
- Regulation 3(20) & Regulation 3(21) of the Client Asset Regulations set out the records an investment firm is required to maintain in respect of each client. These records should be kept separate from all other transactions of the investment firm including those not related to the client asset account.
- Equivalent regulations are specified in the Investor Money Regulations (Regulations 3(15) & 3(16)); a FSP as the entity holding investor money is required to have a record of such information.

Question 6: 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.

24. While the majority of respondents agreed with the concept, it was pointed out that required margin under a collateral arrangement for the purpose of securing or otherwise covering a required margin may cease to be client money and may become firm money.

Central Bank:

- The objective of the client asset regime is to safeguard and protect all client assets. Unless a client has given full title transfer of its asset to an investment firm, an investment firm should apply the Client Asset Regulations to all margin received from a client. When a client enters into an arrangement to transfer full ownership to the investment firm, the Central Bank expects an investment firm to consider the appropriateness of such a transaction for each client and to clearly explain to the client the implications of this transaction.

Question 7: Do you agree that the records should be retained for six years? If not please explain why.

25. The majority of respondents agreed with this proposal. Some respondents suggested a retention period of seven years.

26. Some respondents pointed out that it is not always possible to produce records within one business day as items may be archived off site and/or there may also be a reliance on a third party to reproduce the record, suggesting the timeframe should be changed to "as soon as possible".

27. Clarification was sought regarding when a firm should be in a position to produce records if such records are held in hard copy.

Central Bank:

- The Central Bank has maintained the requirement of six years for both investment firms and FSPs.
- The Central Bank has amended the timeframe for the production of records from one business day to 'without delay'. An investment firm/FSP should have structures in place or put such structures in place to comply with this requirement.
- To clarify, the 'without delay' timeframe for producing records applies to all records regardless of what medium is used, e.g., soft copy, hard copy etc.

Question 8: Do you agree with the new approach proposed in respect of Facilities Letters and Confirmations? If not please explain why.

28. The majority of respondents agreed with the proposed approach in respect of Facilities Letters and Confirmations; certain respondents disagreed with the process proposed and some of the criteria to be included in the Facilities letters.

29. Some respondents outlined that the proposed new process may increase administration without adding any additional value to the protection of client assets and could be prone to error. Some respondents suggested, as an alternative, the use of one letter from each third party to cover all client asset accounts (both present and future accounts).

30. Certain respondents outlined that, in some cases, a third party may be unable to proceed with account opening until the third party is actually in receipt of client funds from the firm and/or the third party may not provide account numbers until the account is actually opened.

31. It was also raised that some third parties outside the State may be unwilling or unable to comply with the requirements. Some respondents pointed out that this may have the effect of preventing investment with such third parties and limiting investment choice for the individual investor.

32. One respondent outlined the possibility that some custodians may unilaterally open a client asset settlement account to settle a particular trade and the firm may only become aware of the existence of this account when a statement is produced the following day.

33. Respondents requested clarification on the following:
    a) Whether existing letters could be grandfathered in under the new client asset regime.
    b) Would letters be required from a third party such as ‘CREST’?
    c) What is envisaged with respect to Regulation 3(9) and the feasibility in respect of Regulation 3(6)(g) & 3(7)(h)?

Central Bank:

- Having considered the views of respondents, both sets of Regulations have been amended to provide clarity.
- A Funds Facilities Letter and a Financial Instruments Facilities Letter, where applicable, is required to be agreed at the outset of the relationship with the third party; this letter is the overarching letter covering the relationship with the third party.
- Regulation 4(8) of the Client Asset Regulations requires that, prior to or within three working days of the initial deposit of client money into a client asset account with a third party, an investment firm shall obtain a confirmation from that third party that this particular client asset account is subject to the criteria provided for in the relevant Funds Facilities Letter or Financial Instruments Facilities Letter together with any relevant account details including the account number. This confirmation can be provided in electronic form.
- Regulation 4(4) and 4(6) of the Investor Money Regulations provide for an equivalent process in respect of investor money in a collection account.
- As outlined above, the Funds Facilities Letter/Investor Money Facilities Letter and Financial Instruments Facilities Letter is only required when a relationship is formed with a third party; however a confirmation is required on the initial deposit into each new client asset account/collection account with that third party and, for clarification, not each time money is lodged money into that account.
- A third party should provide the Funds Facilities Letter/Investor Money Facilities Letter and Financial Instruments Facilities Letter, where applicable, at the outset of the relationship; it is permissible to provide the account number after the initial deposit of client funds/investor money (within three working days of the initial deposit).
- If a third party is unwilling to provide the necessary Funds Facilities Letter/ Investor Money Facilities Letter or Financial Instruments Facilities Letter, client assets/investor money should not be deposited with that third party as the assets may not be protected.
- A third party should not have the ability to open a client asset account without the permission of an investment firm; an investment firm should engage with its third party to eliminate this practice.
- The following are requested clarifications:

