IRISH FUNDS INDUSTRY ASSOCIATION

Submitted via email to:
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CAR Consultation
Securities and Markets Supervision Division
Central Bank of Ireland
Block D
Iveagh Court
Harcourt Road
Dublin 2

8 November 2013

Re: Client Asset Regulations and Guidance
Central Bank of Ireland Consultation Paper CP 71

Dear Sir/Madam,

The Irish Funds Industry Association (IFIA) is the industry association for the international investment fund community in Ireland, representing the custodians, administrators, investment managers, transfer agents and professional advisory firms involved in the international fund services industry in Ireland. Accordingly, all developments in the area of investment fund and related service providers regulations are of particular importance to the Irish industry. The IFIA welcomes both the publication of, and the opportunity to comment on, the Central Bank of Ireland's Consultation Paper "Client Asset Regulations and Guidance", CP 71. We have outlined below some of our general comments in relation to the Consultation Paper followed by more detailed answers to the questions following the numbering used in the consultation.

At the outset it is important to note that we share the Central Bank's goal of ensuring that monies held in Transfer Agency collection accounts are suitably protected and we welcome in particular the Central Bank's reference on page 10 of CP71 that the regime for such protection should be proportionate. We also acknowledge the extensive engagement by the Bank with IFIA on this topic in the last 18 months and appreciate the time taken to consider how the specific issues facing the funds industry can be dealt with. In this regard we note that e the Central Bank's acknowledgement that where the collection accounts are held as an asset of the fund, the regulations do not apply, as outlined in Page 4 of the Guidance on Client Asset Regulations. Where this is not the case, the Guidance indicates that the client asset regime will apply.

We note that the terms under which the "fund asset" regime applies have not been set out in CP 71 and we assume that the correspondence between IFIA and CBI on this subject (most recently our letter of 10 July) forms the basis for this approach. As already indicated in our

letter of 10 July, there are aspects of the "fund asset" approach that are operationally problematic for a number of Transfer Agents and Trustees and for certain service providers may not be operationally feasible at all.

In the event that the "fund asset" approach is not accepted, we note that CP71 makes clear that the client asset regulations will apply. As already noted in our letter of 10 July, there will be circumstances when this will happen (and we cannot rule out that this could be in a significant number of cases). We are concerned that the resultant client asset regime for the impacted collection accounts will be disproportionate as these rules will require expensive changes to reconciliation systems, ongoing audit costs, updates to application forms and therefore costs to management companies and fund investors are likely to increase, without a significant improvement in the protection regime for these collection accounts. The consequences for the competitive position of the Irish funds industry would be damaging particularly as an equivalent client asset regime does not apply to collection accounts in comparable international funds jurisdictions in the EU, in particular Luxembourg. In stating this, we are not suggesting that the protection of monies in collection accounts should be a secondary consideration – our view is that these protections can be achieved without harming Ireland's competitiveness and attractiveness as an international funds domicile. To the extent that it is concluded as part of this consultation that these protections can only be achieved under a client assets regime as set out in CP71, we would encourage that such a regime be introduced in the context of an EU initiative. Furthermore a transitional period of at least 18 months would be necessary for fund service providers to adopt the required technology and system changes and management company and investor communication.

Ultimately, cash in collection accounts must either belong to the fund, to the investor or to a third party (e.g. bank charges belong to the banking vendor, commissions generally belong to the investor's agent or the fund's distributor). As previously stated, we agree with the point on page 4 of the Guidance that "If the collection account is an asset of the Investment Fund the Regulations will not apply" but believe that this should expanded, e.g. it should be specified which parties are eligible to determine whether the collection account is an asset of the Investment Fund.

As a further point, it needs to be clarified that while specific requirements concerning collection accounts should not arise in respect of non- Irish authorised funds, all subsequent requirements imposed on Fund Service Providers should not apply to the servicing of non-Irish funds.

There appears to be scope for considerable confusion as to whom the Regulations apply given the manner in which the Regulations and guidance have been drafted. In particular, the defined terms "firm", "investment firm" and "fund service provider" appear to overlap or conflict with each other. We also note that the defined term "investment firm" is barely used in the draft Regulations and therefore query its application. The end result is less than satisfactory as a result.

