Banc Ceannais na hÉireann
Central Bank of Ireland
Eurosystem

Feedback Statement -
Consultation Paper CP 133

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

July 2021

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Introduction

1. On 3 December 2020, the Central Bank of Ireland (the Central Bank) published a Consultation on enhancements to the Central Bank Client Asset Requirements, as contained in the Central Bank Investment Firms Regulations (CP 133).

2. CP 133 raised 46 questions on the proposed enhancements to the second edition of the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Investment Firms) Regulations 2017 (S.I. 604 of 2017) (the Investment Firms Regulations).

3. The most significant enhancements that were proposed in CP 133 relate to the Client Asset Requirements (the CAR), as set out in Part 6 of the Investment Firms Regulations. The protection of client assets is a key priority for the Central Bank and the enhancements set out in CP 133 were proposed with the aim of ensuring that client assets held by investment firms and credit institutions, authorised by the Central Bank, remain appropriately safeguarded. The Central Bank expects that investment firms and credit institutions afford the protection of client assets sufficient importance within their Risk Management Frameworks.

4. This feedback statement summarises the material responses received to each question in CP 133 along with the Central Bank's comments and decisions on each of the areas where enhancements were proposed. The Central Bank would like to take the opportunity to acknowledge all parties who took the time to make a submission in response to CP 133 to inform the policy development process.

5. The Central Bank will keep its requirements under review at all times and welcomes on-going discussion on how best to protect investors and ensure a robust level of protection for client assets.

6. The feedback statement is published to promote an understanding of the policy development process within the Central Bank and is not relevant to assessing compliance with regulatory requirements.

Markets Policy Division and Client Asset Specialist Team

Central Bank of Ireland

28 July 2021

For the purpose of this feedback statement, unless stated otherwise, all references to "investment firm(s)" are intended to include credit institution(s) undertaking MiFID investment business, which will be brought in scope of the CAR.

Responses to questions posed in Section I of CP 133: Extension of the scope and application of the CAR

Application of the CAR to credit institutions

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.

7. Respondents supported the proposal to extend the scope and application of the CAR to credit institutions undertaking MiFID investment business, noting that this would allow for a common framework for all entities who hold client assets and consistency of protection for clients. [1]

8. One respondent queried whether the CAR would apply to credit institutions undertaking investment business under the Investment Intermediaries Act 1995 (IIA) and another respondent requested clarification on whether the CAR would apply to credit institutions providing depositary services.

9. One respondent queried whether the Central Bank would permit credit institutions to apply the CAR to non-MiFID investment business if/where appropriate.

Central Bank response:

The Central Bank welcomes the feedback received and intends to proceed with the proposal to extend the scope of the CAR to credit institutions undertaking MiFID investment business.

The Central Bank intends to clarify in the CAR and CAR guidance that:

a) Credit institutions which provide investment business services or investment advice (as defined in the IIA) are excluded from the scope of the IIA by virtue of section 2(6)(h), and will not be in scope of the CAR. [2]

b) The CAR will not apply to credit institutions in so far as they are undertaking UCITS and AIF depositary safekeeping services as these entities are subject to safeguarding rules under the UCITS Regulations and AIFMD.

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[1] Unless otherwise indicated, cross-references to the CAR in this feedback statement refer to the Regulation as set out in the draft Regulations annexed to CP 133.

[2] Section 2(6)(h) states: (6) Notwithstanding subsection (1) of this section, investment business firm shall not include – (h) credit institutions which provide investment business services or investment advice.

It is critical that investment firms ensure strict segregation between those assets that meet the definition of client assets in the CAR and those that do not. Therefore it is not considered appropriate to apply the CAR to assets which do not meet the definition of client assets.

The Central Bank will continue to monitor the scope and application of the CAR in light of the evolving market environment and new legislative initiatives.

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.

10. Respondents were of the view that a consistent level of application of the CAR should apply across the industry.

11. One respondent provided feedback on a number of technical areas not specifically referenced in CP 133 which may require consideration in light of extending the CAR to credit institutions. [3] These included:

    a) **Waiver process:** The respondent suggested that the Central Bank leverage off the rule modification waiver used by the UK's Financial Conduct Authority (the FCA), which facilitates firms requesting approval on an exceptional basis to amend or dis-apply a rule;

    b) **Statement of client financial instruments:** The respondent suggested that the requirement in Regulation 61(1)(b) of the CAR to identify client financial instruments registered in the client's name which are held in custody by, or on behalf of, the investment firm separately from those registered in any other name, should be disclosed in the client assets key information document (CAKID);

    c) **Value of collateral:** The respondent sought clarity on whether the requirement in Regulation 61(1)(c) of the CAR to include the market value of collateral held, should include the value of client assets subject to title transfer collateral arrangements (TTCA); and

    d) **Due diligence requirements:** The respondent expressed the view that Regulation 67(2)(d) of the CAR should require the Head of Client Asset Oversight (HCAO) to demonstrate "oversight" rather than "approve" the due diligence reviews referred to in Regulations 49(8) and 50(7) of the CAR.

Central Bank response:

Having considered the feedback received, the Central Bank intends to proceed with applying all elements of the CAR to credit institutions undertaking MiFID investment business. With regard

[3] This response also made reference to specific enhancements proposed in CP 133, which will be addressed in the relevant sections of this Feedback Statement.

to the feedback received on items not specifically referenced in CP 133, the Central Bank's response is as follows:

a) **Waiver process:** The central objective of the proposals to enhance the CAR is to ensure that a robust regime for safeguarding client assets is applied across Irish regulated entities and a consistent level of protection is afforded to clients. The Central Bank does not consider that sufficient rationale or benefit has been provided to support the introduction of a waiver or derogation process for CAR requirements at this time.

b) **Statement of client financial instruments:** The Central Bank intends to retain the requirement in Regulation 61(1)(b) of the CAR for investment firms to identify in the statement of client financial instruments or client funds those financial instruments registered in the client's name which are held in custody by, or on behalf of the investment firm separately from those registered in any other name. The Central Bank is of the view that this information would not be suitable for inclusion in the CAKID, since it is specifically provided to retail clients in advance of signing an investment agreement to open an account and is subject to annual review. If it were to be included in the CAKID, professional clients may not have access to this information, nor would the information be updated on a sufficiently regular basis.

c) **Value of collateral:** The Central Bank intends to confirm in CAR guidance that the value of client assets subject to TTCA should not be included in the market value of collateral to be included in the statement under Regulation 61(1)(c) of the CAR. Investment firms are reminded that, under Article 63(2)(d) of the MiFID II Delegated Regulation, investment firms are required to include a clear indication of the assets or funds that are subject to a TTCA in the statement to clients.

d) **Due diligence requirements:** The Central Bank notes that the obligation to perform the review of third party arrangements required by Regulations 49(8) and 50(7) of the CAR is placed on the investment firm. The Central Bank does not intend to make any change to the requirement for the HCAO to provide approval in writing of those reviews.

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?

12. Respondents did not identify any material unintended consequences that might arise as a result of extending the scope and application of the CAR to credit institutions.

13. One respondent noted that further future proofing of the CAR could be achieved by extending the scope and application of the CAR to branches of third country credit institutions and investment firms.

Central Bank response:

The Central Bank will retain the proposal as consulted on and extend the scope and application of the CAR to credit institutions undertaking MiFID investment business only.

As noted in response to feedback on Question 1 of CP 133, the Central Bank will continue to monitor the scope and application of the CAR in light of the evolving market environment and new legislative initiatives.

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.

14. The majority of respondents did not agree with the Central Bank's proposal to provide a 12 month transitional period for credit institutions to comply with the CAR. [4] Respondents suggested a 24 month transitional period would be more appropriate. The rationale provided by respondents included:

    a) This is the first time the CAR will apply to credit institutions;

    b) It would allow credit institutions sufficient time to design, implement and test new internal account structure/systems/controls; and

    c) It would allow credit institutions sufficient time to develop and implement a meaningful Client Asset Management Plan (CAMP) that reflects the internal account structure referenced in (b) and is based on a meaningful policy and risk assessment.

15. One respondent suggested that the Central Bank could consider a phased implementation period that separates deliverables relating to client/custodian communications from those relating to technology, which may be subject to longer implementation timelines.

16. One respondent indicated a preference for the proposals to be implemented as early as possible and expressed a hope that the transitional period would not be extended beyond the proposed 12 months.

Central Bank response:

Please see the Central Bank's response to Question 42 for further information on transitional periods for both credit institutions and investment firms.

[4] References to "majority of respondents" throughout the feedback statement should be understood as meaning the majority of respondents who responded to the particular question as set out in CP 133.

Use of the MiFID '*banking exemption*'[5]

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.

17. Respondents supported the proposal to introduce additional disclosure requirements for credit institutions undertaking MiFID investment business that avail of the MiFID '*banking exemption*'.

18. One respondent noted that clients of credit institutions concluding or exiting an investment service or activity with a credit institution should be clear as to when their money is treated as client funds and covered under the Investor Compensation Scheme (ICS) protection and when their money is held as a deposit and covered under the Deposit Guarantee Scheme (DGS).