    a) Client Asset Regulation 4(7) permits the 'grandfathering' of existing

confirmations but an investment firm should review these confirmations to ensure that they comply with the criteria of Regulation 4(4), 4(5) & 4(6) where applicable.

b) The Funds Facilities Letter and Financial Instruments Facilities Letter will not be required from CREST.

c) Having considered the views of respondents, Regulation 3(6)(g) and 3(7)(h) (as proposed in CP 71) have been deleted.

Question 9: 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.

34. While all respondents agreed with the concept, a number expressed concern with the timeframe of one working day, highlighting the need to allow time for the rectification of clerical errors and other circumstances that could delay remediation such as the nature of the investment, e.g., private equity fund raising.

35. Respondents put forward a timeframe of five to thirty days or suggested that a timeframe should be stipulated in the firm's CAMP.

Central Bank:

- It is critical that client asset accounts/collection accounts are correctly designated. If an investment firm/FSP has proper procedures and checks in place to open client asset accounts/collection accounts, it should be a case that the withdrawal of client funds/ investor money as a result of non-designation or incorrect designation should be an exception. In accordance with Regulation 4(3) of the Client Asset Regulations/Investor Money Regulations, an investment firm/FSP must verify the designation within one working day of the initial lodgement to a client asset account/collection account. However, the Central Bank has amended the timeframe for withdrawing client assets/investor money if the account is not adequately designated; an investment firm/FSP should withdraw the client assets/investor money without delay and in any event within three working days of carrying out the verification assessment.

Question 10: 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.

36. Respondents agreed with the approach for reconciling client asset accounts that hold client funds.

37. A number of respondents suggested that the frequency of the reconciliations should be determined with reference to the frequency of the transactions going across the accounts.

38. One respondent suggested that directors of a firm should determine the frequency of reconciliation based on risk.

39. A number of respondents highlighted the difficulty in obtaining statements in order to carry out the reconciliation within one working day.

40. One respondent suggested that there should be a requirement that all statements should be in SWIFT and that the timeframe should be extended for reconciliations relating to fund managers until the fund managers can provide the statements in SWIFT.

41. It was suggested that Regulations 4(1) & 4(2) (as proposed in CP 71) should be merged to avoid confusion.

42. On the issue of investigating reconciling differences, a number of respondents pointed out that it is not always possible to identify the cause of a difference within one working day as a firm may need to interact with third parties which may give rise to delays.

43. Another respondent requested clarification as to whether the reconciliation of fixed deposit accounts fell under Regulation 4(1).

Central Bank:

- It is important from a control perspective that reconciliations are carried out expediently.
- At the outset of its relationship with a third party, an investment firm should put a process in place to obtain the necessary statements within the required timeframe; if a statement cannot be provided from a third party within the required timeframe, client assets should not be deposited with that third party.
- Having considered the responses received and in order to avoid confusion, the Central Bank has changed the text in Regulations 4(1) and 4(2), now referred to as Client Asset Regulations 5(1) and 5(2) for investment firms.
- Regulation 5(1) of the Client Asset Regulations requires an investment firm to reconcile on a daily basis the balance of all client funds held by the investment firm.
- Regulation 5(2) of the Client Asset Regulations requires, without prejudice to Regulation 5(1), an investment firm to reconcile at least monthly all fixed term deposit accounts held by the investment firm.
- Regulation 5(1) of the Investor Money Regulations requires a FSP to reconcile collection accounts on a daily basis.
- With regard to reconciliation differences, the original text for Regulation 4(9) (as proposed in CP 71) has also been amended. Under Regulation 5(10) of the Client Asset Regulations, an investment firm shall commence an investigation into the cause of any difference in the reconciliation within one working day, shall identify the cause of the reconciliation difference within 5 working days and shall resolve any reconciliation difference identified as soon as practicable. Equivalent requirements are contained in Regulation 5(7) of the Investor Money Regulations for FSPs.

