

Responding Party	Document Reference	Requested Change	Rationale for change	Other Comment
Irish Funds	1.2 (pg. 7)	<p>Last para states: <i>Where lists or examples are included in the Guidelines, such lists or examples are non-exhaustive and represent the minimum matters to be covered. The examples present some, but not the only ways, in which firms might comply with their obligations. The Guidelines do not take the place of a firm performing its own assessment of the manner in which it shall comply with its statutory obligations.</i></p> <p>Remove "and represent the minimum matters to be covered".</p>	<p>Examples indicated in any guidance should be an illustration of what firms may use. By contextualising as "minimum matters to be covered" mandates these as requirements, which should not be the case as is intended by the remaining text in this para.</p>	Significant issue
Irish Funds	2	Footnote url	Footnote 1 - FATF url is not a viable link	
Irish Funds	4	<p>The Risk Management section in the CBI guidelines has a good deal of overlap with the risk section in the ESA Guidelines, it is recommended that the CBI reduces the detail in its Risk Management section to only highlight instances where it wishes additional factors to be considered compared to the ESA Guidelines or wishes to provide significant further interpretation to the ESA Guidelines.</p>	<p>The large extent of overlap between the CBI Guidelines and the ESA Guidelines is confusing and may cause the firm to overlook additional requirements.</p>	Unintended consequence
Irish Funds	4.2.1 (pg. 13)	<p>4.2.1 Change: "Firms should use various relevant sources when carrying out their business-wide risk assessment, including (but not limited to):" to "Firms should use various relevant sources when carrying out their business-wide risk assessment. Examples include :"</p>	<p>It may be too onerous to expect firms to review the entire list of sources when preparing their business risk assessment. The ESA Guidelines give some sources which should always be reviewed and others which may be considered by firms.</p> <p>We would recommend that the CBI either delete this section as it is adequately covered in the ESA Guidelines (15 has mandatory sources and 16 suggested other sources) or ensure guidance is consistent with ESA.</p>	Unintended consequence

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Irish Funds	4.4.1 (pg. 15)	<p>Change 4.4.1 : "<i>Firms should consider the risk factors associated with a customer's or their beneficial owner's business or professional activity including for example, whether the customer or its beneficial owner:</i>"</p> <p>to</p> <p><i>"Firms should consider the risk factors associated with a customer's or their beneficial owner's business or professional activity including for example, where the firm may have ordinarily obtained information that the customer or its beneficial owner"</i></p> <p><i>"Holds another prominent position or enjoys a high public profile that might enable them to abuse this position for private gain. For example, they are:</i></p> <ul style="list-style-type: none"> <i>o Senior local or regional public officials with the ability to influence the awarding of public contracts;</i> <i>o Decision-making members of high profile sporting bodies; - Please remove this example.</i> <i>o Individuals that are known to influence the government and other senior decision-makers;"</i> 	<p>The current wording may imply an obligation to verify whether or not a person holds a prominent position that he/she could abuse for private gain or has the ability to influence the awarding of public contracts, or is a decision-making member of a high profile sporting body or is known to influence or other senior decision - makers. Although a firm may become aware of this information and should then consider it in its risk assessment; due to the lack of available lists, these examples cannot be considered the minimum requirements, it is highly unlikely a firm could systematically identify whether a customer or beneficial owner meets this criteria.</p> <p>The CBI's current wording goes further than the equivalent section in the ESA Guidelines (19) and the CBI as they may consider it to be adequately covered in the ESA Guidelines.</p>	<p>Unintended Consequence: The funds industry has a global reach and whilst, in Ireland some of this information would be in the public domain, this would not be the case in a global context. The examples listed would be unlikely to be met and should not form guidance in the context of absolute minimum requirements</p>
Irish Funds	4.4.3 (pg. 17)	<p>4.4.3 Amend as follows "The customer is a special purpose vehicle (SPV) or structured finance company" to "where the customer is a special purpose vehicle (SPV) or structured finance company where beneficial ownership is not transparent."</p>	<p>It is important that all SPV's are not considered high risk, particularly as most are corporate entities which will be required to hold details of their beneficial ownership in their books. The amended text is to distinguish these from those jurisdictions where this is not mandated or is difficult to obtain</p>	<p>Unintended Consequence</p>
Irish Funds	4.7.2 (pg. 22)	<p>4.7.2: Amend the text "The extent that the firm has taken measures to satisfy itself that the group entity applies CDD measures to EEA Standards...". by adding "equivalent" to the sentence.</p> <p>"The extent that the firm has taken measures to satisfy itself that the group entity applies CDD measures equivalent to EEA Standards...".</p>	<p>"equivalent" correctly reflects the wording of the legislation.</p>	<p>Unintended Consequence</p>

