BARCLAYS

INVFIRMSpolicy@centralbank.ie

10 March 2021

Dear Sir/Madam

Barclays response to CP 133: Consultation on enhancements to the Central Bank Client Asset Requirements, as contained in the Central Bank Investment Firms Regulations

Barclays welcomes the opportunity to comment on the above consultation.

Barclays agrees with the Central Bank of Ireland's proposals to enhance the CAR to ensure that a robust regime for safeguarding client assets is applied across Irish regulated entities and also to ensure a consistent level of protection to clients.

We have set out our response to the consultation below. We would be very happy to discuss any of the points raised in this response with you in more detail.

Yours sincerely,

Andrea Repp
Chief Operating Officer Barclays Europe

Barclays' response to CP 133: Consultation on enhancements to the Central Bank Client Asset Requirements, as contained in the Central Bank Investment Firms Regulations

Q1. Do you agree with the proposal to extend the scope and application of the CAR to credit institutions undertaking MiFID investment business? If not, please explain why.

Barclays is in agreement with the proposal to extend the scope and application of the CAR to credit institutions. Barclays would also ask the Central Bank of Ireland to consider allowing credit Institutions the option of being able to apply the rules to non-MiFID investment business if/where appropriate.

Q2. Are there any elements of the CAR (existing provisions or proposed enhancements) that should not apply to credit institutions? Please provide a clear rationale as to why credit institutions should not be required to comply with a particular existing or enhanced provision, and/or set out an alternative provision that may be more appropriate.

Barclays would suggest it be an optional PCF for credit institutions, and incorporated within the existing list of PCFs and CFs. We would welcome further guidance on grandfathering arrangements for those already designated as the single officer/existing relevant PCFs within credit institutions in line with MIFID requirements. Depending on the size, structure and business of the credit institution, ownership of relevant policies and procedures could be assigned to the relevant PCF.

Q3. Are there any unintended consequences that might arise as a result of extending the scope and application of the CAR to credit institutions?

Barclays has not identified any unintended consequences as a result of the extension of the CAR to credit institutions.

Q4. Do you agree with the Central Bank's proposal to provide a 12 month transitional period, from the date of publication of the third edition of the Investment Firms Regulations, for credit institutions to comply with the CAR? If not, please explain why.

Barclays requests that consideration be given to a 24 month transitional period to allow for any IT enhancements, Operating model changes and in particular for any changes required to client contractual arrangements. Barclays also requests that consideration be given to the impact of the upcoming changes to the CAR Guidance on the transitional period.

Q5. Do you agree with the proposal to introduce additional disclosure requirements in the CAR for credit institutions undertaking MiFID investment business on behalf of clients, in order to provide clarity to clients as to how their money will be held and protected? If not, please explain why.

Barclays is in agreement with the proposal, however as per above we would request additional time to transition should credit institutions be required to change client contractual arrangements or reporting.

Q6. Please provide details of any circumstances under which a credit institution may cease to hold money on behalf of clients as deposits (i.e. avail of the 'banking exemption') and would instead hold that money as client funds.

There may be certain operational flows where a credit institution may want to protect any client money held as client funds, therefore we would request the application of the rules to be flexible to enable money to be held as client funds in certain appropriate circumstances.

Q7. In your view, are there other implications of extending the scope and application of the CAR to credit institutions that the Central Bank should consider?

Barclays has not identified any other implications of extending the scope and application of the CAR to credit institutions that the Central Bank should consider.

Q8. Do you agree with the Central Bank extending the application of the existing PCF-45 role (HCAO) to credit institutions holding client assets? If not, please explain why.

Barclays would suggest it be an optional PCF for credit institutions, and incorporated within the existing list of PCFs and CFs. We would welcome further guidance on grandfathering arrangements for those already designated as the single officer/existing relevant PCFs within credit institutions in line with MIFID requirements. Depending on the size, structure and business of the credit institution, ownership of relevant policies and procedures could be assigned to the relevant PCF.

