

PRIVATE & CONFIDENTIAL

CAR Consultation
Securities and Markets Supervision Division
Central Bank of Ireland
Block D
Iveagh Court
Harcourt Road
Dublin 2

31 October 2013

Dear Sir/Madam,

RE: Central Bank of Ireland Consultation Paper on Client Asset Regulations & Guidance

I refer to Jack Grehan's email dated 2nd August 2013 in relation to the above.

I wish to confirm that the firm has considered the contents of the consultation paper and the draft Regulations and Guidance and we now enclose our comments for consideration.

If you have any questions in relation to the content of this letter, please do not hesitate to contact Diarmuid Whyte (diarmuid.whyte@ifg.ie) or me (joseph.doherty@ifg.ie).

Yours sincerely,



Joseph Doherty

Compliance Director – IFG Pensco Ltd.

c.c. Gary Owens, Managing Director, IFG Pensco Ltd.



Thinking, Years Ahead

Comments on the draft Client Asset Regulations and Guidance

Regulation 2.(7) *Any client funds received shall be deposited in a client asset account or Collection Account without delay and in any event not later than one business day after the receipt of such funds.*

Regulation 2.(8) *If a firm receives funds where it is not clear which client owns such funds or there is insufficient documentation to identify the client who owns such funds, the firm shall, within two business days, either identify the client concerned or return the funds.*

G2 (8) *Where a firm receives client funds from a client either by way of a cheque or electronic transfer and the firm is not in a position to identify the client or the client has submitted inadequate documentation to enable the firm to set up the account, the firm should assess if it is appropriate for the firm to accept such client funds in the absence of the necessary paperwork and/or until such time as the client is identified.*

The Central Bank expects a firm to set out in its CAMP, the steps a firm would follow in assessing how to deal with the receipt of client funds in this manner..... Such assessment should be made without delay, but in any event, a firm should ensure it takes action in order to act in accordance with Regulation 2.(8).

Firm Comments

Regulations 2(7) and 2(8) of the proposed client asset regulations and guidance specify the approach and timeframes required for identification as client funds. G2 (8) of the proposed client asset regulations and guidance suggests a requirement for the firm to assess and define if it is appropriate to accept such client funds until such a time as the client is identified, while limiting the timeframe for identification of the client or return of the funds to the two business days specified in Regulation 2.(8). The firm believes that the two-day timeframe allowed could create significant regulatory and reputational risks for it and other firms authorised to hold client assets.

Regulatory Risk

The requirement to lodge or return funds to a client within one business day in itself could create a potential money laundering risk. If the funds provided for lodgement were deemed to be proceeds of crime the lodgement by the firm could potentially be considered the act of "placement" under the Criminal Justice (Money Laundering and Terrorist Financing) Act, 2010. Similarly, any return of funds which had been lodged to a client asset account without prior identification of what they relate could be considered as aiding in the process of laundering the monies. In order to avoid this potential risk we would suggest that firms are allowed a more suitable timeframe for identification, before being required to return unidentified funds.

Reputational/Commercial Risk

A reputational/commercial risk related to client satisfaction can arise due to the current timeframes required on receipt of client funds. If the firm is unable to identify the client to which a cheque or funds relate, the regulations require that the cheque or funds be returned within one business day. In practice it could take longer than one business day to identify the party to which the cheque or funds relate and the source/address to which the funds or cheque should be returned. In addition, the requirement to return funds which may relate to a client but where the client cannot be identified within the allowed timeframe can result in further delays in investment of the client's funds. While attempting to protect the client in all instances the proposed regulations and guidance would not appear to consider a client's frustration at having to resend returned funds or cheques, or the resulting market exposure due to the client's funds having been out of the market for longer than is absolutely necessary.

The firm would suggest that the risks of (i) failure to lodge a cheque within one business day and (ii) not being able to identify a client if funds held in a client asset account are considered further.

(i) What are the risks if a cheque is not lodged to a client asset account within one business day?

If a cheque was not lodged to a client asset account within one business day the funds would remain in the client's own bank account as the cheque was not presented for payment. This is similar to requirement 4.7.1 referenced in the existing Client Asset Requirements which states that *"funds do not cease to be client funds until the cheque or other payable order is presented and paid by the eligible credit institution."* Given the scenario outlined, the firm would suggest that the requirement to lodge a cheque within one business day be amended. The firm suggests that it would be more prudent and practical to require firms to implement additional controls, including a requirement that all cheques be held in a safe overnight with a log of all such cheques maintained and updated daily.

(ii) What are the risks of not identifying a client within one/two business days if funds held in a client asset account?

If a client makes a lodgement directly to the client asset account and the firm is unable to identify which client made this lodgement, the firm would consider the risks to be limited. The funds would be included in the secure client asset account and reconciled daily as per a firm's established client asset procedures. Upon identification of the client the firm would include the client reference in the reconciliation record. The implementation of the CAMP document should place an onus on a firm to undertake a full assessment of what is appropriate and define the approach in this document, having carefully considered all risks. We would suggest that an appropriate timeframe for identification is 3-5 working days.

Recommendation

The guidance would appear to suggest a more suitable approach given the ever changing financial environment in which the industry operates and the increasing risks associated with receipt of funds. This would involve the firm assessing if it is appropriate to accept and/or hold funds until the client is identified and clearly defining their approach in the CAMP document. The firm would recommend that the regulations be amended to reflect the firm's obligation to consider appropriate timeframes and formally document these in the CAMP document. We would suggest that an acceptable timeframe would be 3-5 working days.

If the Central Bank concludes that this would not be an appropriate approach, the firm would recommend that the Regulations should specify a longer timeframe than the one to two business days currently proposed.