We believe that the Central Bank's intention is that a fund service provider would be in scope for CAR where it holds subscription or redemption monies in a collection account. We also believe the Central Bank intends that a MiFID firm or an investment business firm authorised as a custodian under the Investment Intermediaries Act, 1995 holding client assets in its capacity as an "eligible custodian" as defined in the draft Regulations, would be out of scope of CAR. We should be grateful if the Central Bank could confirm that our understanding is correct and that appropriate amendments to the defined terms in the Regulations are made in this regard.

We have summarised other main concerns below. These points may also be reflected in the responses to relevant questions.

i. Funding of shortfall

Regulation 5 (6) states that a fund service provider shall, without delay and in any event within one business day, deposit in the collection account such money as is necessary to cover the shortfall.

As per Q4, we wish to clarify with the Central Bank whether early subscription monies received after dealing date but before settlement date would be considered as "client monies" rather than fund monies? If these early subscriptions are considered to be client monies then this would cause difficulties when a "contractual settlement" model is in operation.

As background, most daily dealing funds administered in Ireland operate on a contractual settlement basis where, in order to ensure that the investment manager has sufficient monies to settle portfolio purchases made in anticipation of receipt of pending subscriptions, monies are moved from the collection account to the fund on the contractual settlement date prior to receiving the monies from the investor. Because the contractual settlement process allows the investment manager to trade portfolio securities prior to the receipt of subscription monies, the potential for loss due to unfavourable market movement between the dealing date for recording subscriptions and redemptions in the share register and the settlement date for receipt of monies is minimised.

The contractual settlement process however creates the possibility of shortfalls in the collection account when investors do not pay for their subscriptions on the prescribed settlement date (although investors typically indemnify the fund for any shortfall). Fund Service Providers would not retain liquid assets to cover potential shortfalls of this nature and would not view the shortfall as being within their control. In the absence of liquid assets, Larger Fund Service Providers would be obliged to seek a line of credit with their parent company which may not be possible for a variety of reasons. Smaller Fund Service Providers may not have a large parent company to advance credit. It would also be difficult for Fund Service Providers to arrange a credit line with a third party bank.

As a result, in many instances, the Irish funds industry may need to discontinue servicing funds on a contractual basis rendering it a less attractive jurisdiction for domicile and administration of investment funds compared to some other jurisdictions where client asset Regulations do not apply.

ii. Issue of receipts

Regulation 6(17) states that each time a Fund Service Provider receives client funds, the Fund Service Provider shall as soon as practicable issue to the client a receipt in writing for those funds. In our response to Q21, we state our opinion that this is an impractical and costly requirement noting the short settlement cycles for investment funds, the institutional nature of most fund investors and that investors can receive comfort of payment from the audit trail available for wire payments. In addition, the majority of fund investors are institutional and we do not believe that they would wish to receive such receipts. Furthermore, written confirmation of ownership is also a de facto receipt and this would typically be issued shortly after dealing day.

iii. Provision of Client Asset Key Information Document

We note the requirement to provide investors with a Client Assets Key Information Document ("CAKID"). As detailed in our response to Q25, although we welcome opportunities to improve understanding of the fund process for investors, we believe that the provision of an additional fund document is unnecessary and risks further complicating the investment process. We believe that the information to be contained in the CAKID could be included in existing fund documentation already provided to investors, for example, in the KIID or the fund prospectus. We also note that the requirement to provide a CAKID to existing investors appears to be allocated both to an investment firm in regulation 6.(23) and to a Fund Service Provider in 6.(24) where those existing investors make subsequent subscriptions. Where a fund is for example, managed by an Irish MIFID firm, this may result in existing investors receiving the same CAKID from both the management company and the Fund Service Provider.

Out of scope

We believe that the following questions are out of scope for Fund Service Providers and collection accounts

"Required margin" –Q6.

"Client financial instruments" – Q11, Q12, Q13,

"investment firms" – Q16, Q19, Q20, Q21, Q23,

Detailed answers in relation to specific questions raised in the Consultation Paper are provided in the section below.

Because of the above and the specific issues identified in the response to the consultation paper below, the IFIA requests that the Central Bank considers modifying the client asset Regulations to take into account the concerns contained in this letter

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.