19. One respondent was in agreement with the proposal but requested additional time to change client contractual arrangements or reporting.

Central Bank response:

The Central Bank considers it appropriate to proceed with the proposal as set out in paragraph 29 of CP 133 with an additional amendment.

The Central Bank acknowledges the feedback received with regard to ensuring that clients are clear as to whether their money is treated as client funds in accordance with the CAR or is held as a deposit in accordance with the Capital Requirements Directive (CRD).[6] To address this feedback, the Central Bank intends to clarify in the CAR that, in addition to the proposed enhancement as set out in Regulation 62(1) of the CAR, credit institutions who wish to hold client funds on behalf of a client (rather than relying on the MiFID '*banking exemption*') shall disclose to the client in writing:

a) That their money shall be held as client funds by the credit institution for the client in accordance with the CAR and the MiFID Regulations and not as a deposit in accordance with the CRD; and

b) The circumstances, if any, in which the credit institution will cease to hold such money as client funds in accordance with the CAR and the MiFID Regulations and shall hold that money as a deposit in accordance with the CRD.

[5] See paragraph 3(2) of Schedule 3 to the MiFID Regulations.
[6] Investment firms are reminded of the requirement in Article 47(1)(g) of the MiFID II Delegated Regulation which requires firms to provide clients with summary details of any relevant investor compensation or deposit guarantee scheme which applies to the firm by virtue of its activities in a Member State.

In recognition of the technology implementation challenges, the Central Bank is of the view that the proposed transitional period of 18 months should be sufficient for credit institutions to update client agreements/reporting. See response to Question 42 for further information on transitional periods for credit institutions.

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.

20. One respondent noted that where a credit institution uses money from its own assets for the purpose of addressing shortfalls in client financial instruments, in this scenario, the money would be protected as client funds. [7]

Central Bank response:

The Central Bank welcomes the feedback received.

Please see the Central Bank's response to Question 5 for further information on disclosure requirements in the CAR for credit institutions undertaking MiFID investment business on behalf of clients.

Other implications of extending the scope and application of the CAR to credit institutions

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?

21. A number of respondents provided feedback on the proposed levies which will apply to credit institutions subject to the CAR (i.e. the Central Bank's supplementary levy and the ICS levy imposed by the Investor Compensation Company's (ICCL)).

22. One respondent noted that consideration should be given to the nature of the risk to client assets arising from an investment firm's service offering when calculating proposed levies.

Central Bank Supplementary Levy

23. Respondents requested additional visibility and engagement in respect of the Central Bank's supplemental levy, with one respondent highlighting that any additional resources required following the extension of the scope of the CAR to credit institutions should be appropriately funded by those credit institutions.

ICCL ICS Levy

[7] See Central Bank response to Questions 30 and 31 for further information on the treatment of shortfalls.

24. One respondent raised the following points in relation to the ICCL ICS levy:

    a) **Eligible investor:** It is important to consider the profile of the client base in applying additional levies to credit institutions as certain clients e.g. professional and eligible counterparty clients, may not be eligible investors under the ICS.

    b) **Potential duplication of levies:** A large proportion of client assets deposited in credit institutions may be held on behalf of other financial institutions. These financial institutions may in turn also be subject to ICS levies in their own right including in other jurisdictions, which could result in levies being applied to assets held at multiple locations.

    c) **Existing ICS levy Application:** Certain credit institutions will already contribute to the ICS levy via the Fund A allocation, which is based on the 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.

Central Bank response:

Central Bank Supplementary Levy

The Central Bank's funding strategy aims to achieve levies that are proportionate. Significant effort is made to attribute costs to the population of entities that benefit from the related authorisation. Therefore, if the CAR is extended to credit institutions undertaking MiFID investment business, it is reasonable that these credit institutions would shoulder an element of the associated costs.

It is Central Bank practice to provide information to industry representatives on the main cost components of the annual funding levy and to include details in respect of any supplementary levies as part of such engagement. Furthermore, the Central Bank is always interested in stakeholder views around proportionate burden sharing amongst investment firms subject to levy. As such, this annual engagement is set to continue.

ICCL ICS Levy

The Central Bank has engaged with the ICCL on the feedback received on the ICS Levy, and the ICCL has provided the following response:

    a) **Eligible investor:** The ICCL has recognised through its established basis for assessment of liability to levy, that professional and/or eligible counterparty clients are not counted when making this assessment. This principle is not changing as a result of the proposal in CP 133.

    b) **Potential duplication of levies:** This is a matter more properly raised and addressed, directly with the ICCL in advance of, or during the upcoming Funding Review of the ICCL which will be published for consultation in Q4 of 2021. The current basis of assessment for ICCL levy purposes is the number of eligible clients which is clearly

defined in the ICCL Funding Arrangements and related publications. [8] The ICCL is not aware of any evidence to date to support the position that duplication of investor compensation levies is arising or may arise, including across multiple jurisdictions. As this issue has not arisen in feedback from previous ICCL Funding Consultation reviews, the ICCL would welcome specific examples from investment firms.[9]

c) **Existing ICS Levy Application:** In circumstances where an investment firm is subject to the CAR, and has eligible clients, the investment firm is required to pay an additional levy of 10% over its existing Fund A levy. This requirement, which was introduced during the 2015/2016 ICCL Funding Review, would become applicable to credit institutions by virtue of the extension of the scope of the CAR. This is reflective of the current ICCL levy position that applies to investment firms subject to the CAR which are also members of Fund A. [10]

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.

25. The majority of respondents supported the Central Bank's proposal to extend the application of the existing PCF-45 role to credit institutions, with one respondent noting that this will ensure that the CAR will be embedded into credit institutions in terms of governance, accountability and adherence.

26. Two respondents noted that the PCF-45 should be optional for credit institutions and incorporated within the existing list of PCFs and CFs. Additional guidance was requested on grandfathering existing arrangements for those already designated as Single Officer/existing relevant PCFs within credit institutions in line with MiFID II requirements. [11]

Central Bank response:

The Central Bank welcomes the feedback received and intends to proceed with the proposal to extend the application of the PCF-45 role to credit institutions. The Central Bank intends to require all investment firms and credit institutions that hold client assets to appoint a PCF-45 (HCAO).

Given the significance of the PCF-45 (HCAO) in the protection of client assets, credit institutions will be required to submit an application under the Central Bank's Fitness and Probity regime seeking approval for the individual to be appointed to the role. This requirement

[8] For further information on eligible clients, please see link to ICCL publication on *Returns for Fund A Participant Firms* here.
[9] Information can be submitted directly to ICCL via the following email address: info@investorcompensation.ie
[10] For further information on levy rates please see link to the ICCL website here.
[11] Paragraph 6(1) of Schedule 3 to the MiFID Regulations requires the appointment of a 'Single Officer' with specific responsibility for matters relating to the compliance by investment firms with their obligations regarding the safeguarding of client assets.

will also apply to those individuals who are already designated as the "Single Officer" or who hold existing PCFs within credit institutions.

Responses to questions posed in Section II of CP 133: Enhancements to the CAR, including proposals relating to wholesale activities

Principle of Client Disclosure and Consent

Use of Client Financial Instruments

Question 9: Do you agree with the Central Bank's proposal to require investment firms to maintain, for a period of six 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.

27. The majority of respondents supported the Central Bank's proposal, with one respondent noting that the proposal is consistent with other record keeping requirements in the CAR.

28. One respondent recommended that for the avoidance of ambiguity, the record retention period should specify the date at which the six year period commences.

29. One respondent suggested that, it may be more appropriate to have a time-bound consent for retail clients and require investment firms to clearly document how the best interests of clients are achieved, and the implications for the client in an insolvency event where the investment firm may not be able to return the client's financial instruments.

Central Bank response:

The Central Bank welcomes the feedback received and intends to proceed with the proposal as set out in paragraph 38 of CP 133. The Central Bank will clarify in the CAR that investment firms will be required to maintain a copy of all relevant material in order to evidence that express consent has been obtained, from the date on which the client consent is first obtained, throughout the duration of the relationship with the client, and for six years after the termination of the investment agreement.

The Central Bank is proposing additional CAR guidance in order to provide enhanced protection to clients, in particular to retail clients, where an investment firm enters into securities financing transactions or otherwise uses a client's financial instrument.

The Central Bank intends to clarify in CAR guidance that:

a) The inclusion of general or broad terms which grant an investment firm the right to use a client's financial instruments in agreements with clients is inappropriate and investment firms should ensure that the consent provided is relevant to that individual client's relationship with the investment firm;

b) Where an investment firm has not relied on a retail client's consent over the previous 12 months, an investment firm should seek to obtain renewed explicit consent from the retail client in advance of entering into an arrangement for which that client's consent is required; and

c) Investment firms should review the consent provided by the client on an annual basis to ensure that the necessary consent has been obtained and the investment firm's use of the client's financial instruments is restricted to the specified terms to which the client consents. [12]

This additional CAR guidance will assist in ensuring that the investment firm acts in the best interest of its clients at all times.

