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8th March 2021

Dear Sir/Madam,

Re: Central Bank CP 133 - Enhancements to the Central Bank Client Asset Requirements ("CAR")

Citi welcomes the opportunity to respond to the Central Bank of Ireland's ("Central Bank") consultation paper on enhancements to the Central Bank's Client Asset Requirements. As a large global custodian and a credit institution, which operates in multiple jurisdictions, we believe the introduction of further measures to strengthen the protection and safeguarding of client assets will bring wider benefits and consistency.

Citi recognises the need for robust client assets arrangements to prevent risk of loss/misuse of assets and believe that the CAR will ensure the necessary focus on effective client assets arrangements. We are pleased to enclose our response to the specific questions. Our responses highlight areas for further discussion and engagement including any additional guidance.

We agree with the majority of the proposals included in the consultation paper. While this is the case, the developments and system changes required are significant. We have captured some of our thoughts below, with these considered in further detail within the specific question responses.

Internal reconciliations – the approach suggested considers firms with two separate internal records and would require significant changes for firms with one set of records with limited client benefits
Shortfall considerations – the basis of shortfall lock up should be based on an external reconciliation
Levy impositions – further visibility and engagement is required with industry on the proposed additional levies
Monthly Client Asset Report – significant additional technology development required to deliver additional data fields

The points above represent a small subset of our response and we believe that further consideration would be beneficial to the wider industry.

We look forward to the opportunity to continue our discussion in respect of the consultation paper feedback at a mutually convenient time.

Yours sincerely,

Diarmuid Whyte

Diarmuid Whyte
Client Asset Oversight Officer
Citibank Europe plc

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Question 1: 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.

We agree with the proposal to extend the scope and application of the Client Asset Regulations ("CAR") to credit institutions. Given the CAR will apply to both credit institutions and investment firms the definitions and the applicability of scope are key areas. We would recommend that the relevant rules draw out clarity of applicability to the relevant institution type to avoid any ambiguity.

Question 2: 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.

We have identified a number of areas in respect of the CAR proposals, which would merit further consideration. Further detail is included in our specific question responses below.

Reconciliation Frequency

We recognise the need for reconciliations and the benefits of ensuring the accuracy of books and records. Credit institutions can provide a range of services and activities that result in client assets. These client assets will not in all cases be exposed to similar risks, with differing risks arising for counts of physical securities and those of validation to external market records. We would suggest that the reconciliation (internal and external) process proposed in the CAR regulations should be enhanced to enable firms to define an appropriate reconciliation frequency for different types of assets, whilst meeting the Central Bank's minimum requirements.

The monthly period outlined for reconciliation of de-materialised assets held with a Central Securities Depository ("CSD") or sub custodian is an area where there may be benefits to have a more frequent basis of reconciliation. Alternately, there will be client assets related to collective investment schemes where it will only be possible to reconcile based on availability of statements from the transfer agent such as quarterly and semi-annually. Therefore, we suggest the Central Bank should introduce a requirement in CAR for firms to self-assess the adequacy of reconciliation frequency and perform reconciliations based on their assessment.

Monthly Client Asset Report ("MCAR") High, Low and Average Fields

For credit institutions, which provide custody and do not provide pricing services to clients, inclusion of high, low and average values of client assets for MCAR purposes would require calculation of these values on a daily basis. This daily pricing process would require significant investment in technology infrastructure, with little client benefit due to a credit institution's client base and those clients' requirements. It would be unduly burdensome for a firm to build a pricing process for custody assets that is not required by its client base and would provide minimal client value. As outlined in our response to question 43 we would suggest that as client assets will only be valued for the month end we would recommend that this month end balance would then be considered the high, low, and average value. This is aligned with the UK Client Money and Assets Report ("CMAR") where the month end values would be recorded in these fields.