Question 11: 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.

44. All respondents agreed that client financial instruments should be reconciled at least monthly.

Central Bank:

- Monthly reconciliation of client financial instruments has been retained.

Question 12: 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.

45. The majority of respondents agreed with the time allocation of ten business days.

Central Bank:

- Ten business days has been changed to ten working days.

Question 13: 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.

46. A number of respondents pointed out that there are many aspects which may create a shortfall, e.g., insolvency of a third party, fraudulent activities, trade failures, timing differences. Respondents pointed out the practical difficulties of implementing such a requirement, particularly as many of the differences identified relate to timing issues.

47. Some respondents suggested that a shortfall should only be made whole if it is directly as a result of the action of the investment firm.

48. Respondents suggested that in the event that it is deemed necessary to make good any shortfall a cap should be imposed on that amount.

Central Bank:

- It is not feasible for the Central Bank to maintain an exhaustive list of all scenarios which might give rise to a shortfall and the appropriate action to take. An investment firm is best placed to determine the action necessary in order to avoid a shortfall in a client financial instrument.
- The Central Bank has amended the Client Asset Regulations such that an investment firm is now required to ensure that the quantity and type of client financial instruments held by the investment firm or nominee are the same quantity and type as those which the investment firm should be holding on behalf of the clients (refer to Regulation 5(4)).

Question 14: Do you agree that a collection account should be reconciled each time a transaction occurs on that account? If not, please explain why.

49. The majority of respondents agreed that collection accounts that have daily transactions should be reconciled daily.

Central Bank:

- Regulation 5(1) of the Investor Money Regulations requires a FSP to reconcile collection accounts on a daily basis. As a point of clarification, daily reconciliation is required regardless of whether or not a transaction has occurred in a collection account.

Question 15: 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.

50. The majority of respondents agreed that it is appropriate for a firm to report material reconciling items with the level of materiality determined by the firm.

51. A respondent suggested that a firm's authorised activities, turnover and compliance record should be taken into account and that the Central Bank should consider setting firm specific reporting thresholds by percentage of asset categories held and/or absolute value.

Central Bank:

- Given the diversity of business models for both investment firms and FSPs, it is not possible to determine a materiality level that would be suitable to all investment firms/FSPs.
- An investment firm/FSP should determine the criteria it will adopt to quantify its materiality level using the Client Asset/Investor Money Guidance provided. Where indicative threshold limits are included in the Client Asset/Investor Money Guidance, the Central Bank would not in the ordinary course of business foresee an investment firm/FSP putting forward thresholds above these benchmarks.

Question 16: Do you agree with the components of an investment firm's Client Money Requirement and Client Money Resource? If not, please explain why.

52. All respondents agreed with the components of an investment firm's Client Money Requirement and Client Money Resource.

53. One respondent requested that it should be optional as to whether the cashbooks or counterparty statements are used as the source document.

Central Bank:

- As an investment firm is the ultimate holder of the client's record of assets and the daily calculation is an important internal control, the Central Bank is seeking to ensure that an investment firm is using its records to carry out the calculation and requires uniformity in approach. Therefore, the Client Asset Regulations requiring an investment firm to use the investment firm's own records or its own records reconciled to third party records has been retained.
- With regard to the Investor Money Regulations, the components of the daily calculation are now referred to as the 'Investor Money Requirement' and the 'Investor Money Resource'.

Question 17: 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.

54. The majority of respondents disagreed with the approach suggesting that this approach is too restrictive and didn't see the value of translating the Client Money Requirement and Client Money Resource into base currency.

55. The Funds industry put forward concerns regarding the significant change that would be required to produce such a calculation, requesting the option to use alternative calculation methods; however no detailed alternatives were provided for consideration.