Q9. Do you agree with the Central Bank's proposal to require investment firms to maintain, for a period of 6 years, a copy of all relevant material in order to evidence that express consent has been obtained from a client prior to the investment firm entering into arrangements for securities financing transactions, or otherwise using the client's financial instruments? If not, please explain why.

Barclays is in agreement with the Central Bank's proposal.

Q10. Do you agree with the Central Bank's proposal to require that TTCAs be the subject of, or form part of, a written agreement between an investment firm and a client? If not, please explain why.

Barclays is in agreement with the Central Bank's proposal.

Q11. Do you agree with the proposed information that should be included in the written agreement in respect of TTCAs? If not, please explain why.

Barclays is in agreement with the Central Bank's proposal, however Barclays would recommend that there be a further consultation on planned amendments to the CAR Guidance.

Q12. Do you agree with the proposal that the written agreement containing the TTCA provisions be maintained by investment firms for a period of 6 years? If not, please explain why.

Barclays is in agreement with the Central Bank's proposal.

Q13. Do you agree with the Central Bank's proposals relating to record-keeping requirements following a client's request for the termination of a TTCA? If not, please explain why.

Barclays is in agreement with the Central Bank's proposal, however Barclays would recommend that there be a further consultation on planned amendments to the CAR Guidance.

Q14. Do you agree with the Central Bank's proposals relating to a written notification by an investment firm to clients following the termination of a TTCA? If not, please explain why.

Barclays is in agreement with the Central Bank's proposal.

Q15. Do you agree with the Central Bank's proposal to require investment firms that provide prime brokerage services to make available to clients a daily statement covering client asset holdings in the context of prime brokerage business? If not, please explain why.

Barclays is in agreement with the Central Bank's proposal.

Q16. Do you agree with the Central Bank's proposal to require investment firms that provide prime brokerage services to include an annex to a relevant client agreement, summarising the key terms of the prime brokerage business that relate to client assets? If not, please explain why.

Barclays is in agreement with the Central Bank's proposal.

Q17. Do you agree with the Central Bank's proposal to require an investment firm to notify the Central Bank of its intention to effect a material transfer of client assets at least three months in advance of the transfer taking place? If not, please explain why.

Barclays is in agreement with the Central Bank's proposal, however would request some guidance on the definition of 'material'.

Q18. Do you agree with the Central Bank's proposal to include a reference to transfer of business in Regulation 59(1)(d)(iv) of the CAR, thereby requiring investment firms to include information in respect of transfer of business arrangements, in so far as they relate to client assets, in the terms of business? If not, please explain why.

Barclays is in agreement with the Central Bank's proposal.

Q19. Do you agree with the Central Bank's proposals to enhance the CAR guidance in order to support investment firms in respect of the orderly transfer of client assets? If not, please explain why.

Barclays is in agreement with the Central Bank's proposal, however Barclays would recommend that there be a further consultation on planned amendments to the CAR Guidance.

Q20. Are there other aspects of the transfer of business process, as relating to client assets that require clarification? If so, please provide details.

Barclays did not identify any other aspects of the transfer of business process that require further clarification.

Q21. Do you agree that CAR guidance could support investment firms in managing the approach to uncontactable clients during a transfer of business? If not, please explain why.

Barclays is in agreement with the Central Bank's proposal, however Barclays would recommend that there be a further consultation on planned amendments to the CAR Guidance.

Q22. Do you agree with the Central Bank's proposal to clarify in the CAR guidance the expectation that client funds should be deposited directly into a third party client asset account? If not, please explain why.

Barclays is in agreement with the Central Bank's proposal, however Barclays would recommend that there be a further consultation on planned amendments to the CAR Guidance, especially in respect of the definition of 'directly' as a daily calculation is required to determine whether the client money segregation requirement is higher or lower than the prior day which would then determine payments and receipts to/from the third party client asset account.