We agree that the Core Principles are prudent and sound fundamental principles for safeguarding client assets. We support the purpose of the regime as the mitigation of risk of misuse of client assets and the provision of a system to enable expeditious and efficient return of investor and client monies in the event of insolvency. However there are some specific procedural and operational factors that are relevant to the Funds Industry in Ireland that we believe should be considered in full prior to implementation. Because of these factors, we believe that the application of the CAR to investment funds must be very targeted. We address these below and in our opening statement.

Notwithstanding our view that an additional fund document is unnecessary, if it is to be a requirement, it would be helpful if the guidance could reflect that client disclosure and client consent can be achieved through the investment funds documentation and that making the CAKID available on a website would discharge the obligation to disclose.

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

We do not agree with the proposed wider scope in respect of "client funds". This is because of the particular difficulty which arises in the application of the CAR to investment funds in that the client is defined as any person to whom a firm provides financial services. In the context of obligations imposed on the fund service provider, its client (i.e. the entity to whom it provides financial services) is the investment fund. The fund service provider's contractual arrangement is with the investment fund, or management company, and not with the investor remitting or receiving funds.

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.

We need to ensure that any such requirements do not contravene other relevant legislation and Regulations, such as AML, and that it is practical to adhere to the timeframes specified in the Regulations. Bearing this in mind we are of the opinion that the 2 business day timeframe for returning the funds should be increased to a minimum of 5 business days. From a purely practical perspective, if the funds are reconciled on receipt date + 1, it could take a further 2-3 days in which to identify if the funds are intended for investment and thereafter a further day in which to return the funds if not to be invested. Where 5 business days is considered not achievable by a firm, we recommend that the Fund Service Provider's CAMP outlines an alternative timeframe for return of funds.

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

In principle, we agree that the Regulations should apply to funds that have been lodged into a collection account but we stress that it will be important to consider the specifics of how the funds industry operates currently, prior to implementation of each core principle and the practical implementation of the Regulations.

We wish to clarify with the Central Bank whether early subscription monies received after dealing date but before settlement date would be considered as "client monies" rather than fund monies?

We note the explanation of Client Money Requirement G5(6) as including "cash which is mainly received for pending subscriptions prior to the dealing date of the investment funds or cash received from the investment funds as a result of, for example redemptions/ dividends and has yet to be paid to the investors of the investment funds"

We note that it is not indicated whether cash received on or after dealing date but before contractual settlement date would generally form part of the Client Money Requirement. We believe that this cash could be considered the fund's assets in certain circumstances, e.g. where the cash is being paid in respect of a previously submitted subscription deal (generally submitted deals are considered to be irrevocable without the Fund Service Providers and / or the Board of Directors consent). We believe that a similar interpretation could be made, in certain circumstances, for cash received for pending subscriptions.

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.

We do not have a difficulty with this in practice because the reconciliation process enables Fund Service Providers to comply with the requirement.

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.

This is not an applicable issue from a fund's Transfer Agency perspective.

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

We do not have a difficulty with this in practice and note that it is aligned to the duration of similar record retention regulation currently in operation in Ireland. However, we would highlight that a longer timeframe may be required to produce these records particularly if they have been archived.

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

Please can you clarify our understanding that a Fund Facilities letter is required to be agreed prior to the first deposit of client assets with a third party and can cover all client asset account / collection accounts which will be held with the third party and that a Confirmation is required whenever a new client asset account / collection accounts is opened with a third party who has previously agreed a Fund Facilities letter. If this is the case we agree with the proposed approach.

It is not clear how such a letter will be enforceable where the third party is resident in a country other than Ireland. Is it expected that the firm would obtain legal advice from external lawyers as to the enforceability of the provisions of the Letters in foreign courts?

Under (f) of the Funds Facility Letter, reference is made to withdrawals only being made to the firm or on the firm's instructions by authorised signatories. Many firms use SWIFT to instruct such money movements and only rely on authorised signatories for faxes in the event that SWIFT is not available

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.

We agree - however if the client has instructed the firm that the money is to be lodged with the third party in account which is not designated a client money / collection account and acknowledges that such money will not have the client money protections, it is not clear if the firm can carry out the instruction of the client?