Excess Client Assets

We note that it is the Central Bank's intention to introduce in regulation 57 (12) of the CAR a requirement to remove any excess client assets from the client assets account. The nature of credit institutions business means that this requirement can result in the firm removing assets, which belong to a client where an allocation is not yet completed from the sub custodian/issuer. Returning excess to the market or possibly moving client assets in those cases to the firm's account would not be in the clients' best interest as these

assets could belong to a client. The Central Bank should consider the completion of appropriate reconciliation item reviews and when necessary clarity has been obtained that it is not a client asset, that it be removed. Further feedback is provided on this topic in our response Question 32.

Physical reconciliations
We understand that it is the Central Bank's intention to introduce a requirement to count physical assets on a monthly basis and using this count perform a reconciliation to be completed within 10 days of the date of the reconciliation. We suggest that for credit institutions holding large number of physical assets, completing physical assets counts and reconciliation (equivalent of a safe/vault count) on a monthly basis could result in increased risk to the client assets. Factors could include increased resources with access to the assets, which are immobilised as part of safekeeping obligations and space limitations requiring potential extraction of assets from their secure location. As outlined above under the reconciliation frequency section we believe consideration should be given to a requirement for the firm to consider the risks associated and document in a reconciliation frequency document the timeframes for review.

Internal reconciliation
We would request the Central Bank to clarify further the expectations in respect of 'internal client financial instruments reconciliation' for credit institutions who have only one set of records. These firms do not maintain two sets of independently updated records.

For those firms the Central Bank should consider an alternative method of ensuring accuracy and completeness of existing internal records. These alternative methods could be based on review of key system controls, system logic and architecture of custody system, which would ensure that records remain accurate and complete within the relevant custody system. A similar type of arrangement is facilitated under UK CASS by way of Internal System Evaluation Method ("ISEM") for firms with similar systems, which do not allow for two separate sets of records.

Waiver process
We believe that the Central Bank should consider a process, similar to the UK FCA rule modification and waiver https://www.fca.org.uk/firms/waivers-modifications. This facilitates firms requesting approval, on an exceptional basis, to amend or dis-apply a specific rule for a relevant part of their business basis. These decisions are formally published on the FCA website.

Statements of client financial instruments
We note the statement requirements as outlined under regulation 61. (1) (b) of the CAR requires the identification of those client financial instruments registered in the client's name separately from those registered in any other name. For large global organisations systems used to facilitate client reporting can be in consistent formats across differing legal vehicles.

In order to meet a specific jurisdictional obligation significant technology development would be required and may not provide for the additional benefits expected for underlying clients. The transparency and understanding as how the assets are held would be better served by providing transparency via a disclosure to the clients in the Client Asset Key Information Document or terms and conditions.

We suggest that further consideration should be given to the benefits of including an identification requirement in the statements of the registration form of how the assets were held.

Additionally, we note regulation 61. (1) (c) of the CAR requires detail of the market value of collateral held as at the date of the statement to be included. We would request clarity as to whether this is envisaged to consider Title Transfer Collateral Arrangements ("TTCA") as legal title in these cases will transfer from the client to the firm. Any inclusion of collateral on the statements could cause additional ambiguity for a client given the entitlement has been transferred to the firm.

Due Diligence
We agree with the principle and the requirements of due diligence. We note that regulation 67. (2) (d) of the CAR requires as part of the Head of Client Asset Oversight ("HCAO") responsibilities to provide "*approval, in writing, of the reviews referred to in Regulations 49(8) and 50(7)".* Industry bodies such as the Association of Financial Markets in Europe ("AFME") have been quite active in this area seeking to harmonise and improve due diligence requirements across the industry, which Firms across the EU have sought to adopt. Credit institutions can have dedicated personnel that perform these activities on behalf of their organisations and can utilise a significant amount of third parties.

We would recommend that where these exist, the existing processes should be maintained. The HCAO should be required to exercise and demonstrate oversight of this process rather than require the approval in writing of each review.

Financial Instrument Facilities Letters
We agree with the principle of Financial Instrument facilities letters to allow for protection and agreement as to the treatment of client assets at third parties and note the intention of regulation 53 (1) of the CAR. Credit institutions currently will have deposited their client assets with a range of third parties such as custodians and CSDs. We understand that not all CSDs will be willing to provide a Financial Instrument facilities letter or may suggest that relevant clauses are captured within the contractual arrangements. In these cases, it will not necessarily be in the best interest of the client to move the client assets e.g. due to market limitations in which the assets can be held.