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Irish Funds	4.8.5 (pg. 26)	4.8.5 "Setting a timeline on which the next risk assessment update will take place annually,...." Remove " annually " from the sentence.	The guidance states that a timeline should be set and then goes on to state that this update that will take place annually. Firms will define their own timelines commensurate with their policies and procedures. Whilst in some cases this may be annual or more frequent, it is important that guidance does not preclude firms from determining when an update should occur for themselves	Unintended Consequence
Irish Funds	5.2 (pg. 28)	Include footnote to 'persons purporting to act on behalf of customers' that clarifies such persons do not ordinarily act on behalf of the customer, for instance where a power of attorney exists.	Clarification is required to 'persons purporting to act on behalf of the customer' to avoid unintended consequences of the application of CDD measures to parties who ordinarily act on behalf of the customer, for example employees of regulated financial institutions or public limited companies acting as signatories. i.e. we would consider these persons as those who ordinarily act on behalf of the customer as opposed to e.g. a power of attorney who does not ordinarily act but rather is purporting to act.	Unintended Consequence Seeking to confirm the CBI understanding is as we have indicated.
Irish Funds	5.2 (pg. 28)	As a preface to the 1st bullet could the following text be included. This text is taken from the CBI AML Bulletin of December 2017. " <i>Section 33(5) of the CJA 2010 allows a firm to identify and verify the identity of a customer during the establishment of a business relationship in circumstances where the firm believes there is no real risk of ML/TF.</i> "	This addition more clearly recognises that CDD can be undertaken during the establishment of a business relationship.	

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Irish Funds	5.2 (pg. 29)	2nd bullet: current text states " <i>Ensuring that contractual arrangements for new customers adhere to the statutory obligations as prescribed by Section 33 (8) (a) and (b) of the CJA 2010. In relation to the circumstances that would result in the discontinuance of the business relationship and the subsequent effect of such discontinuance, customer consent should be obtained by the firm in advance as part of the on-boarding process;</i> " Request the removal of the word "consent" and replace with "should be advised or notified"	"consent" suggests a positive affirmation is required from the customer which is unnecessary and administratively burdensome. E.g. in the funds industry language contained within the fund prospectus will detail the actions which may be taken. An investor is obligated to review this document prior to investing.	Significant issue
Irish Funds	5.2 (pg. 29)	3rd bullet: current text states " <i>It is important that at all times, firms act in the best interest of the customer (or prospective customer) and exhaust all possible avenues before taking any actions that might disadvantage customers.</i> " Request amendment to "that might disadvantage a customer"	Consistency of language	Drafting
Irish Funds	5.2 (pg. 29)	Add the below 4th bullet in line with the Central Bank's bulletin on discontinuance of a business relationship: <i>In circumstances where there remains a cohort of customers for whom it has not been possible to obtain CDD despite all efforts to contact those customers, firms should design and document policies and procedures to be applied in order to ensure that the associated ML/TF risks are appropriately managed. This may include for example applying measures whereby these accounts are clearly identified as 'discontinued', ring fenced from normal accounts and flagged accordingly, subject to additional and more robust measures to be applied should the customer re-present.</i>	Consistency with the Central Bank's bulletin on discontinuance of a business relationship	Seek to confirm that CBI bulletins issued to date have been captured in these guidelines so as to avoid the need to refer to multiple previously issued documents. Noting future bulletins may be issued outside of the guidelines