Furthermore, it is not clear how the situation would arise, other than if incorrect bank account details were provided which is unlikely as these are provided on the application form, if the requirement is that in advance of any client funds being deposited with a third party, the firm must receive a funds facilities letter. In any case, it may not be possible to withdraw these assets from the third party in a day.

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.

We agree that the frequency of the reconciliations should be determined by the frequency of the transactions going across the accounts and that in any event such reconciliations should be performed at least monthly, or more frequently for daily dealing funds.

However, it may not always be possible to obtain a statement from the third party in order that the reconciliation can be performed by close of business on the day following the business day to which the reconciliation relates – particularly for accounts which have very infrequent transactions and for which a statement may only be available on an infrequent basis. We would prefer that the reconciliation is performed within 1 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.

In the interests of clarification, Client monies are typically not lodged directly into term deposit accounts. For that reason we deem the reference to term deposits as being out of scope.

Q11. Do you agree that client financial instruments should be reconciled at least monthly or should the Client Asset Regulations and Guidance 29 reconciliation be performed in a lesser time period? If so, please explain why.

Client Asset accounts in the context of funds do not hold client financial instruments. For that reason we deem the point as not applicable for the Funds industry.

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.

Similar to our comments around the collection account reconciliation process we believe the process for reconciling and returning monies, where applicable, should be outlined in a 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.

Not seen as relevant for the Funds Industry.

In the case of other industries, in the event that it is deemed necessary to make good any shortfall a cap should be imposed on that amount.

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

We agree that it is reasonable for a reconciliation to take place *each day* a transaction occurs (at close of business) on a collection account (or at least monthly).

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.

We would be comfortable for firms to have the flexibility to establish which material reconciling items should be reported in the CAMP. However, we do not believe it is necessary to report all reconciling items. We note that other jurisdictions do not have this requirement, but rather annual audits and reviews are deemed sufficient to ensure operating models and controls are in place.

However, we note that the Regulations specify definite reporting time-frames for certain types of events.

Some examples are below:

Regulation 5.(11) A firm shall inform the Central Bank without delay, and in any event within one business day, when the firm has been unable to or has failed to carry out the daily calculation referred to in Regulations 5.(1) to 5.(4) together with the reasons for such a failure."

Regulation 4(13) P60:

"Timing differences
By their nature timing reconciling differences, other than unpresented cheques, should clear within a relatively short space of time. Therefore, the Central Bank expects any reconciling timing difference that has not cleared within a maximum of ten (10) business days should be considered to be material and should be reported to the Central Bank as provided for in G4 (10). The firm should report the aggregate value of unpresented cheques outstanding for more than three (3) months.

Errors on the part of a 3rd party
It is a firm's responsibility to contact the 3rd party in order to resolve any errors which it identifies. Errors which remain un-reconciled in excess of fifteen (15) business days should be reported to the Central Bank as provided for in G4 (10).

Errors on the part of the Firm
Errors identified in the firm's records which result in the firm having to lodge firm money into the client asset bank account should be reported to the Central Bank without delay. All other errors should be reported to the Central Bank if they remain un-reconciled in excess of fifteen (15) business days as provided for in G4 (10)."

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

We agree that it is reasonable to consider the Client Money Requirement of an investment firm to be the sum of all monies held on the collection accounts and the Client Money Resource to be the sum of all client asset balances that should be recorded on the investment firm's books and accounts.

Please clarify whether it is intended that a similar rule would be required for Fund Service Provider's where they are the holder of the collection accounts. If so, we question the usefulness of calculating a combined sum on a daily basis. We would presume that for each collection account the Client Money Requirement should be equal to the Client Money Resource.

Margin transactions are generally not relevant for collective investment schemes and on this basis, we do not express an opinion on this aspect of the Client Money Requirement.

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.

We believe that as it is not generally permitted for a firm to use the monies provided by one client for the account of another client, that it is reasonable to require the Client Money Requirement for each collection account to be equal to the Client Money Resource for each collection account.

We believe, however, 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. This summing-up process would also add considerable additional complexity as follows:

- The collection accounts may be held with different banking vendors which would make summing the Client Money Resources non-straightforward.

- Different funds may be recorded on different reconciliation and general ledger systems making the summing of Client Money Resource non-straightforward.