Title transfer collateral arrangements (TTCAs)

TTCAs subject to a written agreement

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.

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.

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 six years? If not, please explain why.

30. Respondents supported 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.

31. Respondents agreed with the proposed information that should be included in the written agreement in respect of TTCAs.

32. Respondents agreed with the proposal that the written agreement documenting the use by an investment firm of a TTCA be maintained for a period of six years, with one respondent seeking clarity on the date from which the six year timeframe applies.

Central Bank response:

[12] In accordance with Paragraph 4(1) of Schedule 3 to the MiFID Regulations.

The Central Bank intends to proceed with the proposed enhancement in relation to TTCAs subject to a written agreement, as set out in paragraphs 44-47 of CP 133.

The Central Bank will clarify in the CAR that the written agreement documenting the use by an investment firm of a TTCA should be maintained by the investment firm for the duration of the TTCA and for a period of six years following the termination of the TTCA.

Termination of a TTCA

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.

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.

33. Respondents supported the proposals, with one respondent noting that the proposal relating to record-keeping requirements is consistent with other aspects of the CAR.

34. One respondent highlighted that it is important to note that while the specific terms of the TTCA may cease, the client relationship can continue with the provision of other services.

35. Respondents also agreed with the Central Bank's proposals relating to a written notification by an investment firm to clients following the termination of a TTCA.

36. One respondent highlighted that in the event of a termination of a TTCA between a credit institution (that avails of the MiFID "banking exemption") and a client, the margin under the TTCA, if not paid away to the client, will be held by the credit institution as a deposit rather than as client funds.

Central Bank response:

The Central Bank intends to proceed with the proposals relating to the termination of a TTCA, as set out in paragraphs 49-55 of CP 133.

Investment firms providing prime brokerage services

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.

37. Respondents supported the Central Bank's proposal.

38. One respondent suggested that information on the location of where client financial instruments are deposited should be provided in a separate document which is updated for any relevant changes.

Central Bank response:

The Central Bank intends to proceed with the proposal as set out in paragraphs 58-62 of CP 133 to require investment firms that provide prime brokerage services to clients to provide the information as specified in Regulation 73 of the CAR to clients on a daily basis.

The Central Bank also intends to clarify in the CAR that where the investment firm provides its clients with access to an online system, which qualifies as a durable medium, where up-to-date information can be easily accessed by the client on a daily basis, this will satisfy the requirement to provide a daily statement. Investment firms should ensure that clients have access to information on the location of client financial instruments, regardless of how such information may be presented.

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.

39. Respondents agreed with the Central Bank's proposal.

Central Bank response:

The Central Bank intends to proceed with the proposal set out in paragraphs 63-65 of CP 133.

Transfer of business

Transfer of business – notification and client disclosure requirements

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.

40. Respondents supported the Central Bank's proposal.

41. One respondent requested clarification that the notification to the Central Bank is for informative purposes only and is not to be considered a request for approval.

42. One respondent suggested that further consideration be given to business as usual type events that would not be considered a material transfer event. This could include onboarding/off boarding of significant clients, movements within the same legal vehicle or custodian transfers.

43. One respondent suggested that the proposed minimum notification period should not apply in circumstances where the transfer results in an additional flow of client assets into the jurisdiction or into the scope of the ICCL operated ICS. In circumstances where the transfer would result in an in-flow of client assets from another jurisdiction into Ireland, and therefore fall within the scope of the ICS, the respondent was of the view that a longer notification period may be necessary.

44. One respondent noted that it would be best practice to notify the Central Bank of such a transfer once it comes known to the investment firm.

45. A number of respondents sought clarity on the materiality threshold which should apply and requested that this be considered in the CAR guidance.

Central Bank response:

The Central Bank welcomes the feedback received and confirms that it is not the intention of the Central Bank to approve a material transfer of client assets in advance of the transfer taking place. The notification is for information purposes only and is without prejudice to the requirement to consult the Central Bank as set out in Regulation 4(1) of the Investment Firms Regulations. [13]

Having considered the feedback received, the Central Bank intends to make a slight amendment to the enhancement consulted on to clarify that the notification should be made to the Central Bank **as soon as possible**, but no later than three months in advance of the transfer taking place. This requirement will be contained in the reporting requirements section of the revised CAR. The Central Bank will seek to provide additional clarity in CAR guidance on the materiality threshold for notifying the Central Bank.

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.

46. The majority of respondents supported the Central Bank's proposal, with one respondent noting that this would place current industry best practice on a legislative footing.

47. One respondent noted that investment firms should not be required to consider all eventualities and requirements of a potential transfer of business at the time of entering into a client agreement. In the event of a material transfer of business, investment firms will engage with their clients to facilitate the clients' understanding of the steps to be undertaken as part of a business transfer, including any associated timeframes and changes to client asset protections.

48. One respondent noted that the investment firm's obligation to disclose its arrangements in respect of business transfers should be a standalone requirement under Regulation 59(1) of the CAR.

Central Bank response:

[13] Regulation 4(1) requires an investment firm to consult the Central Bank before (a) engaging in any new area of business or field of activity (b) establishing any office or subsidiary in the State, or (c) introducing material changes to the investment firm's operating model.

The Central Bank welcomes the feedback received, and intends to update the CAR to include transfer of business as a standalone item under Regulation 59(1) of the CAR.

The Central Bank expects investment firms to engage with their clients both in advance, and in the course of, a material transfer of business that involves the transfer of client assets. The Central Bank intends to introduce CAR guidance on the information which should be disclosed to clients to ensure clients have an understanding of the potential arrangements associated with a transfer of business from the outset of the relationship.

Transfer of business – client disclosure and consent guidance

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.

49. The majority of respondents supported the Central Bank's proposals to enhance the CAR guidance.

50. One respondent requested clarity on the proposed obligation for investment firms to offer clients the option to have their assets returned to them without delay rather than being returned to another entity, and highlighted that in many cases it is not possible to return client assets to clients as they may only be held in electronic format.

Central Bank response:

The Central Bank welcomes the feedback received and intends to proceed with the proposal as set out in paragraph 74 of CP 133.

The Central Bank intends to clarify in CAR guidance that, in the event of a proposed transfer of business, investment firms should provide clients with the option to request to have their assets returned to them (where it is possible to do so) or transferred to an investment firm of the client's choosing, that has agreed to receive the client assets, without delay.

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.

51. One respondent noted that guidance on notifications to clients (e.g. in relation to timing, information, and approach to be taken where consent has not been received) would be beneficial.

52. One respondent was of the view that any guidance, should take into account illiquid or low value assets that cannot be transferred to/from an investment firm's account at the custodian or re-registered at the registrar.

53. One respondent suggested that, subject to the matter not being addressed elsewhere either now or in the future, an investment firm's terms of business should specifically provide for the unconsented transfer of client assets to another investment firm(s)

subject to the CAR either by the Resolution Authority or an insolvency practitioner appointed by the High Court at the request of the Central Bank.

54. One respondent raised a concern in relation to circumstances where a client does not agree to a proposed transfer but does not request the return of client funds.

Central Bank response:

The Central Bank welcomes the feedback received.

The Central Bank intends to clarify in CAR guidance its expectations with regard to the information an investment firm should provide to clients when notifying clients of a transfer of business.

The Central Bank acknowledges that investment firms face challenges with regard to the treatment of illiquid or low value client financial instruments. Investment firms should continue to treat these assets as client assets.

Given that the CAR supplements the MiFID II safeguarding of client asset requirements, the Central Bank is of the view that requiring an investment firms' terms of business to specifically provide for the transfer of assets to another investment firm(s) by the Resolution Authority or an insolvency practitioner appointed by the High Court, would be beyond the scope of the CAR.

As highlighted in the Central Bank's response to Question 19, investment firms should provide options to clients as how they would like their client assets to be treated in the context of a transfer of business. Where a client does not agree to the proposed transfer nor request a return of their client assets, an alternate or default arrangement may be implemented, subject to the contractual terms in place between the client and the investment firm.

Transfer of business – uncontactable client guidance

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.

55. Respondents supported the Central Banks proposal.

56. One respondent noted that it would be beneficial for the Central Bank to set out minimum expectations, for example in relation to the frequency of client contact attempts.

57. One respondent noted that guidance on the acceptable measures that constitute "client contact" (e.g. email, letter) would be beneficial.

58. One respondent stated that such guidance should extend to other scenarios beyond transfers of business, for example in relation to clients who become uncontactable during the course of a business relationship.

Central Bank response:

The Central Bank intends to set out in CAR guidance, minimum expectations with regard to dealing with uncontactable clients. This will include expectations in relation to the frequency of contact attempts, timeframes for making contact and measures which will constitute client contact.

It is not the Central Bank's intention to extend the scope of the proposed CAR guidance on uncontactable clients to scenarios other than transfers of business at this time.

Principle of Segregation

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.