56. One Funds industry respondent requested clarification on whether funding for individual clients could be done on an intra – day basis.

Central Bank:

- The method of calculating the Investor Money Requirement and Investor Money Resource by a FSP has been retained in the Investor Money Regulations. This is the method the FSP has to follow in order to be in compliance with the Investor Money Regulations. The daily calculation may be performed per currency or all collection account balances may be converted to the base euro currency.
- Using one investor's money to fund another investor is not permitted unless a legally enforceable agreement is in place between the investors (refer to Regulation 3(5) of the Investor Money Regulations).

Question 18: 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.

57. Of those that responded, 53% agreed with the proposal. The following suggestions were put forward by respondents for consideration by the Central Bank:

a) A firm could maintain a risk adjusted percentage of client assets as a buffer, suggesting a buffer may mitigate against a shortfall.

b) A buffer could be held in a separately designated client asset account but it should be incorporated into the calculation.

c) Stockbrokers should be allowed to hold a buffer if they accepted the risk of losing 'excess' funds, should the investment firm become insolvent.

d) As part of daily cash forecasting, a buffer is required to ensure that when debts are not settled and when trades fail that other client credit balances are not impacted. As a result, removing the requirement of the buffer may leave clients exposed.

e) Where a firm deems it prudent to maintain a buffer, it should be allowed to do so, requiring the firm to document in detail the rationale and the measurement criteria in the firm's CAMP.

f) The Funds industry expressed concern as to how it should deal with non-client money that currently flows into the Collection account, e.g., FX charges, commissions, bank charges.

Central Bank:

- The principle of Segregation requires an investment firm to hold client assets separate from the investment firm's own assets ensuring that only client assets are deposited in a client asset account. This is a fundamental principle of the client asset regime. If an investment firm is allowed to maintain a buffer, in the event of the insolvency of the investment firm, the liquidator may legitimately have recourse to the investment firm's funds held in a client asset account (i.e., buffer amounts). The Central Bank wants to minimise the extent to which client funds are co-mingled with other money (including firm money). If there is only client funds in the client asset account then there can be no doubt that, in the event of the insolvency of the investment firm, the client funds are all client assets and can be ring fenced as such. Therefore the Central Bank has decided to retain the requirement for an investment firm's Client Money Resource to only contain

what the investment firm is required to hold for its clients on a given day.

- The same applies in respect of investor money held by the FSP in collection accounts. A FSP's Investor Money Resource can only contain what the FSP is required to hold for investors on a given day. The Investor Money Regulations specify how a FSP should deal with money that is a mixture of investor money and other money if it flows into a collection account (refer to Regulation 3(11) of the Investor Money Regulations).

Question 19: 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.

58. The majority of respondents agreed that reporting should be firm specific based on its materiality appetite.

59. It was suggested that the number of shortfalls should be reported monthly to assess if a firm is funding client cash on a frequent basis.

60. A view was also expressed that a shortfall is a core risk and it should not be subject to a firm's materiality judgement. It was suggested that the reporting of a shortfall should be based on the percentage of the Client Money Requirement the shortfall represents.

61. One respondent suggested that, if a buffer is not permitted, reporting of a funding shortfall should be without thresholds.

62. The Funds industry raised some legal issues regarding the funding of a shortfall.

Central Bank:

- Given that each investment firm and FSP varies in size and business model, each investment firm/FSP should report its funding shortfall as determined by the investment firm's/FSP's materiality appetite.
- Prior to the commencement of the Client Asset Regulations, the Central Bank will require each investment firm to assess what level of shortfall or surplus is considered material and record this rationale in its CAMP. When a material shortfall occurs and a funding transfer is required, an investment firm should immediately report this to the Central Bank and explain in the notification the reasons for this transfer. Likewise, in cases where an investment firm's Client Money Resource materially exceeds its Client Money Requirement, it should be reported to the Central Bank.
- Prior to the commencement of the Investor Money Regulations, the Central Bank will require each FSP to assess what level of shortfall or surplus is considered material and record this rationale in its Investor Money Management Plan ("IMMP"). When a material shortfall occurs and a funding transfer is required, the FSP should immediately report this

to the Central Bank and explain in the notification the reasons for this transfer. Likewise, in cases where a FSP's Investor Money Resource materially exceeds its Investor Money Requirement, it should be reported to the Central Bank.