We believe that consideration should be given to the treatment of these cases and believe that these instances should not be considered to be breaches of the underlying requirements. We believe that firms should be required to document its approach to Financial Instrument Facilities Letter in the Client Asset Management Plan ("CAMP") and ensure that where the signed letters have not been received that clear understanding of the risks are documented and considered.

Question 3: Are there any unintended consequences that might arise as a result of extending the scope and application of the CAR to credit institutions?

We have not noted any unintended consequences other than those outlined in our individual question responses.

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 would recommend that the Central Bank consider extending the 12 month transitional period. The EU regulatory landscape continues to evolve with the Central Securities Depositories Regulation ("CSDR") introducing large changes likely also to affect Client Assets with migration to dematerialised assets. Additionally, a number of the requirements proposed in the CAR will require significant system changes/enhancements in processes such as preparation of MCAR and reconciliation process changes. The Central Bank could consider a phased implementation period separating client/custodian communications from technology deliverables, which should be subject to longer implementation times.

We would recommend a transitional period of 24 months for credit institutions and the utilisation of a phased basis as appropriate.

Question 5: 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.

We agree with the proposal to include additional disclosure requirements to clients as to how their money/deposits will be held. We would note that cash/deposits are not considered to be "protected" as referred in paragraph 29 a (Use of MiFID 'banking exemption'). The Irish Deposit Guarantee Scheme will allow for compensation to a client in the event of insolvency of the institution similar to an insurance scheme. While this is the case, these deposits will only be eligible for claim where relevant criteria are met. For example, where the client is a financial institution these clients' deposits are not likely to be eligible. The Irish Deposit Guarantee Scheme regulations provide clear transparency to clients via the provision of the depositor information sheets.

Question 6: 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.

A credit institution will cease to hold money on behalf of clients as deposits where:

a) the client has invested the money in assets using these funds
b) the cash or deposits is paid away/returned to the client

It is important to note that in neither of the instances above would the deposits be treated as client funds under the CAR.

The one circumstance where client funds can arise is in respect of any custody shortfalls in line with the proposed process detailed in paragraph 114 of the consultation paper. These client funds would therefore not be held as a client deposit. We envisage no other instances for the credit institution business where client funds/monies would arise. However, this can be subject to each institution's own business model.

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?

Consideration should be given to the nature of the risk to client assets from a firm's offering. Certain credit institutions may provide a common depositary offering which can result in the custody of immobilised assets. Immobilised assets by their nature are held in a secure location with the risks to clients of lesser significance.

We believe that it would be beneficial for additional consideration to be given to the proposed levies with these risks in mind.

Supplemental Levy feedback

Additional visibility and engagement should occur in respect of the supplemental levy proposed to fund the costs attributable to the performance of the Central Bank's function under the CAR. Credit institutions presently fall subject to a number of levies with the cost of supervision and levies are a key area of focus. While a supplemental levy may be appropriate, it is important that consideration is given to the approach for application and the allocation of the levy to credit institutions.

Investor Compensation Levy feedback

In respect of the investor compensation proposals there are a few elements we believe should be considered.

<u>Eligible Investor</u>

It is important to consider the profile of the client base in applying additional levies to credit institutions. Certain credit institutions' client base will include professional and eligible counterparty clients with these

parties possessing a significant understanding of the services they utilise. In addition, these clients will not necessarily fall to be eligible investors under the Investor Compensation Company Limited (ICCL).

Duplicate Levy Contribution on same assets
In considering the nature of the client base we would note that a large proportion of credit institutions client assets may be held on behalf of other financial institutions such as investment firms and stockbrokers (professional clients/eligible counterparties). These firms may in turn also be subject to investor compensation levies in their own right including in other jurisdictions, which could result in levies being applied to assets held at both locations.