59. The majority of respondents agreed with the proposal.

60. A number of respondents provided examples of circumstances where it would not be possible for an investment firm to deposit client funds directly into a third party client asset account. These circumstances included:

    a) Where a client deposits client funds into an investment firm's own account in error;

    b) Where a mixed remittance is received into an investment firms own account in error; and

    c) Where money is received on behalf of clients into the investment firm's own account in the course of the trade settlement process.

61. One respondent queried whether cheques received by the investment firm are to be deemed client assets immediately upon receipt and requested further guidance on this point.

Central Bank response:

The Central Bank welcomes the feedback received and intends to proceed with the proposal to clarify in CAR guidance the expectation that client funds should be deposited directly into a third party client asset account, unless this is not possible. The CAR guidance will outline a narrow range of exceptional circumstances in which it may not be possible to deposit client funds directly into a third party client asset account.

The Central Bank expects that client cheques received by investment firms be treated as client assets immediately upon receipt. Therefore, an investment firm should ensure that it has procedures in place to ensure that cheques are deposited promptly into client asset accounts, and in any event not later than one working day after the receipt of the cheque in accordance with Regulation 49(3), in order to ensure the highest level of protection for the client. This expectation will be clarified in CAR guidance.

Principle of Reconciliation

'Internal' reconciliation of client financial instruments

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.

62. The majority of respondents agreed with the proposal.

63. Three respondents suggested that there could be challenges in performing the internal reconciliation in the format as set out in CP 133, given that a number of investment firms do not hold separate internal client and bank/custodian ledgers and instead use integrated systems.

64. Two respondents explained that they currently perform a "three way" client financial instrument reconciliation (i.e. a process which reconciles internal client ledgers to internal bank/custodian ledgers to external third party records). One of these respondents sought clarity as to whether the expectation is to complete the 'internal' and external reconciliation independently of each other. The other respondent expressed concern that the proposal may result in the investment firm having to disaggregate this mature process, which may in turn introduce unnecessary risk.

65. Three respondents expressed the view that an alternative method of ensuring the accuracy and completeness of the internal records should be provided for those investment firms that do not separately maintain internal client and bank/custodian ledgers. Respondents suggested that consideration be given to the methods of internal system reconciliations checks, in particular the Internal System Evaluation Method (ISEM) contained in the FCA's Client Asset Sourcebook (CASS). One respondent expressed the view that it would be sufficient for investment firms to be able to evidence that the checks and controls that capture and maintain transactional information correctly are operating as designed.

66. Two respondents suggested that the shortfall identification process should be based on the external reconciliation and not the internal calculation process.

67. One respondent suggested that consideration should also be given to allowing the use of the different methods of performing the internal reconciliation of client financial instruments within the one entity where different systems are used across business areas.

Central Bank response:

The Central Bank welcomes the feedback and valuable insights received.

In recognition of the feedback received and in order to ensure that a similar requirement exists for client financial instruments as is set out in the daily calculation for client funds, the Central Bank intends to:

a) Amend the terminology for this process to refer to a "calculation" of client financial instruments and include the requirement to perform a calculation of client financial instruments in the same section of the CAR as the daily calculation. [14]

b) Introduce two newly defined terms in the CAR:

   (i) "client financial instrument requirement" [15] meaning the balance of client financial instruments that an investment firm owes to its clients and recorded as such by the investment firm; and

   (ii) "client financial instrument resource" [16] meaning the balance of client financial instruments deposited in the investment firm's third party client asset account(s) or otherwise entrusted to an investment firm and recorded as such by the investment firm; [17]

c) Require all investment firms, regardless of their system capabilities, to perform a "calculation" of client financial instruments to ensure that the client financial instrument resource is equal to the client financial instrument requirement at least on a monthly basis; and

d) In addition to the requirement set out in c), clarify in CAR guidance that all investment firms should evaluate the robustness of internal records and accounts (e.g. the internal bank/custodian ledger and client ledger) and the systems on which those records are maintained on a monthly basis.

Client financial instruments calculation

It is essential that an investment firm be in a position to accurately identify the balance of client financial instruments which it should be holding for each individual client, so that client financial instruments can be swiftly returned to the correct client, particularly in the event of that investment firm's insolvency. The proposed requirement for investment firms to ensure that the client financial instrument resource is equal to the client financial instrument requirement seeks to ensure that this is the case.

[14] This will align the terminology with that used for the daily calculation of client funds.
[15] Information from the investment firm's internal records (e.g. client ledger) will be used to calculate the client financial instrument requirement.
[16] Information from the investment firm's internal records (e.g. custodian/bank ledger) will be used to calculate the client financial instrument resource.
[17] For example where the investment firm holds the client financial instruments in custody (i.e. does not deposit the client financial instruments in a third party client asset account).

As such, all investment firms, regardless of system capabilities, will be required to complete the client financial instrument calculation and ensure, on at least a monthly basis, that the client financial instrument resource is equal to the client financial instrument requirement.

For those investment firms that separately maintain the internal records that feed into the calculation of the client financial instrument resource and client financial instrument requirement, the "calculation" of client financial instruments will serve as an important control to identify potential differences between the two sets of records.

To address the comments raised by respondents that rely on integrated systems, updated CAR guidance will clarify that the internal records used for the purpose of calculating the client financial instrument resource and client financial instrument requirement do not need to be independently maintained.

Furthermore, it is not the Central Bank's intention to require investment firms who utilise integrated systems to disaggregate any existing process that achieves the goal of ensuring the client financial instrument resource is equal to the client financial instrument requirement. The Central Bank intends to clarify in CAR guidance that investment firms may continue to perform a "three way" reconciliation process for the purpose of satisfying the requirement to perform the client financial instruments calculation, as long as the investment firm can evidence that this achieves the objective of comparing the client financial instrument resource to the client financial instrument requirement and ensuring they are equal.

CAR guidance on the evaluation of internal records and systems

In addition to the requirement for all investment firms to perform a client financial instrument calculation, the Central Bank intends to clarify in CAR guidance that all investment firms should evaluate the robustness of the internal records and accounts used for the purpose of the monthly client financial instrument calculation and the daily calculation of client funds (e.g. the internal bank/custodian ledger and client ledger) and the systems on which those records are maintained.

The Central Bank places a high degree of importance on investment firms maintaining accurate records and accounts so that client assets can be returned to clients swiftly, particularly in the event of an insolvency, therefore this process should be undertaken by all investment firms holding client assets (both client funds and client financial instruments).

This additional CAR guidance will set out the expectation that investment firms should:

a) Establish a process that evaluates:

    i. the completeness and accuracy of the investment firm's internal records and accounts of client assets held; and

    ii. whether the investment firm's systems and controls correctly identify and resolve all discrepancies (which may give rise to shortfalls and excesses) in the internal records and accounts of client assets held;

b) Run the evaluation process at least on a monthly basis; and

c) Promptly investigate, and without undue delay, resolve the causes of any discrepancies that the evaluation process reveals.

While this additional process will assist all investment firms, regardless of system capabilities, in ensuring that their client asset records are accurate, it will be of particular importance for those investment firms who do not separately maintain an internal client ledger and bank/custodian ledger, as this process will assist in mitigating the risk of holding incorrect balances of client assets on behalf of their clients (e.g. due to discrepancies in the records and accounts).

The feedback received on the subject of shortfalls will be addressed in the Central Bank's response to Question 30.

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.

68. The majority of respondents agreed with the proposal.

69. One respondent was of the view that investment firms should be allowed to assess the adequacy of the internal and external reconciliation frequency on an annual basis and define appropriate timeframes.

70. One respondent suggested that investment firms should be able to perform the internal client financial instrument reconciliation monthly, and ideally at more frequent intervals and on short notice to ensure that the CAR objective of enabling the efficient and cost-effective return of assets to clients in the event of the insolvency of an investment firm can be achieved at all times.

Central Bank response:

As set out in the response to Question 23, the Central Bank intends to require investment firms to perform the client financial instruments calculation on at least a monthly basis.

The Central Bank intends to clarify in CAR guidance that the monthly frequency of the client financial instruments calculation which will be required by the CAR, represents a minimum standard that must be applied by investment firms. An investment firm should have procedures in place to monitor, on an ongoing basis, the frequency of transactions, and utilise this information in determining whether the client financial instruments calculation should be performed on a more frequent basis. However, the client financial instruments calculation should be performed no less frequent than monthly.

'External' reconciliation of client financial instruments not deposited with a third party

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.

71. The majority of respondents supported the proposal.

72. One respondent requested further clarification on this proposal, and queried whether it was intended to capture reconciliations between an investment firm and an internal affiliated entity.

Central Bank response:

The Central Bank intends to proceed with the proposal as set out in paragraph 97 of CP 133.