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Irish Funds	5.2.2 (pg. 30)	3rd bullet: current text states " <i>Compile detailed, documented assessments determining scenarios where beneficial ownership may be a factor with regard to the provision of products and services offered by the firm;</i> " suggest context is added to clarify meaning	Unclear what the meaning of this text is e.g. if this relates to relationships with minors e.g. Credit Unions, it would be helpful to clarify this by way of examples	Unintended consequence
Irish Funds	5.2.2 (pg. 30)	<p>Second paragraph "<i>Firms should note that while there is an obligation to identify all beneficial owners and verify the identity of beneficial owners on a risk based approach, there may be circumstances where the product or service is of a type where it is obvious that it is being provided in respect of the customer only and that no beneficial owner is involved</i>". This should be amended/updated to reflect "circumstances where customer is of a type and assessed as being low risk in line with the factors in schedule 3 qualifying for simplified CDD, that it is not necessary on a risk based approach to enquire further regarding the beneficial owner".</p> <p>The wording in the last paragraph "<i>In all other instances, firms are required to verify the beneficial owner's identity in accordance with Section 33(2) to ensure they are satisfied they know who the beneficial owner is</i>" should be amended to "<i>Firms are required to verify the beneficial owner's identity in accordance with Section 33 (2)</i>"</p>	Whilst section 33(2) requires identification of beneficial owners, section 34A of the CJA provides that "a designated person take the measures specified in section 33(2) and 35 in such manner, to such extent and at such times as is reasonably warranted by the lower risk of money laundering or terrorist financing...where the designated person identifies in the relevant business risk assessment an area of lower risk and considers that the relationship or transaction presents a lower degree of risk".	Significant issue: Section 5.2.2 on Beneficial Ownership should be reviewed and rewritten to reflect sections 34A and 33 (2) (b) of the CJA 2018 which permit, based on an assessment of lower risk, a designated person to take the measures specified in S 33(2) and 35 in such manner, to such extent and at such times. Customer types assessed as lower risk due to regulatory status in low risk jurisdictions with full disclosure and transparency regarding ownership, the absence of high risk factors, and it is obvious no natural persons are beneficial owners as defined in the regulations, should be exempt from standard enquiries regarding identification of beneficial owners as defined in the regulations. Should the existing text remain, it has the potential to pose a Significant issue for the funds industry where it is common for regulated financial institutions in equivalent jurisdictions, including those within the scope of 4AMLD to invest in funds, having already conducted CDD to 4AMLD standards. Any requirement for the designated person to repeat said CDD precludes the application of a risk based approach in this regard. Further, this would go beyond the requirements of the CJA 2018 and 4MLD.
Irish Funds	5.2.6 (pg.'s 33 and 34)	Last bullet (pg33) and first bullet (pg34) refer to " <i>a signed agreement</i> " and " <i>clear contractual terms</i> ". Please amend to " <i>the arrangement should have clear provisions in respect of obligations</i> " etc.	Consistency with S 40 (4) (a) of the Act which states " <i>there is an arrangement between the designated person (or, in the case of a designated person who is an employee, the designated person's employer) and the relevant third party under which it has been agreed that the designated person may rely on the relevant third party to apply any such measure,</i> "	Significant issue Further comment captured under S 9.2.5 pg. 66 below

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Irish Funds	5.3 (pg. 35)	First para states: <i>"Such policies and procedures should include at a minimum:" Please replace with "by way of examples, such policies and procedures may include"</i>	Each firm will assess their own obligations and determine their ongoing monitoring programme appropriate to their assessment. Whilst examples of how they may do this, the language as is currently drafted is too prescriptive.	Unintended consequence
Irish Funds	5.3 (pg. 35)	Third bullet: current text states <i>"Periodic reviews of all customers, the frequency of which is commensurate with the level of ML/TF risk posed by the customer. Firms should also ensure that staff are provided with specific training on how to undertake a periodic review;"</i> Amend text to <i>"Periodic reviews of some or all customers" etc.</i>	Each firm will assess their own obligations and determine their ongoing monitoring programme appropriate to their assessment. This may consist of a periodic review of all customers for some firms, whereas other firms may determine the periodic review as only applicable to certain customers commensurate with that firms risk assessment. The inclusion of "all customers" constrains firms in applying their own risk assessment to the customer type and frequency of periodic review. Refer to S5.4.1 pg. 38 2nd to last bullet <i>"Adjusting the frequency of CDD updates and reviews of the business relationship, for example carrying these out only when trigger events occur such as the customer looking to take out a new product or service or when a certain transaction threshold is reached;</i>	Inconsistency