- Fund Service Providers often administer funds with different cut-off points and different currency deadlines. Fund Service Providers may also "hand-over" work to related companies in other time-zones in order to allow an appropriate level of servicing for investors in those time-zones. There is therefore often no single close of business point which can be identified for all funds administered by a Fund Service Provider.

We request the option for alternative calculation methods to be determined. The one method prescribed in the consultation paper is too restrictive and will be very onerous for Fund Service Providers.

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.

We agree with the general 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 where a collection account has been deemed as a client asset account that on a daily basis it may be subject to receipts of monies which are not client

monies e.g. commissions. Identifying the amount of commission attached to all individual trades can be complex and it may not always be possible to identify and move them to a non-client money bank account within one business day.

Similarly, on a periodic basis, a collection account may be subject to bank charges which would be required to be offset by the firm (or another party) in order to ensure that the Client Money Requirement matches the Client Money Resource.

With reference to the description on page 17 of the Consultation Paper, we would like to clarify that it is the Central Bank's view that "firm" may refer to either an investment firm or a Fund Service Provider. In cases where a client money shortfall may result from non-receipt of subscription monies from a fund's investor in a "contractual settlement fund", it is unlikely that a Fund Service Provider would have a legal responsibility to the fund to make up the shortfall and as discussed in the introduction to this submission, a Fund Service Provider would also have difficulty in securing liquid assets or a credit line for this purpose

In terms of the timing of identification of the shortfall, it may not be operationally possible to calculate and finance this within one business day.

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.

This question relates to the investment firm rather than Fund Service Providers.

With reference to the Central Bank's comment regarding agreement of circumstances of "when and how a FSP should report to the Central Bank when it has to fund a shortfall". As noted in our response to Q18, we are unclear of cases where a Fund Service Provider would have a legal obligation to fund a shortfall and have noted the difficulties that this would cause. As an example, one of the most frequent reasons for a shortfall is non-payment of subscriptions on settlement day by an investor in a contractual settlement fund. This situation would be seen as outside the Fund Service Provider's control.

It is unclear to us what "materiality appetite" means regarding the need of an investment firm and / or a Fund Service Provider as well as an investment firm to report to the Central Bank and we believe that greater clarity is required.

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

While we agree in principle that an annual basis is sufficient we would question the need for the detailed requirements as outlined, on the basis that the annual statement is just a notification of the status of the Client Monies and adds little protection to the investor.

An alternative proposal would be for the industry to leverage off the annual statements of holdings already issued to investors to include appropriate wording pertaining to Client money regulation and protection.

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.

While we agree (a) to (g) is more than sufficient, we note that the cost to implement the detailed requirements would be particularly onerous, with little understanding of the added benefits of the provision of a statement with such detail Would it be sufficient for the funds documentation and application form to contain specific wording around the Client Money process?

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.

No, we do not believe the need for receipts each time a shareholder pays monies is necessary. Operationally it will be seen as onerous and potentially excessive due to the predominance of wire payments in Irish funds and the high level of institutional investors.

Furthermore the client will receive a contract note directly on settlement from the Fund Service Providers. Depending on the settlement cycle this is usually within a 2-3 business days. It will not be immediately obvious who has paid the money into the account, by the time it takes to gather this information (investor name details etc.) the monies will have been moved into the fund's custody account and the contract note will have been issued.

A different acknowledgment is issued when we receive monies with incorrect details, unclear instructions etc on it – this is issued to the sender bank and they will then contact the client directly. In this instance and through this manner the client will be aware if the monies have not reached the correct destination.

Based on the above and subject to our understanding as set out in the opening statement, we do not believe the issuing of a receipt is necessary.

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.

We agree but would suggest that the consent could form part of the initial application form process and refer to specific wording in the fund's prospectus. Furthermore, we believe it would be appropriate for existing investors to be subject to grandfathering and not require prior written consent.

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.

We are unsure what this requirement is trying to address. Once settlement date is reached the monies then form part of the assets of the investment fund (based on this model and subject to the opening statement). At that stage the investment fund may instruct the Fund Service Providers to transfer the monies to a third party as payment for various investments to be made by the investment fund. The monies now form part of the assets of the investment fund. We do not agree that this suggestion adds anything.