The purpose of this requirement is to ensure that an investment firm reconciles its **internal** records of the client financial instruments it holds against **external** records, regardless of whether those client financial instruments have been deposited with a third party. Where an investment firm has deposited a client financial instrument with a third party (including a third party that is an affiliate of the investment firm), it is required to perform the reconciliation as prescribed in Regulation 57(3) of the CAR. Where an investment firm has not deposited a client financial instrument with a third party (i.e. where the investment firm holds the client financial instrument in custody itself), the investment firm will still need to obtain an **external** record for the purposes of performing a reconciliation, namely from the entity responsible for maintaining the record of legal entitlement to the client financial instrument.

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

73. Respondents did not identify any barriers in performing the reconciliation of client financial instruments not deposited with a third party on at least a monthly basis.

Central Bank response:

The Central Bank intends to proceed with the proposal as set out in paragraph 97 of CP 133.

Reconciliation of physical client financial instruments

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?

74. Respondents agreed with the proposal.

Central Bank response:

The Central Bank intends to proceed with the proposal as set out in paragraphs 101 and 102 of CP 133.

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.

75. Two respondents expressly agreed with the proposal, with one indicating that this is the current approach they follow.

76. One respondent noted that this frequency may not be practicable for investment firms holding very large numbers of unique client financial instruments and indicated that there are circumstances where the monthly performance of a physical client financial instrument reconciliation could prove prohibitive and may expose the client assets to heightened risks, which could result in certificates/notes being mislaid or lost.

Central Bank response:

The Central Bank is of the view that the frequent reconciliation of an investment firm's physical client financial instruments is an essential control in the mitigation of loss and or misallocation of client assets and that in general the benefits associated with performing a well-managed and robust physical reconciliation process on at least a monthly basis, outweigh the potential risks of client exposure.

Since the publication of CP 133, the Central Bank has given some further consideration as to whether this proposal should be tailored to the types of clients for whom investment firms may hold physical client financial instruments. In particular, the Central Bank has considered whether a differential approach for those physical client financial instruments held on behalf of eligible counterparty (ECP) clients may be appropriate, in light of the following:

a) The bespoke arrangements which investment firms have in place with ECP clients, including the protections afforded by way of the contractual agreements between the ECP client and the investment firm; and

b) The experience, knowledge and sophistication of ECP clients and their treatment under the MiFID legislation.

On this basis the Central Bank intends to clarify in the CAR that:

a) In respect of physical client financial instruments held on behalf of ECP clients, an investment firm shall count the balance of physical client financial instruments held and reconcile, on at least a bi-annual basis[18], the results of this count to the balance of physical client financial instruments held on behalf of ECP clients as recorded by the investment firm, provided that the following conditions are met:

[18] Every six months.

i. The physical client financial instruments held on behalf of ECP clients are held physically separate from client financial instruments held on behalf of other client types; and

ii. The investment firm has obtained the ECP client's prior express consent to the agreed frequency.

b) In all other cases, an investment firm shall count the balance of physical client financial instruments held by the investment firm and reconcile, on at least on a monthly basis, the results of this count to the balance of client financial instruments physically held as recorded by the investment firm.

While the requirements set out a minimum frequency, the Central Bank expects investment firms to monitor the movement in physical client financial instruments on an on-going basis. Where there is a higher degree of movement, investment firms should consider whether the frequency of the reconciliation of physical client financial instruments should be increased accordingly. This expectation will be included in CAR guidance.

The treatment of client financial instrument reconciliation differences or discrepancies

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. [19]

77. The majority of respondents supported the proposal.

78. One respondent suggested that consideration be given to expanding Regulation 57(10)(c) of the CAR to explicitly require that, in addition to identifying and resolving the cause of any reconciliation difference, an investment firm will also be required to document the cause in detail, on a real time investigatory basis.

Central Bank response:

The Central Bank intends to proceed with the proposal as set out in paragraphs 108 and 109 of CP 133, with a minor amendment to Regulation 57(10) to remove the reference to the internal reconciliation of client financial instruments (Regulation 57(5)) as this is considered to be a calculation process as opposed to a reconciliation process and will now be set out in an overarching "calculation" requirement alongside the daily calculation. [20]

[19] The cross reference is to the requirement contained in the CAR as set out in the Investment Firms Regulations rather than the draft CAR annexed to CP 133.
[20] Please see the Central Bank's response to Question 23 for more information on the calculation requirements.

The Central Bank is of the view that the cause of the reconciliation difference will be identified through the course of the investigation process as set out in Regulation 57(10) of the CAR and does not intend to extend the scope of Regulation 57(10)(c) of the CAR at this time.

The treatment of client financial instrument shortfalls and excesses

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.

79. The majority of respondents agreed with the proposal.

80. One respondent noted that any such transfer from the investment firm's own assets to the client asset account should be made in such a manner that once the transfer is effected, the transferred investment firm's assets move beyond the reach of the investment firm's own creditors should an insolvency event occur.

81. Two respondents noted that shortfalls will also be identified through the external reconciliation of client financial instruments.

82. One respondent asked whether the origination of a shortfall would be considered a breach if the shortfall had been addressed.

83. One respondent raised a concern that this proposal would require an investment firm to open a separate client asset account with each third party for the sole purpose of addressing very infrequent shortfalls identified.

Central Bank response:

The Central Bank welcomes the feedback received. The Central Bank intends to require investment firms to deposit money, financial instruments or a combination of both from the investment firm's own assets into a third party client asset account for the purpose of addressing a shortfall in client financial instruments.

The Central Bank agrees that once an investment firm has deposited such money, financial instruments, or combination of both into a third party client asset account for the purpose of addressing a shortfall, those assets will be considered to be client assets.

The Central Bank is of the view that shortfalls and excesses in client financial instruments should be addressed regardless of how they are identified. CAR guidance may be introduced to outline how the internal records an investment firm uses for the purpose of the calculation of client financial instruments may need to be appropriately adjusted to reflect any reconciliation differences identified through the reconciliation of client financial instruments, which may result in a shortfall.

The Central Bank intends to clarify in CAR guidance that investment firms will not be expected to open separate client asset accounts with each third party for the sole purpose of addressing shortfalls. The money, financial instruments, or combination of both from the investment firm's own assets that an investment firm uses to address a shortfall may be deposited directly into an existing third party client asset account (e.g. the account where the client's funds or financial instruments would be deposited were it not for the shortfall). Where a shortfall is not attributable to an individual client, an investment firm may address the shortfall by depositing money, financial instruments, or combination of both from the investment firm's own assets into an omnibus client asset account.

In accordance with Regulation 72(1) of the CAR, investment firms are required to report any breaches of or non-compliance with the CAR. The Central Bank intends to clarify in CAR guidance that investment firms are expected to report breaches of the CAR regardless of whether any resultant shortfall has been addressed.

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.

84. The majority of respondents supported the proposal.

85. One respondent supported an approach that allows investment firms up to five days to establish if a discrepancy has resulted in a shortfall before being required to fund that shortfall, with the expectation that if the discrepancy which has resulted in a shortfall has been identified prior to the end of the five day timeframe, investment firms should address the shortfall at that point in time.

Central Bank response:

The Central Bank welcomes the feedback received and agrees that in order to ensure consistency with the timeframe for identifying the cause of a reconciliation difference/discrepancy as required under Regulation 57(10)(c) of the CAR, investment firms should address shortfalls within five working days of being identified. The Central Bank intends to amend the proposal set out in paragraph 114 of CP 133, and require investment firms to address shortfalls in client financial instruments within five working days and this requirement will be set out in the relevant Regulation in the CAR which will capture the calculation processes for client funds and client financial instruments.

The Central Bank intends to clarify in CAR guidance that shortfalls should be addressed as soon as possible in order to ensure no detriment to the client. An investment firm should address any shortfall by the earlier of the following:

a) The point in time at which the cause of the shortfall is established; or

b) Within five working days of identification of the shortfall.

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.

86. The majority of respondents agreed with the proposal.

87. One respondent queried whether additional independent safeguards could be deployed to verify the underlying reason for the difference for any material excess prior to the actual withdrawal given the potential risks posed to a client asset estate in an insolvency event.

88. One respondent noted that a period of time may be required to establish whether a financial instrument is a client financial instrument, and that the proposal may result in the investment firm instructing the sub-custodian to return valid client assets. The respondent suggested that, any excess should remain in the client asset account until the discrepancy is resolved, and that investment firms should seek to do so on a timely basis, in accordance with the best interest of clients.

Central Bank response:

The Central Bank is proposing to amend the CAR and introduce two additional enhancements to ensure that investment firms act prudently when they receive or identify that they are holding an asset where it is not clear whether that asset is a client asset.

Firstly, the Central Bank intends to amend Regulation 49 and Regulation 50 of the CAR to require that in the event that an investment firm receives or identifies at any stage that it is holding an asset where:

a) It is not clear if the asset is a client asset; or

b) There is insufficient documentation to identify the client who owns such assets;

The investment firm shall:

a) Promptly investigate and identify whether the asset is a client asset and, if so, the client on whose behalf the investment firm is holding the asset; and

b) Treat the asset as a client asset until such time as the investment firm has concluded the investigation in (a) and confirmed that the asset is not a client asset.