Q23. Do you agree with the Central Bank's proposal to require investment firms to perform an 'internal' client financial instrument reconciliation? If not, please explain why. Responses should include details of any barriers an investment firm may face in performing this process. Details of any suggested alternative processes that could address the risk of loss/misallocation of client financial instruments and meet the objective of the proposed enhancement should also be included.

Barclays is in agreement with the Central bank's proposal, however asks for consideration of methods of internal system reconciliations checks in line with the UK CASS Internal Custody Records Checks (ICRC) options of Internal Custody Reconciliation check and/or internal system evaluation method. Consideration should also be given to allowing the use of the different methods within one entity where there are different business areas and systems being used.

Q24. Do you agree with the proposed frequency (i.e. monthly) for performing the 'internal' client financial instrument reconciliation? In responding, please refer to instrument types, e.g. those that could be checked more or less frequently than on a monthly basis, and set out the applicable rationale.

Barclays is in agreement with the proposed frequency. Reconciliation of dematerialised securities such as equities and bonds would be performed more frequently and usually daily to support the stock shortfall calculation. For physical instruments and Fund Manager holdings these are generally monthly with most Fund Managers only providing statements on a monthly basis.

The CAR rules also state that the reconciliation is required to be performed within 10 working days of the reconciliation date, however firms with clients holding units in Funds will struggle with this as can be reliant of the date of receipt of the Fund Manager statement.

Q25. Do you agree with amending Regulation 57 to require investment firms to conduct an 'external' reconciliation of client financial instruments not deposited with a third party, using statements obtained from those entities responsible for maintaining the record of legal entitlement to those client financial instruments? If not, please explain why.

Barclays would require further clarification on this requirement in terms of definition of non-third party. If this is in relation to reconciliations between internal affiliate entities, then Barclays would agree with the requirement.

Q26. Do you envisage any barriers to conducting this reconciliation on at least a monthly basis? If so, please explain these barriers.

We do not consider there to be any barriers if our interpretation as set out in our response to Q25 is correct.

Q27. Do you agree with the Central Bank's proposal to enhance Regulation 57 to expressly require investment firms to conduct a reconciliation of physical client financial instruments?

Barclays is in agreement with the Central Bank's proposal.

Q28. Do you agree that the reconciliation of physical client financial instruments should be conducted on at least a monthly basis? If not, please explain why.

Barclays is in agreement with the Central Bank's proposal.

Q29. Do you agree with the Central Bank's proposal that investment firms should follow the process as set out in Regulation 57(7) of the CAR in order to address a reconciliation difference or discrepancy identified through any reconciliation process? If not, please explain why.

Barclays would require further clarity on what is meant by financial instruments which have not been deposited with a third party. In particular, does this mean any assets held within the Organisation itself?

Q30. Do you agree with the Central Bank's proposal to require investment firms to place money, financial instruments or a combination of both from the investment firm's own assets into the relevant third party client asset account to address a client financial instrument shortfall identified through the performance of an 'internal' reconciliation of client financial instruments? If not, please explain why.

Barclays is in agreement with the Central Bank's proposal, but note that shortfalls will be identified through external reconciliations to third parties also.

Q31. Do you agree with the Central Bank's proposal to require investment firms to address shortfalls identified through the performance of an 'internal' reconciliation of client financial instruments where that shortfall has not resolved itself in three working days? If not, please explain why.

Barclays is in agreement with the Central Bank's proposal.

Q32: Do you agree with the Central Bank's proposal to require investment firms to address excesses identified through the performance of an 'internal' reconciliation of client financial instruments, where that excess has not resolved itself in three working days? If not, please provide details of any barriers that an investment firm may face in removing the excess.

Barclays is in agreement with the Central Bank's proposal, with the caveat that only where this is within Barclays' control. E.g. if excess cash/securities have been placed in the account by an erroneous posting by a third party we would be reliant on that third party to correct within 3 working days.

Q 33: Do you agree with the Central Bank's proposal for investment firms to maintain a record of the actions it has taken in respect of the remediation of a reconciliation difference or discrepancy? If not, please explain why.

