Consultation Paper 133

Consultation on enhancements to the Central Bank Client Asset Requirements, as contained in the Central Bank Investment Firms Regulations

Introduction

Banking & Payments Federation Ireland (BPFI) and our affiliate, FIBI (Federation of International Banks in Ireland) represent over 100 domestic and international member institutions. We mobilise industry's collective resources to represent a collective position in relation to matters and proposals which may impact on members, consumers and the economy.

BPFI and FIBI welcome the opportunity to respond to the Central Bank of Ireland's consultation on enhancements to the Central Bank's Client Asset Requirements. Our response focuses on the following elements of the consultation:

- The proposed transitional period
- PCF45 - New PCF requirement for credit institutions
- Client Asset Management Plan (the "CAMP") Requirements
- The levy
- Internal reconciliations and Shortfall/Excesses

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<u>Transition Period</u>

Question 4: 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.

We believe that a 24-month implementation period would be appropriate given the first-time application of the CAR to this large segment of the market and not 12 months as suggested in the consultation paper. In view of the significant requirements and technical changes that may be needed, we believe that the transition period should be 24 months for all new requirements for credit institutions and that it should be proportionate (e.g., based on client asset values/assets under custody).

A 24-month implementation period would allow firms sufficient time to:

- Design, implement and robustly test new internal account structure/systems/controls.
- Develop and implement a meaningful CAMP that reflects the above and is based on a meaningful CAMP/policy/risk assessment, which should risk assess the effectiveness of the above systems and controls and report on the management of residual risks and/or development of risk mitigation programmes.

Question 42: 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.

We suggest that further consideration is given to the transitional period, given the significant technology development that will potentially be required. As detailed above, we suggest that a 24-month implementation period would be appropriate given the first-time adoption due to the significant number of changes.

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PCF45 - New PCF requirement for credit institutions

Question 8: 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.

We suggest that the PCF-45 should be an optional control function based on the nature, scale and complexity of the organisation. Alternatively, the CBI could explore the inclusion of the HCAO responsibilities as a CF function.

- Consideration/guidance is required in relation to grandfathering arrangements for those allocated as the single officer/existing relevant PCFs within credit institutions already in line with MIFID requirements. Depending on size, structure and business of the credit institution, ownership of relevant policies and procedures could be assigned to the PCF whose role is most relevant to managing the risks involved in holding client assets.

Client Asset Management Plan (the "CAMP") Requirements – Proportionately

Question 35: 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.

Proportionality (e.g., based on client asset values/assets under custody) should be considered with respect to the requirement to develop and/or maintain a CAMP and a Client Asset Applicability Matrix within the CAMP. Certain institutions may have very limited client asset offerings and there may not be benefits to implementing a detailed client asset matrix for the full product offering.

Question 37: 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.

We do not agree with the Central Bank's proposal for the location of the client asset breach and incident log to be in the CAMP. We suggest that firms be allowed to incorporate and identify client asset breaches/incidents within their already established, breach logs/operational risk event registers rather requiring the development of a specific standalone breach and issues log.

Question 39: 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.

Where possible, duplication of themes/topics/policy should be avoided that are already addressed by credit institutions' existing requirements for example, operational and governance structure. Consideration should be given to allowing firms to address many of these requirements through a client asset policy to be reviewed annually/board approved and supported by ongoing assurance activities.

<u>Levy – Engagement requested</u>

Question 7: 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?

Credit institutions are subject to existing levies and this is an important consideration in terms of any approach to the application and allocation of an additional levy to credit institutions.

The industry requests additional details on the levies proposed. We have reviewed the detail of the client asset levy[1] under the Funding strategy for Investment Firms and Stockbrokers. It is unclear if this is what the CBI may consider as the consultation paper does not provide the necessary details. Further engagement would be welcome on the supplementary levy referred to under point 30 on page 12 of the consultation.

Internal reconciliation and Shortfall/Excesses

Question 23: 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.

Credit Institutions may not maintain two sets of independently updated records unlike a stockbroker. One example of this is where they provide custodian services and do not have sight to the transactional level data. Alternative methods could be considered based on review of existing key system controls which ensure the records remain accurate and complete in the relevant custody system. UK CASS facilitates this by way of the Internal System Evaluation Method ("ISEM") for firms with systems which do not allow for two sets of records.[2] Shortfall process should be based on external reconciliation, and not on internal reconciliation particularly due to the above internal reconciliation point.

1https://www.centralbank.ie/docs/default-source/regulation/how-we-regulate/fees-levies/industry-funding-levy/guidance/funding-and-strategy-guide-to-the-2020-industry-funding-regulations.pdf?sfvrsn=6

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https://www.handbook.fca.org.uk/handbook/CASS/6/6.html#:~:text=The%20purpose%20of%20the%20internal,controls%20and%20any%20recordkeeping%20discrepancies – CASS 6.6.10

Consideration should be given to the timeline between publication of final rules and the implementation date, to ensure firms have sufficient time to develop/procure automated solutions to meet reconciliation requirements and/or additional regulatory reporting obligations. Further guidance should be provided on the expectations of reconciliations in particular regarding clearing these accounts to nil daily. A 24-month implementation period would be appropriate given the first-time adoption due to the significant number of changes and appropriate guidance should be published in a timely manner alongside the requirements.

Question 43: Do you foresee any challenges in reporting the information referenced in the paragraph 171, on a monthly basis? If so, please explain why?

The proposed inclusion of the additional data fields in the MCAR report should be proportionate to the nature of the activities of the organisation. For example, an operation may provide safekeeping or administration services of underlying securities but not provide a pricing service. Where required to report these fields, a process should be put in place that is similar to that adopted by the FCA in respect of CMAR reporting[3], where custodians only value assets on a monthly basis and are allowed to report the month end values in the average, high and low value fields.

Contacting Us:

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3 https://www.fca.org.uk/publication/policy/ps11_06.pdf