Existing ICCL Levy Application
Certain credit institutions will already contribute to the Investor Compensation Company Levy via the Fund A allocation based on number of eligible investors at year end. It is important that consideration is given to the existing levy application prior to altering or adding to this levy.

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 have no objections to the proposal to extend the application of the existing PCF-45 to credit institutions holding client assets.

Question 9: 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.

We would recommend that for the avoidance of any ambiguity that the record retention period specifies the date to which the timeframe relates. I.e. does it begin at the date of the completed disclosure or is it post the relationship terminating.

Question 10: 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.

We have no objections to the Central Bank's proposal to require written agreements for TTCA.

Question 11: Do you agree with the proposed information that should be included in the written agreement in respect of TTCAs? If not, please explain why.

We have no objections to the inclusion of the proposed information in written TTCA agreements. We would suggest that regulation 59. (1) (g) (ii) of CAR be amended slightly to state any additional **known** risks that may arise where client assets are deposited with a third party outside of the State. This would allow some scope for unforeseen circumstances.

Question 12: 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.

Yes, we agree with the proposal that written agreements containing TTCA provisions are maintained for a period of 6 years. As outlined above in our response to Question 9 we would suggest that further clarity is provided as to date on which the timeframe applies.

Question 13: 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.

We have no objections to the Central Bank's proposals relating to the record keeping requirement following a client's request for the termination of TTCA. It is important to note that while the specific terms of the TTCA will cease the client relationship can continue with the provision of other services.

Question 14: 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.

Yes, we agree with the proposal to provide written notification to clients following termination of a TTCA. However, it should be noted that in the event of termination of a client TTCA arrangement, the margin under the original TTCA agreement, if not paid away to client, will be held by the credit institution as a deposit rather than client funds.

Question 15: 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.

We agree with the Central Bank's proposal to require the provision of statements daily to clients. In respect of regulation 73. (3) (c) of the CAR we note that this suggests that the location of where the client financial instruments are held on behalf of the client should be captured in the statement. We agree that there is merit in including this information for transparency to the client. We would suggest that capturing this information in one statement would require significant technology development for institutions. We believe that the objective should be met with the location information provided in a separate document, which is updated for any relevant changes.

Question 16: 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.

We agree with the Central Bank's proposal.

Question 17: 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.

We would recommend that the intention of the notification to the Central Bank is drawn out that it is for informative purposes rather than requiring an approval.

We recognise the Central Bank's responsibilities for ensuring firms holding client assets do so in a manner compliant with relevant regulations and ultimately protect client interests at all times. While this is the case, we believe that firms must be accountable for the protection of their clients' assets, be responsible for any decisions made and be in a position to take necessary business decisions as required.

We believe that the firm should be able to take all reasonable steps to act in the best interests of its client base and prospective clients. There may be scenarios such as sub custodians/competitors facing financial difficulties, a significant sanction event or a regulatory fine, which could result in a requirement for a material transfer in a short period of time. It will not always be practical to notify in advance of acting in these cases. We believe that in such circumstances it would be appropriate for the firm to take the necessary steps prior to a requirement for notification.

Additionally, we would suggest that further consideration should be given to business as usual type events where firms will consider these to fall outside the scope of a material transfer event. These could include

significant new clients' onboarding/off boarding, movements within the same legal vehicle or custodian transfers.

Question 18: 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.

Yes. We agree with the principle of the Central Bank's proposal. However, whilst the terms of business could provide high level information to allow clients to gain a general understanding of the terms/requirements in the event of a transfer of business, these references should not be required to consider all eventualities and requirements of the transfer of business.

In the event of a material transfer of business, firms will engage with their clients to allow understanding of the steps as part of a business transfer, associated timeframes, and any changes (if any) to client asset protections.

Question 19: 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.

We believe that firms should retain the ability to take necessary business decisions to facilitate the appropriate operating model in accordance with its contracted obligations to clients and relevant legislative requirements. We understand there will be occasions where the Central Bank want to know matters which might impact the wider market and we agree to notify to the Central Bank. We would also suggest that these disclosures be aligned with any compliance notification obligations to ensure consistency of messaging.