We agree that this can be stated in the application form.

Industry standard is that such monies are held in non-interest bearing collection accounts. This is often disclosed in the prospectus and could be made a mandatory requirement and/or could also be included in application forms. To note application forms are investment fund documents and are not controlled by the Fund Service Providers.

As above, we believe it would be appropriate for existing investors to be subject to grandfathering and not require prior written consent.

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.

While the industry welcomes any opportunity to enable better understanding of the funds process for investors, it should be noted that the majority of investors are deemed "sophisticated" and therefore have a strong understanding of the fund's documentation and operational process.

Furthermore we would be of the view that the introduction of a further document, as outlined in the CAKID, could be seen as unintentionally detrimental to the investment process, given the level of documentation already in place and required under other legislation.

The industry would propose that the existing funds documentation (perhaps the KIID or the prospectus) could contain such pertinent information, for both sophisticated and non-sophisticated (retail) investors.

In addition, if a CAKID is still considered by the Central Bank to be necessary, we would suggest that further guidance to a 'material' change to the CAKID under Regulation 6(26) would be beneficial.

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.

We note that with the introduction of the KIID, it was only a requirement to provide the KIID to all new investors and existing shareholders making additional subscriptions, on this basis it would therefore seem inappropriate to require the CAKID to be provided to all existing investors (and not just new investors).

We note that the requirement to provide a CAKID to existing investors appears to be allocated both to an investment firm in regulation 6.(23) and to a Fund Service Provider in 6.(24) where those existing investors make subsequent subscriptions. Where a fund is for example, managed by an Irish MIFID firm, this may result in existing investors receiving the same CAKID from both the management company and the Fund Service Provider.

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?

This is a welcome development. The addition of the proposed new role of Client Asset Oversight Officer ("CAOR") would be at a similar level to the PCF roles of heads of risk, finance, compliance and internal audit. The addition of the role to the list of PCF functions is a means of communicating the importance attached to client asset oversight. Based on experience during the implementation of the fitness and probity regime the addition of CAOR will bring about a reassessment of the individual(s) currently performing this role.

Q28. 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.

To be clear at the outset, it should be noted that if client assets do not apply a FSP should not be required to appoint a CAOR. We would caution against being unduly prescriptive in defining the role. This specificity on the meaning of a particular role is unprecedented in the context of the fitness and probity regime. The Fitness and Probity Regulations, Code and Guidance do not set out the role of a particular function in such detail. Not even the scope of the roles for PCF functions is tightly defined. The Fitness and Probity Guidance states that a person performing an equivalent role to one of the PCF titles is still a PCF regardless of his / her actual corporate title. This 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 by an individual for him / her to be considered a CAOR? Is there a de minimus number of functions a person can perform without becoming a CAOR?

- Are firms that do not necessarily organise the CAOR function along these lines allowed to deviate in any way or must they reorganise this function? It is foreseeable that other PCF holders already take responsibility for some of these roles (e.g., reporting).

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.

As above, it should be noted that if client assets do not apply a FSP should not be required to appoint a CAOR. The proposed CAMP (we would understand this to be a procedure rather than a plan) is a welcome addition. It is envisaged that the CAMP would be a standalone document which could also reference where other relevant information could be found. This approach could result in the CAMP being a document exclusively used by the CAOR and his / her staff.

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

As well as considering whether changes to the client asset management plan since the date of the last review are in sufficient detail to meet the objectives of the Regulations

(Regulation 8(1)(d)) the Regulations should state that the implementation of changes since the date they were made should also be assessed.

Q31. Should this review be carried out more frequently than annually? Is so, please explain why.

It is not clear why it is considered appropriate to reduce the review from semi-annually to annually for all firms. This seems to be very prescriptive. This may be suitable for firms with more sophisticated internal audit functions but may not be suitable otherwise. Additional reviews annually may be appropriate for newly authorised firms or firms where issues have arisen in the past (as envisaged in CP71 under the heading of Transitional Regulation).

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?

Mandating the use of an independent external expert is an approach that will not always be warranted and should be reconsidered. 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, explain why.

We believe 3 months appears a sufficient time-frame for an assessment of the CAMP but we may need to pose this query to potential providers of this service.