Question 20: Do you agree that a statement should be provided on an annual basis or should it provided on a more regular basis?

63. The majority of respondents agreed with the provision of a statement annually.

64. Some other suggestions put forward:

a) Regular reporting may be appropriate where a client's assets are above a certain (pre-determined) level or, at a minimum, a statement should be issued every six months.

b) Another respondent suggested that the proposed regulations should be sufficiently flexible to permit exemptions from providing client statements where it is not relevant to a firm's business model (e.g., agency style brokers execute orders at point in time).

c) Guidance was sought as to how statements should be stored and the timeframe the Central Bank expects the investment firm to issue the statements.

d) One Funds industry respondent suggested that FSPs should leverage off the annual statement of holdings that is currently issued to investors.

Central Bank:

- The Central Bank has retained in the Client Asset Regulations the requirement for an investment firm to issue a statement on an annual basis. However, as noted in the Client Asset Guidance, if a client requests a statement more frequently or in more detail, an investment firm should be in a position to respond to this request.
- The Client Asset Regulations provide that statements must be sent to clients in a durable medium. It is an investment's firm responsibility to determine how and what is the appropriate medium to store its statements. Per G7 (7) of the Client Asset Guidance, an investment firm should be in a position to demonstrate and evidence that the statements have been issued.
- A FSP is not required under the Investor Money Regulations to issue an annual statement to an investor in respect of investor money.

Question 21: 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.

65. The majority of respondents agreed with the proposed content of a client statement with one exception. Respondents considered that including the details of the jurisdiction of a client's assets would be difficult on the basis that ascertaining where assets are held at a point in time would be difficult and potentially misleading for the client given that sub-custodians are often used; it was suggested that this information should only be provided upon request from the client.

66. Other suggestions as to the type of information that could be included in the statement:
    a) Detail on the extent to which client assets are pooled and the quantum of fees charged (taken) over a given period.
    b) A statement of the nature of segregation of client funds, whether notional or physical, and whether segregated from the firm's own funds.
    c) The mechanisms which the client may employ to verify his/her asset holding.
    d) To what extent interest accrued on any pooled funds is fully allocated to the client (or is being retained by the investment firm).

Central Bank:

- Having considered the responses, the Central Bank has amended the Client Asset Regulations by removing the requirement to provide the jurisdiction of where client assets are held.
- With respect to other types of information put forward by respondents for inclusion (e.g., the pooling of client assets, interest on pooled client funds and fees charged), these matters usually form part of the initial agreement between the investment firm and the client and any subsequent changes would be subject to agreement by both parties. However, if an investment firm chooses to provide additional information in the annual statement, such information should not diminish or obscure the required information and such additional disclosures should not distract from its responsibilities in other areas of the Client Asset Regulations.

Question 22: 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.

67. Given the manner in which collection accounts operate, there was strong disagreement with the purpose of issuing a receipt outlining that it would be excessively onerous with little value gained in issuing a receipt to the client.

68. It was suggested that a disclosure statement in the fund documentation should clearly state the specifics of the receipt of money from investors and its status whilst investor money is in the collection account together with detail as to what basis it was transferred to the Investment Fund (e.g., on Trade Date).

Central Bank:

- Having considered the business model of FSPs and responses received, the Central Bank has removed the requirement for a FSP to issue a receipt to the investor.

Question 23: 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.

69. While the majority of respondents agreed with the proposal in relation to prior written consent from clients, a number of respondents suggested that the regulations should permit some flexibility to take account of the nature of an investment firm's client base.

70. A number of respondents raised the question as to whether consents received from existing clients would be grandfathered.

Central Bank:

- The Central Bank has retained the written consent provisions in the Client Asset Regulations. However, recognising the difficulty in obtaining these consents from existing clients, Regulation 7(17) of the Client Asset Regulations provides for the grandfathering of consents in respect of existing clients; any consents not on file for existing clients should be obtained within three months of the commencement of the Client Asset Regulations.