The regulations/guidance should certainly consider the expectations of the regulator in respect of the orderly transfer of client assets. A business transfer can follow a number of different approaches including requiring explicit client consent, full book migration post a set period of notice and court migrated activities. We would recommend that any proposals captured in the guidance should be subject to consultation with industry as the guidance notes can be utilised to guide review findings and it should facilitate practicalities that firms face.

Question 20: Are there other aspects of the transfer of business process, as relating to client assets that require clarification? If so, please provide details.

We have not identified other aspects, which require clarification.

Question 21: 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.

It would be beneficial for the Central Bank to set out their minimum expectations in determining an uncontactable client. This could include the reasonable steps a firm may need to take in order to discharge any trust and fiduciary obligations:

- Form/medium of client communication
- Frequency of contact expectations
- Timeframes expected prior to concluding
- Treatment of uncontactable clients following completion of reach-out process

As referenced above the guidance should be subject to additional engagement with industry. We suggest that the Central Bank consider other legal and regulatory regimes that are of relevance, which would influence the approach and treatment of uncontactable clients.

Question 22: 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.

Yes. We agree that client funds where they arise should be deposited directly into a third party client asset account. Credit institutions will hold client cash as deposits. It is important to note that clients' money will not be held as client funds. The only circumstance where we would envisage client funds being held would relate to the shortfall lock up process. In these cases, it would be expected that the funds would be deposited in a third party client asset account by a credit institutions to cover shortfalls and ensure the monies are protected.

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.

We do not agree with the client financial instrument reconciliation in the form outlined in the consultation paper. We understand the Central Bank's objective to mitigate the risk of loss/misallocation of client financial instruments and the necessity of performing reconciliations. However, we believe that a significant number of institutions holding client assets do not maintain two sets of independently updated records, one of which is a client ledger, and one of which is an aggregate record of assets deposited at a third party.

Therefore, we believe the Central Bank should further clarify expectations to 'internal client financial instruments reconciliation' for institutions, which only have one set of records and client assets, are recorded on the basis of single entry system. For those firms that maintain one set of records it is suggested that the Central Bank should provide an alternative method of ensuring accuracy and completeness of the internal records. These alternative methods could be based on review of key system controls, system logic and architecture of custody system, which ensure that records remain accurate and complete in the custody system or utilise a similar approach to UK CASS ISEM.

Furthermore, while we agree with the concept of shortfalls as captured in paragraph 94 of the consultation paper we believe that these should be identified via an external reconciliation by the deficits in the market record of assets held against the internal books and records.

We believe the Central Bank should consider the utilisation of external based reconciliations for shortfalls due to the value of the external records being independently obtained.

Question 24: 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.

We would suggest the Central Bank consider a requirement for firms to assess the adequacy of the internal and external reconciliation frequency on a periodic basis (yearly) and define appropriate timeframes. Where the type/nature of securities held by the firm (e.g. equities held in dematerialised form where feeds are available daily) are with CSD's/sub custodian's and the firm is able to perform more frequent reconciliation than monthly then the firm should perform reconciliations on a more frequent basis. However, where securities such as units in collective investment schemes are held and where a statement

is sent by a third party on a quarterly/semi-annual basis then reconciliations should be performed on less frequent basis. We would recommend that the frequency of reconciliation should be defined by the firm by way of a reconciliation frequency document with the regulations and guidance specifying the minimum timeframe expectations from the regulator.

Additionally, we would suggest that further consideration is given to the timeframes for reconciliations to identify shortfalls. Given the shortfall lockup is in the interests of protecting clients' entitlements, a monthly basis for the reconciliation could allow shortfalls to occur during the month and in the event an insolvency event occurred the client may not receive appropriate protection.

Question 25: 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.

We have no objection to the Central Bank's proposal.

Question 26: Do you envisage any barriers to conducting this reconciliation on at least a monthly basis? If so, please explain these barriers.