Secondly, the Central Bank intends to extend the period for addressing excesses in client funds and client financial instruments to five working days, thereby allowing investment firms additional time to ensure that any excess identified is a "true" excess (i.e. the client fund/client financial instrument resource exceeds the client fund/client financial instrument requirement). This requirement will be set out in the relevant Regulation in the CAR which will capture the calculation processes for client funds and client financial instruments.

These enhancements will serve as additional safeguards with a view to preventing client assets being removed from the client asset environment inadvertently.

Record-keeping requirements

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.

89. Respondents agreed with the proposal with one respondent noting that this demonstrates evidence of the actions taken to resolve a reconciliation difference.

Central Bank response:

The Central Bank intends to make some minor drafting amendments to the proposal as set out in paragraph 116 of CP 133. As this requirement will be set out in the relevant Regulation in the CAR which will capture the calculation processes for client funds and client financial instruments, investment firms will be required to maintain a record of the actions it has taken in respect of the remediation of shortfalls or excesses rather than reconciliation differences. Investment firms will be required to continue to comply with the process for the remediation of reconciliation differences as specified in Regulation 57(10) of the CAR.

Principle of Daily Calculation

Question 34: Do you agree with the Central Bank's proposal to align the 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.

90. The majority of respondents agreed with the proposal.

91. Two respondents did not agree with the proposal, noting that under existing provisions, investment firms are already required to mitigate the risk posed to client funds by addressing any shortfall or excess within one working day.

92. One respondent expressed the view that creating an investigation requirement that runs in parallel with existing settlement management processes and client funds reconciliation processes, and which overlaps with daily calculations, would cause confusion and would introduce operational risk without benefitting the client, whose risk has been fully mitigated by addressing the shortfall or excess.

Central Bank response:

The Central Bank welcomes the feedback received. The purpose of the proposal as set out in paragraph 122 of CP 133 is to ensure that the internal records an investment firm uses in the performance of the daily calculation are accurate.

The Central Bank acknowledges the concern raised by respondents about potential overlap between the proposed process and existing settlement and reconciliation processes. In recognition of this feedback, the Central Bank is proposing to amend the proposal to ensure that investment firms will not be required to complete a duplicative investigation which would result in a similar outcome as that envisaged by the process for the remediation of reconciliation differences.

The Central Bank therefore intends to:

a) Retain paragraphs (a) and (d) of Regulation 58(7) of the CAR; and

b) Delete paragraphs (b) and (c) from Regulation 58(7) of the CAR, in order to avoid any duplication with the requirements in Regulation 57(10) of the CAR.

Principle of Risk Management

Additional requirements for inclusion in the CAMP

Client Asset Applicability Matrix

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.

93. The majority of respondents supported the Central Bank's proposal, with one respondent noting that it allows for consistency in the review and identification of client assets.

94. One respondent suggested that the content of the Client Asset Applicability Matrix be extended to include information on DGS and/or ICS applicable to each product line or service offered by the investment firm, or in the case where no such protection exists, an appropriate rationale.

95. One respondent suggested that proportionality should be considered with respect to the requirement to maintain a CAMP and a Client Asset Applicability Matrix, noting that certain institutions may have limited client asset offerings and therefore, implementing a detailed Client Asset Applicability Matrix for the full product offering may not be of benefit.

Central Bank response:

The Central Bank welcomes the feedback received and intends to proceed with the proposal as set out in paragraphs 129-132 of CP 133.

The Central Bank does not intend to explicitly require that information on DGS and/or ICS be included in the Client Asset Applicability Matrix. The Central Bank is of the view that providing a list of products and services together with an indication of whether they are in or out of scope of the client asset regime will assist an investment firm in identifying the applicable DGS/ICS for each product and/or service provided. Furthermore, in accordance with the proposal in paragraph 158 of CP 133, investment firms will be required to document in the CAMP, details of the applicable DGS/ICS in those jurisdictions where the investment firm has deposited client assets with third parties.

The Central Bank will require all investment firms subject to the CAR to maintain a CAMP and a Client Asset Applicability Matrix regardless of the scale of that investment firm's client asset offering. The CAMP and Client Asset Applicability Matrix should appropriately reflect the nature, scale and complexity of an investment firm's client asset offering.

Outsourcing

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.

96. Respondents supported the Central Bank's proposal.

97. One respondent suggested that the proposal should apply to any "material" activity relating to the safeguarding of client assets.

98. One respondent noted that CAR related enhancements should consider the impact of initiatives by domestic and regional regulators in relation to outsourcing.

99. Two respondents requested clarity on whether the proposal was intended to include the role of third parties with whom client assets are deposited.

Central Bank response:

The Central Bank welcomes the feedback received and intends to proceed with the proposal as set out in paragraphs 133-135 of CP 133, with a minor amendment to emphasise that this requirement will apply to *critical or important functions* relating to the safeguarding of client assets. [21] Regulation 70 of the CAR has also been amended to refer to *critical or important functions*.

This proposal was intended to refer to service providers to whom an investment firm may outsource key activities and processes related to the safeguarding of client assets, including *inter alia*, the performance of the reconciliation and daily calculation processes, network management and asset servicing. The Central Bank intends to clarify in CAR guidance that this

[21] Investment firms should refer to the Article 30(1) of the MiFID II Delegated Regulation when determining whether a function is critical or important.

requirement is not intended to include those third parties with whom client assets are deposited.

The Central Bank will consider other initiatives in relation to outsourcing when updating the CAR guidance.

Client asset breach and incident log

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.

100. The majority of respondents supported the proposal, with one respondent highlighting that this would place best practice on a legislative footing.

101. One respondent suggested that the CAR should specify that the log be available for inspection, including in circumstances where there are no breaches or incidents recorded in the log.

102. One respondent did not agree with the Central Bank's proposal for the location of the client asset breach and incident log to be in the CAMP, suggesting instead that investment firms be allowed to incorporate and identify client asset breaches and incidents within already established breach logs/operational risk event registers.

Central Bank response:

The Central Bank intends to proceed with the proposal as set out in paragraphs 136-139 of CP 133. Investment firms will not be required to establish a new breach and incident log in order to comply with the requirement, rather investment firms will be required to include clear referencing to the location of the client asset breach and incident log within the CAMP for example, by hyperlink or other such pathway. The Central Bank may request a copy of an investment firm's breach and incident log as part of its supervisory engagement, including in circumstances where there are no breaches or incidents recorded by the investment firm.

Additional information to be included in the CAMP

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.

103. The majority of respondents supported this proposal.

104. One respondent noted that investment firms should retain flexibility as to how this information is presented.

105. One respondent requested further guidance on the Client Asset Applicability Matrix and Client Asset Risk Matrix.

Central Bank response:

The Central Bank intends to proceed with the proposal in paragraph 141 of CP 133.

Investment firms will retain flexibility as to how information is presented in the CAMP. As set out in the Central Bank's response to the feedback on Question 41, paragraph 163 of CP 133 sets out a suggested structure which investment firms may choose to implement.

The Central Bank intends to provide additional CAR guidance on the Client Asset Applicability Matrix and the Client Asset Risk Matrix.

Additional proposed enhancements to the CAR guidance

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.

106. Respondents supported the proposal.

107. One respondent noted that where possible, duplication of themes/topics/policy should be avoided where they are already addressed by existing requirements. The respondent also suggested that consideration be given to allowing investment firms to address many of these requirements through a client asset policy to be reviewed annually, approved by the board and supported by ongoing assurance activities.

108. One respondent requested further detail on the information which will be required under item (f) – Books and records.

Central Bank response:

The Central Bank intends to proceed with the proposed enhancements to the CAR guidance as set out in paragraphs 143 -162 of CP 133.

The CAMP should be regarded by investment firms as a 'master' document in the context of documenting client asset arrangements, risks and mitigating controls. The Central Bank would like to clarify that investment firms may cross-refer in the CAMP to additional/supporting material contained elsewhere. To avoid duplication of information, the CAMP may guide the reader, where applicable, through hyperlinks or other such pathways to the location of relevant internal documents. The Central Bank intends to clarify in CAR guidance that investment firms should continually monitor hyperlinks or other such pathways that have been included in the CAMP, to ensure that they continue to operate effectively and that the information contained in the linked documentation is up to date at all times.

While the Central Bank acknowledges and welcomes the fact that investment firms may implement a client asset policy, this would not be considered a replacement for the CAMP.

The Central Bank intends to clarify in CAR guidance that an investment firm should document the location of its client asset books and records, along with instructions for access in the CAMP. This should include any relevant books and records that are held by an external party.

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

109. One respondent acknowledged that investment firms should treat the CAMP as a 'living' document which can evolve in response to regulatory, political and/or environmental changes.

110. One respondent noted that it is important that the guidance proposed in paragraph 156 of CP 133 (books and records), is generally accepted as meaning that an investment firm's books and records should readily facilitate an insolvency practitioner in establishing the overall client asset position, in order to reconcile and distribute assets to clients efficiently and without delay.