Question 24: 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.

71. The Funds industry suggested that prior written consent could form part of the initial application form.

Central Bank:

- Having further considered the business model of FSPs and the business relationship between a FSP and the investor, the Central Bank will not require a FSP to obtain prior written consent from the investors.

Question 25: Do you agree that the Client Assets Key Information Document ("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.

72. The response to this question was clearly delineated depending on the industry sector responding. The Funds industry disagreed with the requirement for a separate document. All other respondents agreed with the proposal for a standalone document.

73. The Funds industry suggested that similar type information could be included in the Prospectus/Application Form.

74. One respondent noted that the reference to clear language free of technical jargon could be in contradiction to legal principles that may be inherently complex, particularly in reference to the treatment of client assets under any insolvency regime.

75. Concerns were expressed that clients may not receive a consistent message and that a template should be provided. Further guidance as to the content of the CAKID was requested by a number of respondents.

76. A question was raised as to who should provide the CAKID in the context of the relationship which involves a product producer, an intermediary and the underlying clients.

Central Bank:

- The Client Asset Regulations have been amended such that an investment firm is required to provide only its retail clients with the CAKID. It is important that retail clients understand the client asset regime; the Central Bank views the CAKID as a mechanism to achieve this.
- To emphasise the importance of the CAKID, it must be a separate and stand-alone document, written in a language and style that is clear, succinct and comprehensible.
- In order to allow investment firms to develop a CAKID that is reflective of the service it offers to its clients, it would not be feasible for the Central Bank to develop a template as

a one size fits all.

- The text provided in G7 (11) of the Client Asset Guidance is for guidance purposes; it is not intended to be a comprehensive list to cover all investment firm types.
- An investment firm should know what assets are covered by the client asset regime and seek legal advice if necessary. An investment firm should have knowledge of each third party that is holding clients assets in order to determine whether it is appropriate to lodge client assets with that third party and clearly explain the risks to a client including what investor compensation scheme would apply.
- The appropriate party to provide the CAKID to retail clients will depend on the relationship. The CAKID is required to be provided to the retail client and it is the responsibility of the investment firm holding client assets on behalf of the retail client to ensure the CAKID is provided. An investment firm should consider the exact nature of the client relationship to ensure the responsibility for providing the CAKID is clearly established.
- Given the structure of the relationship between the FSP and the investor, the Central Bank does not require the FSP to provide the CAKID to the investor.

Question 26: 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.

77. The majority of respondents did not agree with the need to provide the CAKID to existing clients.

78. Some respondents suggested that providing the CAKID to existing clients may create client confusion.

79. It was suggested that the CAKID should be on a firm's website or included as part of the annual statement issued to a client.

Central Bank:

- The Central Bank has amended the Client Asset Regulations so that the CAKID must only be provided to new retail clients as a standalone document; for existing retail clients it can be made available on the investment firm's website. An investment firm should make the CAKID available to existing retail clients within three months of the commencement of the Client Asset Regulations.
- Where there are subsequent material changes to the CAKID, this information should be provided to all retail clients in a durable medium; therefore use of an investment firm's website would not suffice in case of a material change to the CAKID. Note: it is only the actual changes that have to be provided to retail clients in this case and not the entire CAKID.

Question 27: Do you agree with appointing a person to the role of Client Asset Oversight Role ("CAOR") which will be a pre-approved controlled function? If not, please explain why?

80. All respondents agreed with appointing a person to the role of CAOR. However, a number of respondents suggested that the Compliance Officer should be capable of fulfilling the role.

81. Others do not agree with the requirement that the CAOR should be a director.

82. One Fund industry respondent questioned whether there would be sufficient expertise in the State to perform this role, requesting that firms should be permitted to appoint individuals residing outside the State, particularly as the activities of the CAOR may have an effect on global operations.