A number of Collective Investment Schemes/Hedge Funds only value on a quarterly/semi-annual basis and in certain cases on an even less frequent basis. The holding statements can only be available in line with these valuation frequencies. Additionally, collective investment schemes which are suspended or in liquidation will not have statements available to allow for a monthly reconciliation. We would propose that allowance is made within the rules for firms to determine the frequency of the reconciliation based on the type of security and availability of statement.

This will allow firms to conduct reconciliations on a less than monthly basis where the respective provider only values and issues statements on this basis. We would also suggest that in respect of the minimum frequency that it be appropriate to utilise the last available statement in the event that there is none aligned to the period in question.

Question 27: 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?

We have no objection to the Central Bank's proposal.

Question 28: 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.

Whilst monthly physical reconciliations may be practical for firms holding a manageable quantity of certificates, this will not be practical for firms holding very large numbers of unique certificates. The Central Bank should consider a process, similar to the UK FCA rule modification and waiver https://www.fca.org.uk/firms/waivers-modifications where firms can request approval, on an exceptional basis, to amend or dis-apply a specific rule for a specific part of their business basis.

As previously communicated, there are circumstances where the monthly performance of a physical client financial instrument count and reconciliation would prove prohibitive and expose the client assets to heightened risks. The risks to these assets would rise due to increased resources required in the confined location, movement requirements for financial instruments, which could result in certificates/notes being mislaid or lost.

Additionally, as outlined in our response to Question 2, we suggest the Central Bank introduce a requirement in CAR for firms to assess the adequacy of reconciliation frequency and perform

reconciliations based on this assessment. This is particularly key where the assets are immobilised and the risk to loss will not necessarily mirror those from equities.

Question 29: 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.

We have no objection to the Central Bank's proposal.

Question 30: 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.

We welcome the process to allow firms to address shortfalls via a lock up of money, financial instruments or a combination of both and believe this is in the clients' best interests to ensure clients entitlements are protected.

We believe the lockup process should not be dependent on the internal reconciliation output. We believe that this should follow a similar basis to that which exists in UK CASS with the shortfall identified from the output of the internal v external records reconciliation.

As outlined in our response to Question 28 this is another area where it is appropriate for a rule modification and waiver.

We would also suggest that the Central Bank should outline whether the origination of a shortfall would be considered a breach if the funds are placed to cover the shortfall, protecting the client entitlement in the event of insolvency. This would allow for positioning of considerations in external client asset reviews.

Question 31: 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.

As outlined previously we believe that shortfall considerations should be based on the external reconciliation process rather than an internal reconciliation process.

We welcome the process to allow firms to address shortfalls where they have not been resolved, however we observe a variance between the timeframe to address a shortfall, three days, and the timeframe to "identify the cause of the difference or discrepancy", five days. We believe an approach that allows firms up to five days to establish if a discrepancy has resulted in a shortfall, with the expectation that if it is established earlier than five days that the discrepancy has resulted in a shortfall, firms should address the shortfall at the point this is concluded.

Question 32: 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.

For firms operating custody arrangements, excess securities in the client asset accounts are likely to occur in exceptional circumstances and these excess securities will normally be identified through external client assets reconciliation.

For example, where a firm receives a stock dump in to the client asset account, there is the potential for a period of time to be required to establish client ownership and receive the relevant client instruction. Until

this point, a firm will not be in a position to update the client assets books and records and will not be able to confirm which assets are client assets.

If an excess rule is included in the CAR, to avoid breaching this rule, firms may feel a need to instruct the sub custodian to return assets back on day two in order to ensure the assets are removed from the client asset account within three working days. This is likely to result in valid client assets being returned due to the short timeframe involved and we do not believe this is in the clients' best interest.

Similarly, for a large client position, an issuer or sub custodian may allocate assets to the client account, which a firm cannot in the first instance apply in totality to its clients. In the event this is the result of an issuer or sub custodian error, we believe the best course of action is for the assets to remain segregated in the client asset account until the issuer or sub custodian corrects the position. It would not be appropriate, for example, to move the assets to a firm account as the assets are not the property of the firm.