111. One respondent suggested that the guidance clarify an expectation that an investment firm should, in the context of the Client Asset Risk Matrix proposal, establish through their own legal analysis, and communicate to clients, whether the DGS/ICS operating in each jurisdiction are in fact applicable to their clients in the context of each investment service being provided to the client.

112. One respondent requested further guidance on the level of training to be provided to staff to ensure that the HCAO has sufficient resources to carry out the responsibilities listed in Regulation 67(2) of the CAR.

Central Bank response:

The Central Bank welcomes the feedback received.

As set out in paragraph 127 of CP 133, the CAMP should be viewed as a 'living' document, which should be re-assessed on an on-going basis to ensure it remains current and reflective of an investment firm's evolving business model and emerging risks.

The Central Bank agrees that an investment firm's books and records should readily facilitate an insolvency practitioner in the distribution of client assets and intends to clarify this expectation in CAR guidance.

The Central Bank intends to maintain the scope of the Client Asset Risk Matrix, as set out in paragraphs 145 and 146 of CP 133. The Central Bank does not intend to specify in CAR guidance that investment firms should consider DGS/ICS in the context of the Client Asset Risk Matrix. However, the Central Bank intends to clarify in CAR guidance that an investment firm should document in the CAMP, details of the applicable DGS/ICS in those jurisdictions where the investment firm has deposited client assets with third parties.

The Central Bank expects investment firms to consider the training requirements of their staff and provide initial and ongoing client asset training for the HCAO and all individuals involved in the protection of client assets. The Central Bank will consider the request for additional CAR guidance on client asset training.

Structural amendments to the CAMP

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.

113. The majority of respondents supported the proposal, with one respondent noting that it will allow for consistency across investment firms and credit institutions.

114. Two respondents noted that given the CAMP is to be an investment firm owned document, the nature of the guidance should not restrict entity specific considerations and there should be flexibility around the structure.

Central Bank response:

The Central Bank welcomes the feedback received and intends to proceed with the proposal as set out in paragraph 163 of CP 133.

The Central Bank acknowledges the feedback received with regard to allowing flexibility in the structure of an investment firm's CAMP. To clarify, the proposed CAR guidance will set out a suggested structure which investment firms may choose to implement. The Central Bank does not intend to reflect this proposal as a requirement in the CAR.

Transitional arrangements and enhancements to the Monthly Client Asset Report

Transitional periods

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 (excluding credit institutions) to comply with the revised CAR? If not, please explain why.

115. The majority of respondents were of the view that a 12 month transitional period would be reasonable for investment firms to plan and fully adopt the regulatory changes.

116. One respondent noted that it would be preferential to implement the proposals at the earliest possible opportunity to help deliver better outcomes for clients in insolvency scenarios.

Central Bank response:

The Central Bank has given a great deal of consideration to the transitional period which should be granted to credit institutions and this has been further informed by the feedback received to CP 133.

The Central Bank intends to provide for a transitional period of 18 months for credit institutions. This provides sufficient time for credit institutions to make the necessary arrangements to ensure compliance with the CAR.

Given the support from investment firms with regard to the proposed transitional period, the Central Bank intends to proceed with the proposal to grant a 12 month transitional period for investment firms to comply with the CAR.

It should be noted that the Central Bank intends to take the following approach with regard to the publication of the third edition of the Central Bank Investment Firms Regulations:

a) The third edition of the Investment Firms Regulations will be published in final form in Q4 2021/Q1 2022. The 12 month and 18 month transitional periods for investment firms and credit institutions respectively will commence from the date of publication. The Central Bank expects investment firms and credit institutions to begin preparations at this point to ensure that they will be able to fully comply with the Regulations at the end of the transitional period.

b) The Statutory Instrument containing the third edition of the Investment Firms Regulations will be published approximately six months later.

Enhancements to the Monthly Client Asset Report (MCAR)

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

117. The majority of respondents did not foresee any challenges.

118. Two respondents requested that in the scenario where custodians only value assets on a monthly basis, investment firms be permitted to report the month end values in the average, highest and lowest value fields.

119. One respondent noted that as compliance with MCAR requirements will require a systematic solution, it would be beneficial if the pro forma for the new MCAR is agreed as soon as possible.

120. One respondent noted that consideration should be given to an upload file functionality to avoid the risk of any manual input error in the required population with the increased data fields.

Central Bank response:

The Central Bank welcomes the feedback received and intends to proceed with the proposed enhancements to the MCAR as set out in paragraph 172 of CP 133.

The Central Bank acknowledges that investment firms operating certain business models may not provide a daily pricing service to clients. The Central Bank intends to clarify in the updated MCAR guidance that an investment firm that does not provide a daily pricing services to clients as part of its business model may report month-end values in place of the average, highest and lowest values in the MCAR.

The development of the enhanced MCAR is ongoing. The Central Bank expects to publish the revised MCAR template in H2 2021 and a transitional period will be provided to allow investment firms the opportunity to make any changes to their systems and processes that may be required to report the additional data.

Responses to questions posed in Section III of CP 133: Future considerations in respect of the Central Bank's client asset regime

Question 44: 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?

121. One respondent requested guidance on the alignment of the client asset examination (CAE) required under Regulation 69(2)(c) of the CAR and the report required under paragraph 7 of Schedule 3 to the MiFID Regulations.

122. One respondent believes that further clarity is required as to how monies received (and passed on) as part of the trade settlement process are treated under the CAR.

123. One respondent noted that consideration be given to the scope for professional clients to waive their right to protection under the CAR where de minimis values are being segregated.

Central Bank response:

The Central Bank welcomes the feedback received and will reflect on this feedback when considering additional enhancements to the CAR and the client asset supervisory regime in the future.

Responses to questions posed in Section IV of CP 133: Other amendments to the Investment Firms Regulations

Notification requirements for systematic internalisers

Question 45: 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.

124. One respondent agreed with the proposal.

125. One respondent requested more information regarding the substance of the proposal, including for instance whether the requirements would apply to investment firms who have already submitted notifications.

Central Bank response:

The Central Bank intends to proceed with the proposal as set out in paragraph 178 of CP 133. Further detail on the information to be notified to the Central Bank will be set out in guidance. The Central Bank does not expect those investment firms who have already submitted a notification to the Central Bank to resubmit notifications in accordance with Regulation 8(10) of the Investment Firms Regulations.

Position limit reporting

Question 46: 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.

126. One respondent requested additional information regarding the substance of the proposal.

Central Bank response:

The Central Bank intends to proceed with the proposal as set out in Paragraph 182 of CP 133. The Central bank intends to specify further in guidance the format of the applicable report.

Other feedback received

127. Feedback was also received in relation to the following:

a) In response to many of the questions posed in CP 133, respondents requested that the Central Bank consult on proposed amendments to the CAR guidance.

b) One respondent noted that investment firms with clients holding units in funds will struggle to perform reconciliations with ten working days of the reconciliation date, as they will be reliant on the date of receipt of the fund manager statement.[22]

c) One respondent noted that a number of collective investment schemes/hedge funds only perform valuations on a quarterly/semi-annual basis, and in certain cases less frequently. The respondent suggested that investment firms should be permitted to determine the frequency of the reconciliation of client financial instruments based on the type of security and the availability of statements.

d) One respondent suggested that Regulation 59(1)(g)(ii) of the CAR be amended slightly to state any additional known risks to where client assets are deposited with a third party outside the State, as this would allow some scope for unforeseen circumstances.

Central Bank Response:

a) It is not the Central Bank's intention to consult on the revised CAR guidance. Investment firms will have an opportunity to consider the revised CAR guidance during the transitional period provided to credit institutions and investment firms.

b) The Central Bank does not intend to change the timeframe in which investment firms are required to perform the reconciliation of client financial instruments as set out in Regulation 57(3) of the CAR. Investment firms should make all efforts to obtain statements in a timely manner.

c) With regard to investment firms holding units in funds which are not valued on a monthly basis, the Central Bank expects investment firms to make every effort to obtain up-to-date valuation statements. Where the fund valuation is not carried out on a monthly basis and it is not possible to obtain monthly statements, investment firms should use the most recently obtained statement for the purpose of the reconciliation.

d) The Central Bank does not intend to amend the requirement for investment firms to disclose any additional risks that may arise where client assets are deposited with a third party outside of the State to clients or potential clients in the terms of business.

[22] The Central Bank has interpreted this feedback as relating to Regulation 57(3) of the CAR.

Next Steps

128. The Central Bank expects to publish the third edition of the Central Bank Investment Firms Regulations in final form with accompanying CAR guidance in Q4 2021-Q1 2022.

129. The CAR (as contained in Part 6 of the Investment Firms Regulations) will remain in force and effect until repealed by the third edition of the Central Bank Investment Firms Regulations.

130. The third edition of the Central Bank Investment Firms Regulations will have further technical and structural changes, including those required for alignment with other Central Bank Rulebooks where appropriate. These changes will include:

a) Amending terminology to achieve alignment with MiFID II;

b) Deleting Regulation 49(5) of the CAR, which requires an investment firm upon receiving client funds, to send to the client a receipt in writing for those client funds, except where the client funds are received by electronic transfer or in settlement of a specific contract; and

c) Restructuring the CAR according to the principles of client asset protection.