Central Bank:

- The role of the CAOR, now referred to as the Head of Client Asset Oversight ("HCAO") for investment firms and Head of Investor Money Oversight ("HIMO") for FSPs, is vital in order to have a key individual taking responsibility and ownership for the investment firm's/FSP's compliance with the Client Asset Regulations/Investor Money Regulations. The role is required to ensure that key client asset/investor money related issues are given priority and are brought to the attention of the Board of the investment firm/FSP.
- While the Central Bank would expect a director to be nominated for the HCAO/HIMO position, where an investment firm/FSP proposes to appoint an individual who is not a director, he/she should be a senior manager with direct access to the Board in respect of the client assets/investor money function. However the HCAO/HIMO should be sufficiently removed from the performance of day to day operational functions relating to the administration of client assets/investor money.
- Like all PCF roles, an investment firm/FSP should consider if the physical location of a PCF will have an impact on the PCF performing the role. Each application will be assessed in its own right as to its suitability including the level of seniority within an investment firm/FSP.

Question 28: Do you agree with the responsibilities of the CAOR as provided for in a) to g) above? If not, please explain why, providing details of additional responsibilities which should be included.

83. While the majority of respondents agreed in general with the responsibilities of the CAOR as set out in Regulation 7(2) (as proposed in CP 71), a number of respondents were of the view that the proposed list of responsibilities was overly prescriptive and that it should be a matter for the firm to set out the responsibilities of the CAOR.

84. One respondent suggested that it should be possible for the CAOR to delegate the performance of certain tasks to another PCF or CF.

Central Bank:

- The Central Bank considers the role of the HCAO/HIMO pivotal to the revised client asset regime for investment firms/FSPs and has expanded the duties of the HCAO/HIMO's responsibilities in both sets of regulations.
- It is the decision of the Board and the HCAO/HIMO as to how it organises the work of the HCAO/HIMO, notwithstanding that the responsibility of the PCF role rests with the HCAO/HIMO.

Question 29: 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.

85. All but one respondent agreed with the purpose of the CAMP.

86. A number of respondents expressed concern that Regulation 7(6) was too prescriptive in relation to the minimum content of the CAMP, suggesting that the content should be determined by the Board of a firm in line with the existing process for other key documents and that it would be more appropriate and proportionate to include the prescriptive detail in the guidance document.

87. One respondent questioned the need for a separate document designed exclusively to deal with client assets, suggesting that the Central Bank should consider permitting firms to include the relevant information in their existing governance documents such as the Business Plans and Programmes of Activity.

Central Bank:

- In order to allow an investment firm flexibility in developing its CAMP (and the IMMP in the case of FSPs), the Central Bank has removed from both sets of regulations the 'prescriptive detail' of the content of an investment firm's/FSP's CAMP/IMMP and included this detail in the Client Asset/Investor Money Guidance. The Client Asset Regulations and Investor Money Regulations contain the minimum that should be included in a CAMP/IMMP.
- The Central Bank expects the standalone CAMP/IMMP document to form an integral part of an investment firm's/FSP's governance and risk management processes and procedures.

Question 30: Do you agree that Regulation 8(3) provides for what should be included in a Client Asset Examination ("CAE")? If not please explain why.

88. All but one respondent agreed that Regulation 8(3) provided for what should be included in a CAE.

89. One respondent suggested that matters to be reported on should be more specific.

90. One respondent suggested that the requirement to seek "*external confirmations of any balances held in respect of client assets by other financial institutions*" may be unduly onerous. Some respondents did not see the value of an additional confirmation at the year-end date, expressing reservations that a firm's auditors may have difficulties receiving external confirmations from counterparties and positive confirmations from clients in a timely manner, and noting that both are outside the control of the firm. A respondent suggested that negative confirmations may be a preferable approach.

91. Some of the accountancy bodies had sought clarification on some of the text contained in the Principle of Client Asset Examination.

Central Bank:

- Client Asset Regulation 8(3) has been retained as originally proposed in CP 71. Amendments have been made to some of the wording to reflect the views of accountancy firms. Note: the provision is now included at Regulation 9(3) in the Client Asset Regulations and at Regulation 8(3) in the Investor Money Regulations; for FSPs, the review is now known as the Investor Money Examination ("IME").
- The Central Bank recognises the difficulties in obtaining external confirmations from counterparties and positive confirmations from clients; however, both are important controls in safeguarding client assets and therefore the Central Bank has retained Guidance G8 (5) (now referred to as G9 (4) in the Client Asset Guidance). Guidance G8 (4) in the Investor Money Guidance expects the FSP to engage with the auditor to seek third party confirmations.