Barclays is in agreement with the Central bank's proposal.

Q34: Do you agree with the Central Bank's proposal to align process for the remediation of client fund differences or discrepancies identified through the performance of the daily calculation with the process for remediating reconciliation differences as set out in Regulation 57(7)? If not, please explain why. Details of any suggested alternative processes to ensure that the internal records used in the performance of the daily calculation are accurate to (i.e. meet the objective of the proposed enhancement) should also be included.

Barclays is in agreement with the Central bank's proposal where applicable, unless the banking exemption applies.

Q35: Do you agree with the Central Bank's proposal to enhance the CAR to require investment firms to develop and maintain a Client Asset Applicability Matrix within the CAMP? If not, please explain why.

Barclays is in agreement with the Central Bank's proposal.

Q36: Do you agree with the Central Bank's proposal to enhance existing requirements to include a section in the CAMP that identifies all entities to which an investment firm outsources any activity relating to the safeguarding of client assets and details of how the investment firm proposes to exercise oversight of the activities? If not, please explain why.

Barclays is in agreement with the Central bank's proposal.

Q37: Do you agree with the Central Bank's proposal for investment firms to include a reference to the location of its internal client asset breach and incident log in the CAMP? If not, please explain why.

Barclays is in agreement with the Central Bank's proposal.

Q38: Do you agree with the Central Bank's proposal to require investment firms to include the information set out in Paragraph 1(9) of Schedule 3 to the MiFID Regulations in the CAMP? If not, please explain why.

Barclays is in agreement with the Central Bank's proposal.

Q39: Do you agree with the proposed enhancements to the CAR guidance as set out above as they pertain to:

a) Client Asset Risk Matrix;
b) Client asset account flows;
c) IT systems and controls;
d) Access to critical systems;
e) Operational and governance structure;
f) Books and records;
g) Compensation schemes; and
h) Reconciliation and daily calculation processes?

If not, please explain why.

Barclays is in agreement with the Central Bank's proposal, however Barclays would recommend that there be a further consultation on planned amendments to the CAR Guidance.

Q40: In your opinion, is there any additional information which should be included in the CAMP?

Barclays has no further considerations egarding additional information in the CAMP.

Q41: Do you agree with the Central Bank's proposed approach for the CAR guidance on the structure of the CAMP? If not, please explain why.

Barclays is in agreement with the Central Bank's proposal, however Barclays would recommend that there be a furtherconsultation on planned amendments to the CAR Guidance.

Q42: Do you agree with the Central Bank's proposal to grant a 12 month transitional period following the publication of the third edition of the Investment Firms Regulations for investment firms to comply with the revised CAR? If not, please explain why.

Barclays would request consideration be given to a 24 month transitional period to allow for any IT enhancements, Operating model changes and in particular for any changes required to clients contractual arrangements. Barclays would also requests that consideration be given to the impact of the upcoming changes to the CAR Guidance on the transitional period.

Q43: Do you foresee any challenges in reporting the information referenced in the paragraph 171, on a monthly basis? If so, please explain why.

Barclays does not foresee any challenges.

Q44: Have you identified areas of the client asset regime that warrant consideration, in particular in light of new or evolving business practices, financial innovation or advancements in technology?

Barclays has not identified any further areas.

Q45: Do you agree with the Central Bank's proposal to specify the requirement set out in Article 15(1) of MiFIR in the Investment Firms Regulations and in guidance? If not, please explain why.

Barclays would need more information regarding the substance of the Central Bank's proposal to be able to agree or disagree, including for instance whether the requirements would apply to firms that have already submitted notifications.

Q46: Do you agree with the Central Bank's proposal to specify the requirement set out in Regulation 82(1)(b) of the MiFID Regulations in the Investment Firms Regulations and in guidance? If not, please explain why.

Barclays would need more information regarding the substance of the Central Bank's proposal to be able to agree or disagree.