Glossary

Term	Meaning
"AIF"	Alternative Investment Fund
"AIFMD"	The European Union (Alternative Investment Fund Managers) Regulations 2013 (as amended) (S.I. No. 257 of 2013).
"the Capital Requirements Directive" or "CRD"	Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.
"the CAR"	The Client Asset Requirements as contained in Part 6 of the Central Bank Investment Firms Regulations.
"the CAR guidance"	The Central Bank Guidance on Client Asset Regulations for Investment Firms (March 2015). The CAR guidance will be updated to reflect the proposed enhancements as set out in this feedback statement and to align with the requirements as contained in the third edition of the Central Bank Investment Firms Regulations.
" CASS "	The FCA Client Assets Sourcebook.
"the Central Bank"	The Central Bank of Ireland.
"CF"	Controlled Function.
"Client"	Any person to whom an investment firm provides MiFID investment business.
"Client assets"	Client funds and client financial instruments.
"Client asset examination" or "CAE"	The process undertaken by an investment firms' external auditor pursuant to Regulation 65 of the CAR.
"Client assets key information document" or "CAKID"	The document provided to retail clients pursuant to Regulation 60 of the CAR.
"Client asset management plan" or "CAMP"	The plan developed pursuant to Regulation 64(1) of the CAR for the purpose of safeguarding client assets.
"Client financial instruments"	Financial instruments as defined in Regulation 3(1) of the MiFID Regulations or investment instruments as defined in section 2(1) of the Investment Intermediaries Act 1995, which is held by an investment firm on behalf of a client and includes, without limitation, any— a) client financial instrument that is held with a nominee, and b) a claim relating to, or a right in or in respect of a financial instrument.
"Client financial instrument requirement"	The balance of client financial instruments that an investment firm owes to its clients and recorded as such by the investment firm.
"Client financial instrument resource"	The balance of client financial instruments deposited in an investment firm's third party client asset account(s) or otherwise entrusted to an investment firm, and recorded as such by the investment firm.

"Client funds"	Any money, to which a client is beneficially entitled, received from or on behalf of a client or held by the investment firm on behalf of a client and includes (without limitation)— a) client funds held by or with a nominee, and b) in the case of money that is comprised partly of client funds and partly of other money, that part of the money that is client funds, but does not include money that an investment firm— i. receives from or on behalf of the client, or ii. owes to or retains on behalf of the client and which relates exclusively to an activity of the investment firm which is not a regulated financial service.
"Client funds requirement"	The total amount of client funds that an investment firm owes to its clients.
"Client funds resource"	The total amount of client funds deposited in an investment firm's third party client asset accounts.
"the Consultation Paper" or "CP 133"	Central Bank Consultation on enhancements to the Central Bank Client Asset Requirements, as contained in the Central Bank Investment Firms Regulations.
"Daily calculation"	The calculation that an investment firm is required to perform each working day, to ensure that the client funds resource as at the close of business on the previous working day is equal to the client funds requirement.
"DGS"	Deposit Guarantee Scheme.
"Discrepancies"	Any error in an investment firms records or accounts of client assets.
"Eligible counterparty" or "ECP"	As defined in Regulation 38(3) of the MiFID Regulations.
"Excess" in client financial instruments	A client financial instrument excess occurs when the client financial instrument resource exceeds the client financial instrument requirement.
"Excess" in client funds	A client fund excess occurs client funds resource, is greater than the client funds requirement.
"the FCA"	The UK's Financial Conduct Authority.
"Head of Client Asset Oversight" or "HCAO"	An individual appointed pursuant to Regulation 67 of the CA
"ICCL"	Investor Compensation Company Limited.
"IIA"	Investment Intermediaries Act, 1995.
"Internal System Evaluation Method" or "ISEM"	A method of performing an internal record check as set out in CASS 6.6.18-6.6.20.
"Investment agreement"	A written agreement entered into by an investment firm and a client in which the responsibilities of the investment firm and the client are set down.
"Investment firm"	A person authorised by the Central Bank pursuant to – a) the MiFID Regulations as an investment firm, or b) Section 10 of the Investment Intermediaries Act 1995 as an investment business firm, or c) the UCITS Regulations as a management company which is authorised to conduct activities pursuant to

	Regulation 16(2) of the UCITS Regulations and in respect of those activities only, or d) the AIFM Regulations as an alternative investment fund manager which is authorised to conduct services pursuant to Regulation 7(4) of the AIFM Regulations and in respect of those services only; but shall not include the following: i. a restricted activity investment product intermediary within the meaning of section 2(1) of the Investment Intermediaries Act 1995; ii. an investment business firm authorised under the Investment Intermediaries Act 1995 who satisfies all of the following: - its authorisation is limited to the provision of the investment business service specified in section 26(1)(a)(i) of the Investment Intermediaries Act 1995 or the provision of investment advice in relation to that investment business service; - its authorisation permits it to transmit orders to a person, or class of persons, not specified in section 26(1A) of the Investment Intermediaries 1995; - a person so authorised but only to carry out custodial operations involving the safekeeping and administration of investment instruments; a person so authorised but only to carry out the administration of collective investment schemes or fund accounting services or acting as a transfer agent or registration agent for such schemes; or iii. a certified person within the meaning of section 55 of the Investment Intermediaries Act 1995.
"the Investment Firms Regulations"	The Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Investment Firms) Regulations 2017 (S.I. No. 604 of 2017). This is the second edition of the Investment Firms Regulations.
"Investor Compensation Scheme" or "ICS"	A scheme operated by the ICCL that protects investors by providing compensation if an investment firm fails to return the investor's assets. The scheme is funded by levies paid by participant firms which are authorised to conduct investment and/or insurance services.
"MCAR guidance"	The "Monthly Client Assets Report – Guidance Note for Irish Investment Firms". The MCAR guidance will be updated to reflect the proposed enhancements to the MCAR as set out in this feedback statement.
"the MiFID 'banking exemption"	The exemption as set out paragraph 3(2) of Schedule 3 to the MiFID Regulations.
"MiFID investment business"	Any investment service or activity as set out in Schedule 1, Part 1 of the MiFID Regulations.

"the MiFID Regulations"	The European Union (Markets in Financial Instruments) Regulations 2017 (S.I. No. 375 of 2017).
"MiFID II"	The MiFID II legislative package which includes Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, MiFIR and all applicable Level 2 and Level 3 measures.
"MiFID II Delegated Directive"	Commission Delegated Directive (EU) 2017/593 of 7 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits.
"MiFID II Delegated Regulation"	Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.
"MiFID II safeguarding of client asset rules"	The MiFID II rules on the safeguarding of client financial instruments and funds, as contained in Regulation 23 of the MiFID Regulations, Schedule 3 to the MiFID Regulations, as well as MiFID II.
"MiFIR"	Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012.
"Monthly client asset report" or "MCAR"	A monthly return that firms holding client assets are required to complete and submit to the Central Bank via the Online Reporting System, 20 working days after each calendar month-end.
"Omnibus account"	A third party client asset account in which the client assets of more than one client are held. This may also be referred to as a "pooled account".
"PCF"	Pre-Approval Controlled Function.
"Pooled account"	A third party client asset account in which the client assets of more than one client are held. This may also be referred to as an "omnibus account".
"Prime brokerage services"	A package of services provided under a prime brokerage agreement which gives an investment firm a right to use client financial instruments for its own account and which may comprise of any of the following or a combination thereof: a) safekeeping and administration of client financial instruments; b) clearing services; and c) financing, the provision of which includes one or more of the following: i. capital introduction; ii. margin financing; iii. stock lending;

	iv. stock borrowing; and v. entering into repurchase or reverse repurchase transactions; and which, in addition, may comprise of consolidated reporting and other operational support.
"Reconciliation differences"	Means differences between records identified through the performance of the 'external' reconciliation.
"Shortfall" in client financial instruments	A client financial instrument shortfall occurs when the client financial instrument resource is less than the client financial instrument requirement.
"Shortfall" in client funds	A client fund shortfall occurs client funds resource, is less than the client funds requirement.
"Third edition of the Central Bank Investment Firms Regulations"	This edition of the Central Bank Investment Firms Regulations will replace the Investment Firms Regulations and will capture the proposed enhancements to the CAR as set out in this feedback statement.
"Third party"	In relation to client funds— - any of the entities listed in paragraph 3(1) of Schedule 3 to the MiFID Regulations. In relation to client financial instruments— - entities that meet the requirements in paragraph 2 of Schedule 3 to the MiFID Regulations.
"Third party client asset account"	An account with a third party which has the following features: a) is in the name of the investment firm or its nominee; b) includes in its title an appropriate description to distinguish client assets in the third party client asset account from the investment firm's own assets; c) may include a pooled account.
"TTCA"	Title transfer collateral arrangement.
"UCITS Regulations"	The European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (as amended) (S.I. No 352 of 2011).

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