Question 31: Should this review be carried out more frequent than annually? If so, please explain why.

92. The majority of respondents were in favour of an annual review.

93. One respondent suggested that the CAE should be more frequent if a firm's level of client assets exceeds a pre-determined threshold or a firm's compliance record is poor.

94. Some respondents suggested that the CAE should be more frequent for newly authorised firms or those with issues.

95. One respondent suggested that it may be prudent to undertake the client asset review on a bi-annual basis, based on a high PRISM rating.

Central Bank:

- The Central Bank has retained the requirement for both investment firms and FSPs as proposed in CP 71; the Client Asset Regulations and Investor Money Regulations both provide for at least an annual review and reserves the right to require more frequent reviews if necessary.

Question 32: Do you agree with the type of assessment that should be carried out on the firm's initial CAMP by an independent external expert?

Question 33: 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.

96. All respondents, with the exception of one, disagreed with the requirement to carry out an in independent assessment of the CAMP.

97. Respondents pointed out that adding another independent party adds little value and distracts from ensuring accountability of senior management with regard to their responsibilities; respondents noted that the Board and the CAOR are ultimately responsible for compliance with the Client Asset Regulations supported by compliance, internal and external audit. The majority of respondents felt that the firm's auditors were best placed to carry out the firm's initial CAMP assessment.

98. One respondent asked where the expertise would come from and queried the level of conformity in completing the reviews and suggested industry guidance to assist firms with internal compliance/audit signoff.

99. Accountancy bodies/firms raised some technical questions on the method and the qualifications of the expert.

Central Bank:

- Having considered the views put forward by respondents, the Central Bank has decided not to proceed with this requirement. While we are not proceeding with this requirement, we are of the view that the Client Asset Regulations and Investor Money Regulations contain positive steps towards enhancing the protection of client assets/investor money by having a clear set of regulations that are based on Core Principles. The Central Bank also notes that the CAE/IME will consider if the investment firm/FSP has acted in a manner which is not consistent with the CAMP/IMMP and the adequacy of any changes made to the CAMP/IMMP since the previous review.

Appendix I - Definitions

"investment firm" means a person authorised by the Bank pursuant to:

(a) European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007) as an investment firm; or

(b) the Investment Intermediaries Act 1995 as an investment business firm; or

(c) the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (S.I. No. 352 of 2011) as a management company which is authorised to conduct services pursuant to Regulation 16 (2) of S.I. 352 of 2011 and in respect of those services only; or

(d) the European Union (Alternative Investment Fund Managers) Regulations 2013 (S.I No. 257 of 2013) as an alternative investment fund manager which is authorised to conduct services pursuant to Regulation 7.(4) of the S.I No. 257 of 2013 and in respect of those services only

but shall not include certified persons within the meaning of section 55 of the Investment Intermediaries Act 1995 or a person authorised pursuant to section 10 of the Investment Intermediaries Act 1995 to solely carry out:

i. the administration of collective investment schemes or fund accounting services or acting as a transfer agent or registration agent for such schemes; or

ii. custodial operations involving the safekeeping and administration of investment instruments.

"fund service provider" means a person who is:

a) authorised pursuant to section 10 of the Investment Intermediaries Act 1995 to carry out

i. the administration of collective investment schemes or fund accounting services or acting as a transfer agent or registration agent for such schemes, or

ii. custodial operations involving the safekeeping and administration of investment instruments,

b) authorised pursuant to the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (S.I No. 352 of 2011) as a management company,

c) authorised pursuant to the European Union (Alternative Investment Fund Managers) Regulations 2013 (S.I No. 257 of 2013) as an alternative investment fund manager,
d) referred to in the Unit Trusts Act 1990 as a management company,
e) referred to in Part 24 of the Companies Act 2014 as a management company,
f) referred to in the Investment Limited Partnership Act 1990 as a General Partner,
g) referred to in the Investment Funds Companies and Miscellaneous Provisions Act 2005 as a management company,
h) a credit institution who acts as a depositary for investment funds or who provides fund administration services to such funds.

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