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Our ref: ICAEW Rep 08/12

Richard Sutcliffe
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Dear Mr Sutcliffe

Mandates and Client Assets Report

I am writing to you at the request of the Investment Management Committee ("the Committee") of the ICAEW's Financial Services Faculty. At a recent meeting of the Committee concerns were raised over the CASS reporting accountants' (CASS auditor) reporting requirements in respect of mandates.

Following the changes to the Client Assets Reporting requirements in 2011, where a reasonable assurance Client Assets Report is prepared by the CASS auditor of a regulated investment business ("a firm") the Client Assets Report is required to cover mandates held by the firm under CASS 8.

While we accept the FSA's right to change the scope of the Client Assets Report we are concerned that there is a lack of clarity as to the scope of mandates, particularly in respect of the management of Collective Investment Schemes ("CIS"). This concern arises from the wording of paragraph 121 of the recent APB Bulletin 2011/2 "Providing Assurance on Client Assets to the Financial Services Authority" ("the Bulletin"). Paragraph 121 of the Bulletin gives examples of mandates and what is meant by controlling. At the end of the third bullet point is the sentence "A further common example of "control" arises when a fund manager has control over the bank account opened in the name of the fund." The ICAEW representative at the APB's working party meeting did raise his concerns around the lack of clarity, but the bulletin was not revised in the light of them.

From discussion within the industry we believe that prior to this wording being included in the Bulletin, many firms, and their CASS Auditors, would not have considered the operation of the underlying fund accounts (be they money or assets) of a CIS as a mandate arrangement caught under CASS 8. Indeed the scope of CASS 8 in respect of CIS mandates was raised at a CASS seminar held towards the end of last year at the Investment Management Association at which representatives of the FSA were present. As a result of this seminar it was hoped that clarification would be forthcoming from the FSA as to why such mandates were within CASS 8. The seminar also raised concerns over the retrospective application of such a requirement.

In the light of these continuing concerns, the Investment Management Committee agreed to write to you and formally request clarification on whether the operation of a CIS's accounts was a mandate arrangement under CASS 8 and if so, the reasoning for including such matters under CASS 8 given the main responsibility is considered to be with a trustee or custodian.

In a wider context, we note that the extension of the CASS auditors' responsibilities to cover CASS 8 imposes a requirement to report upon a firm's use of authorities granted by clients and upon any conditions placed by the client on the firm's management of the use of them (CASS 8.1.5 (1)). We note that the Client Money (CASS 7) and Custody Assets (CASS 6) chapters do not impose the same requirements in respect of assets "held", rather than "controlled", by the firm. The requirements of CASS 8 appear to be very general in nature and the scope and their meaning open to widely different interpretations. In its widest sense for example it could be interpreted by some that the reporting requirement extends to considering mandate compliance and suitability. Prior to the APB Bulletin it would probably be fair to say that many firms may not have been challenged over the interpretation of the requirements of CASS 8. As requested above, it would be very helpful if the FSA would issue a statement clarifying the scope and meaning of the CASS 8 requirements. This would enable firms (and their auditors) to more readily meet the intended regulatory objectives of including CASS 8 within the scope of the CASS auditor's report.

We would like to meet with you in the near future to discuss the issue further. I would be grateful if you would let me know whether you are willing to do this, and your availability.

Yours sincerely

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