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Re: Feedback on Consultation Paper 71 – Clients Assets Regulations and Guidance

Dear Sir/Madam,

We welcome the opportunity to consult on the proposed new Client Asset Regulations and Guidance. The feedback below represents the views of Pershing Securities International Limited ('PSIL') and should be reviewed in conjunction with the shared comments and views expressed by Goodbody Stockbrokers, Davy, Investec and ourselves, in a separate letter.

As a MiFID investment firm, CAR has long been a regulatory requirement we are practised in meeting. Our local colleagues in BNY Mellon Ireland are entering CAR for the first time as the funds industry is brought into scope. It is because of this that although PSIL and BNY Mellon Ireland worked closely together in preparing our feedback, the respective feedback will be sent individually to the Central Bank.

A representative from PSIL was fortunate enough to contribute to the Revised CAR Working Group and meet with the original CAR Task Force. In this manner, dialogue in regard to Client Assets is something we have significant experience in. We agree with many of the proposals contained in the Consultation Paper, in particular the introduction of materiality and simplification of the Daily Calculation.

In relation to the questions raised in the Consultation Paper, we have the following comments, which we would be happy to discuss at your convenience.

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.

No. The nature of pooled accounts is that individual client assets are not identifiable at the custodian level but are segregated at the firm's record level. It would be impossible to operate a pooled account and also identify individual client assets. In an insolvency event, where assets are pooled clients share any loss on a pro rata basis, which treats all clients equally and transparently. To move away from this and force firms to require a custodian to record and segregate client assets individually would both (a) cause significant increase in the process complexity and thus opportunity for error and, (b) introduce concentration risk for underlying clients who previously enjoyed the benefits and safety of diversification. Finally, this approach would increase the risk of legal action for firm as clients may choose to sue the firm should a 3rd party custodian fail and they have suffered a loss and other clients have not.
The proposed approach would yield very little benefit for the investor and an enormous burden for the firm and custodian.

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.

No – often a firm will require a client to provide security for investment services the firm is offering. This is collateral as per the current CAR 2.1.6, and may be a vital aspect in the firm's credit management policy. If the security provided by the client remains under the protection of the client asset regime, it is out of the firm's reach, and therefore of little use as a credit risk mitigant.
Further, clients who engage in margined transactions could reasonably be expected to have sufficient knowledge and experience to manage the risk involved and therefore understand why the firm would require the security to be 'realisable' for the firm.

We suggest that the CAR retains specific provision for a client to consent to a title transfer of assets for the purposes of collateral/security which would bring those assets out of CAR protection.

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.

No. The Client Money Resource is the amount of client assets the firm actually has in order to meet the Client Money Requirement (what it should have). A shortfall in the Resource means the firm does not have sufficient funds to meet the Requirement and therefore client's assets are at risk. It is precisely the crystallisation of this risk at recent firm insolvencies that has led to actual losses being experienced by clients.
Therefore, we believe this is a core risk and should not be subject to a firm's materiality judgement.

We suggest the reporting of a Client Money Resource shortfall should be based on the percentage of the Client Money Requirement the shortfall represents. The Central Bank and the firm can investigate the matter and determine its materiality.

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.

We agree with the proposal to provide pertinent and important information to clients in a format that is understandable i.e. 'plain English'. However, in the list proposed item (d) - the amount of cash balances (which may be shown on a separate statement) held by the investment firm as of the statement date and the jurisdiction of where they are held – would be very difficult where client assets are held in pooled accounts with the custodian. Providing the value of cash balances the firm records show it is holding on behalf of the client is not at issue, but the exact jurisdiction would not be possible.

We suggest clients are provided with a list of jurisdictions where it has appointed custodians to hold client assets.

Q28. Do you agree with the responsibilities of the Client Asset Oversight Officer as provided for in a) to g) above? If not, please explain why, providing details of additional responsibilities which should be included.

We agree with the responsibilities but given the seniority of the function and the individual who will perform it we would suggest that the CAOR has the ability to delegate the performance of certain tasks to others who may be more appropriate to perform them. For example, in a firm the PCF 11, PCF12, PCF15, or CF2 may be responsible for approving regulatory returns as they are best placed to carry out this task. As Regulatory Reporting is not a task a Board member or Senior Manager with direct access to the Board would normally undertake, it would be more efficient for the CAOR to delegate this task.

We suggest the CAOR can delegate the performance of certain tasks to another PCF or CF.

Again, we welcome many of the proposed changes and the opportunity to provide feedback on them. We hope the above of benefit and extend an invitation to discuss our views at your convenience.

Yours sincerely

Alan Melia
PSIL Compliance Manager & MLRO
Pershing, a BNY Mellon company