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Irish Funds	5.4.1 (pg. 37-39)	Last bullet point (pg. 37) "...Firms should ensure that the customer's or beneficial owner's identity will ultimately be verified". The wording " or the beneficial owner's identity " should be removed.	This is contrary to a risk based approach and section 33(2)(b) of the CJA that requires taking measures reasonably warranted by the risk of money laundering or terrorist financing to verify beneficial owners' identity.	Significant issue (refer to prior comments on S 5.2.2) Section 5.2.2 on Beneficial Ownership should be reviewed and rewritten to reflect sections 34A and 33 (2) (b) of the CJA. Customer types assessed as lower risk due to regulatory status in low risk jurisdictions with full disclosure and transparency regarding ownership, the absence of high risk factors, and it is obvious no natural persons are beneficial owners as defined in the regulations, should be exempt from standard enquiries regarding identification of beneficial owners as defined in the regulations.
Irish Funds	5.4.1 (pg. 37-39)	First sub bullet of the second bullet point (pg. 38) "Accepting information obtained from the customer rather than an independent source when verifying the beneficial owner's identity." This should be removed as an example.	Acknowledging these are only examples, it may be interpreted that a degree of verification of beneficial ownership is necessary in the application of SDD. Section 33(2)(b) of the CJA allows for verification of beneficial owners' identity as warranted by the risk of money laundering or terrorist financing and to the extent necessary to ensure that the person has reasonable grounds to be satisfied it knows who the beneficial owner is.	Significant issue (refer to prior comments on S 5.2.2) Section 5.2.2 on Beneficial Ownership should be reviewed and rewritten to reflect sections 34A and 33 (2) (b) of the CJA. Customer types assessed as lower risk due to regulatory status in low risk jurisdictions with full disclosure and transparency regarding ownership, the absence of high risk factors, and it is obvious no natural persons are beneficial owners as defined in the regulations, should be exempt from standard enquiries regarding identification of beneficial owners as defined in the regulations.
Irish Funds	5.6.1A (pg. 41)	In the first bullet point the word " beneficiary " should be replaced with " beneficial owner ".	This is to conform to the text of the CJA.	Consistency
Irish Funds	6.5 (pg. 54)	Please insert blue text box to reference section 54 (9) per below <i>"A designated person shall undertake an independent, external audit to test the effectiveness of the internal policies, controls and procedures outlined in this section if directed in writing to do so by the competent authority for that designated person."</i>	Insertion of the blue box Act text will better contextualise the guidance provided	Context

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Irish Funds	8.7 (pg. 63)	8.7 Management Information on Training	Typo, section should be labelled 8.9.	
Irish Funds	8.8 (pg. 63)	8.8 Training Assessment: Change: "Firms should ensure that the AML/CFT training provided includes an assessment" to "Firms should consider whether the AML/CFT training provided requires an assessment".	The current wording may imply an obligation for assessments/examinations to be completed at all levels for all AML training undertaken, regardless of the nature and context of the Firm and training in question.	Inconsistent. Not required in S.54 of the Act
Irish Funds	9.1 (pg. 64)	Remove reference " <i>to any third parties relied upon for CDD purposes</i> " in following clause: " <i>Firms should also ensure that all staff including agents, outsourced service providers, and any third parties relied upon for CDD purposes adhere to equivalent record keeping procedures.</i> "	There is no requirement (and it would be very unusual) for third parties to adhere to a firm's procedures for record-keeping. The s40 requirement assumes that a relevant third party will carry out equivalent AML/CFT identification and verification measures but not per the firm's procedures. Suggest text amendment or removal of "and any third parties relied upon for CDD purposes"	Unintended consequence
Irish Funds	9.2.2 (pg. 65)	Change "copies of any sample testing of CDD files" to " evidence of sample testing of CDD files".	Assurance testing sampling is undertaken by firms (1st; 2nd and 3rd lines of defence) using many different means. Sampling is commonly undertaken via onsite review; direct systems access etc. Whilst records evidencing the sampling undertaken are maintained, it is not common to retain copies of CDD sample-testing in all circumstances. The text as currently drafted does not permit firms to distinguish between circumstances where retention of sampling copies is warranted as opposed to those that are not. Additionally GDPR compliance concerns prevail where data subject personal information is being retained unnecessarily in duplicate across the firm	Significant issue
Irish Funds	9.2.5 (pg. 66)	Change "signed agreement" to "written arrangement"	As per 5.2.6 s40 Legislation requirement is for "arrangement" rather than "signed agreement".	Inconsistent with the Act Refer to prior comment (5.2.6 (pge's 33 and 34))

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Irish Funds	Not Captured	CBI AML bulletins and general AML communications to industry are not included in the CBI RSS feed	In view of the importance placed on these communications by both the CBI and industry, a formal means of ensuring firms receive the communications is crucial. The CBI RSS feed is an existing means of receipt which firms can subscribe to which would resolve concerns firms have with timely notification	Significant issue
Irish Funds	Not Captured	Section 7. Reporting of Suspicious Transactions	Guidance on "Directions and Orders" as currently referenced in para. 227 - 237 of the CJA2010 Guidelines (February 2012) would be helpful under Section 7. CP128 is silent on this matter. It would also be helpful to include guidance on the rights and obligations of designated persons following submission of a STR, to include and expand on Para 214 of the CJA 2010 Guidelines	Significant issue