We would therefore conclude it is in the clients' best interest that any excess remain in the client asset account protected until the discrepancy is resolved, which firms should seek to do on a timely basis.

Question 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.

Yes. We agree with the Central Bank's proposal and we believe this demonstrates evidence as to the actions taken to resolve a reconciliation difference.

Question 34: 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.

We agree with the Central Bank's proposal to align the remediation of client fund differences identified through the daily calculation. We believe that these obligations will only arise in respect of the shortfalls lock up process for credit institutions as the monies held on behalf of clients will generally be held as deposits/cash.

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.

We agree with this proposal as it allows consistency of review and identification of client asset products and believe it is a key part of the client asset framework.

Question 36: 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.

Yes. We agree with this approach but believe it is important that a clear distinction is drawn out between the custodian/sub custodian activity which would fall subject to the due diligence obligations and that of an outsourced party. We would suggest that in respect of the proposed enhancements that the wording is adjusted to the capture of "any" material activity relating to the safeguarding of client assets.

Additionally, we note that outsourcing as a topic is subject to ongoing scrutiny both by domestic and regional regulators. We believe it is important that any CAR related considerations consider the impacts of these initiatives such as the recently published consultation paper.[1]

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 agree with the proposal to include a reference to the location of the internal client asset breach and incident log in the CAMP. We believe this is a good discipline with alignment to the documentation of the consideration and capture of materiality.

Question 38: 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.

We agree with the proposal for the CAMP to include the information set out in Paragraph 1(9) of Schedule 3 of the MiFID Regulations. Firms should retain flexibility as to how this information is presented which can take the form of links to artefacts that contain the relevant information.

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.

We agree in principle with proposed enhancements to the CAR guidance. However, we would suggest that the CAR guidance is shared with industry for comment and feedback.

Question 40: In your opinion, is there any additional information which should be included in the CAMP?

We note no further points for consideration.

Question 41: 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.

We believe that additional CAR guidance on the structure of the CAMP will allow for further consistency across the investment firms and credit institutions. However, given the CAMP is to be a firm owned document we would suggest that the nature of the guidance does not restrict entity specific considerations.

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 evolving regulatory environment (such as CSDR) and the significant technology development that will be required from the

[1] https://www.centralbank.ie/docs/default-source/publications/consultation-papers/cp138/cp138-consultation-on-cross-industry-guidance-on-outsourcing.pdf?sfvrsn=5

final regulatory text. A transitional period of 24 months would be appropriate for credit institutions where implementation will be required across multiple product lines and multiple branches.

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?

In considering the inclusion of the additional data fields in the MCAR report, it is important to consider the nature of the activities of the organisation. In certain cases, the business model of an organisation can be to provide safekeeping or administration services of underlying securities but not to provide a pricing service.

It is also important to note that the securities held as client assets can be held on behalf of other authorised investment firms. These clients will be required to place assets with suitable third parties and will not necessarily require the pricing of the securities on an ongoing basis. The service provided is to ensure that records are maintained of the nominal quantities of the securities held.

These considerations are particularly relevant in the context of the requirement to include a highest, lowest and average client financial instrument value. In order to calculate the highest, lowest and average value of assets for the month, a firm would be required to complete a full calculation of the value of client assets for each working day of the month. Pricing and valuation is not a core custody activity, so firms safeguarding large values of assets, in multiple locations and multiple businesses will consider this to be an exceptionally large undertaking requiring significant technology development. We would suggest an agreed exception process, similar to that adopted by the FCA in respect of CMAR reporting[2], where custodians only value assets on a monthly basis are allowed to report the month end values in the average, high and low value fields.

In respect of MCAR, more broadly it will require a systematic solution. For large global organisations with significant other regulatory changes and technology prioritisation, it is key that the pro forma for the new MCAR is agreed as soon as possible. This is to allow for prioritisation of the aforementioned technology development.

Additionally, we would recommend that in relation to the MCAR report changes that consideration is given to an upload file functionality to avoid the risk of any manual input error in the required population with the increased data fields.

[2] https://www.fca.org.uk/publication/policy/ps11_06.pdf