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10 March 2021

Dear Sir/Madam,

Re: Consultation Paper 133: Consultation on enhancements to the Central Bank Client Asset Requirements, as contained in the Central Bank Investment Firms Regulations

Following the issuing of the Central Bank of Ireland's ("CBI") Consultation on enhancements to the Client Asset Requirements (the "CAR", the "Requirements"), Goodbody ("the firm") has considered the consultation paper in detail and would like to provide feedback on certain aspects of the proposed changes. Where the firm has not provided an answer to a question, this is an indication that the firm is in agreement with the proposed enhancement or the firm is outside the scope of the proposed change. Please find attached to this letter the firm's answers to the questions relating to the proposed changes for which we wish to provide feedback.

The firm's understanding is that the Central Bank intends to update its guidance from 2015 in parallel with any update to the Requirements. The firm welcomes this. Throughout the consultation paper, reference is made to the proposed enhancements to the guidance, with examples of what may be included. The firm believes that, in order to ensure that the guidance notes published are clearly understood by firms and are consistently applied, firms that will be subject to the requirements (and by extension subject to what is contained in the guidance notes) should be afforded the opportunity to review a draft version of the revised guidance and to provide feedback prior to its publication. Once published, the guidance notes will become the standard to which firms will be required to adhere and will be the tool used by Auditors to measure adherence to the requirements, during Client Asset Examinations. In order to ensure that the guidance notes are practicable and, indeed, comprehensive enough to ensure that there is no ambiguity in how the new Requirements must be applied, ensuring that they are applied consistently by all firms and measured consistently by auditors, a process of allowing firms to provide feedback on the proposed guidance notes would be mutually beneficial and would ultimately add to the robustness of the Requirements following their update. A collaborative approach was taken by the Central Bank in the years prior to the CAR coming in force in 2015. The firm welcomed and actively participated in this process. The collaboration ultimately ensured a common understanding of the new Requirements, at that time. Providing firms now with an opportunity to review the new guidance notes prior to their publication could help mitigate the risk of any items being overlooked in guidance or any ambiguity emerging from the guidance that could result in firms or auditors adopting differing approaches or standards over time.

Finally, if you have any questions on any of the firm's feedback, please do not hesitate to contact me.

Yours sincerely,

Brian Dennehy

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

The firm has no objection to a requirement to notify the Central Bank in advance of a transfer of client assets as part of a business transfer. It is unclear to us, however, what defines the materiality threshold and so we would ask that this be made clear in guidance notes.

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

We do not agree that Regulations 59(1)(d)(iv) is the correct place for the inclusion of a reference to business transfers. The arrangements referred to in Regulation 59(1)(d)(iv) relate to corporate activity at the companies in which a client has invested (e.g. PLCs). We believe that the firm's obligation to disclose its arrangements in respect of business transfers should be a standalone point under Regulation 59(1).

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

As outlined in the cover letter above, the firm believes that, in order to ensure that the guidance notes are clearly understood by firms and are consistently applied, firms that will be subject to the requirements (and by extension subject to what is contained in the guidance notes) should be afforded the opportunity to review a draft version of the revised guidance and to provide feedback prior to its publication. Once published, the guidance notes will become the standard to which firms will be required to adhere and will be the tool used by Auditors to measure adherence to the requirements, during Client Asset Examinations. In order to ensure that the guidance notes are practicable and, indeed, comprehensive enough to ensure that there is no ambiguity in how the new Requirements must be applied, ensuring that they are applied consistently by all firms and measured consistently by auditors, a process of allowing firms to provide feedback on the proposed guidance notes would be mutually beneficial and would ultimately add to the robustness of the Requirements following their update. We now request that the Central Bank provides such an opportunity to firms.

Paragraph 74(a)(v) of the Consultation Paper suggests that the revised guidance may include an obligation for firms to offer clients the option to have their assets returned to them without delay rather than being transferred to another entity. In many cases, it is not possible to return assets to clients as they can only be held in electronic form and this may cause confusion for clients. In such cases, the client would need to arrange a relationship with another entity. We suggest that this point be clarified further in the guidance and, for the reasons outlined above, we request the opportunity to provide feedback on a draft of the guidance notes prior to their publication.

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

The firm is of the view that any guidance provided on the steps that firms are required to complete when undertaking a business transfer, takes account of illiquid or of low-value assets that cannot be transferred to/from the firm's account at the custodian or

reregistered at the Registrar. As noted in the firm's cover letter, in order to ensure that the guidance provided is practicable we request the opportunity to provide feedback on a draft of the guidance notes prior to their publication.

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

Goodbody agrees that guidance in this area would support firms in managing the approach to uncontactable clients. Goodbody believes that such guidance should extend to other scenarios (not solely business transfers) and requests that this guidance extend to business that has been transferred prior to now and to clients who become uncontactable during the course of a business relationship.

Notwithstanding the above, without visibility of what that guidance is to require of the firm, we cannot express a view on how practicable that guidance will be and so, for the reasons outlined in our cover letter, we request the opportunity to provide feedback on a draft of the revised guidance prior to its publication.

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

The firm has no objection to this approach and already takes this approach for electronic transfers of client funds. However, past guidance was clear that cheques received by the firm are to be deemed client assets immediately upon receipt and so it is not clear if this is to change. For the avoidance of doubt, the firm does subsequently deposit cheques into a client asset account. We suggest that the guidance make clear the Central Bank's expectation about cheques for this reason and, again, request the opportunity to provide feedback on a draft of the guidance prior to its publication.

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

Goodbody's financial instrument reconciliation process, undertaken by its outsource service provider, already incorporates an internal reconciliation as part of the standard process. In effect, the firm's external reconciliation is a three way reconciliation comparing (a) the client accounts on the firm's back office systems with the custody depot on the same system and (b) the custody depot on the back office system with the custodian statement. The firm, therefore, does not believe that an additional piece of Regulation is required. Creating an additional Regulation on the Statutory Instrument may set an expectation with auditors that firms would undertake separate processes, one for the internal reconciliation and one for the external reconciliation. This could result in firms such as Goodbody having to disaggregate a mature reconciliation process, introducing unnecessary risk for no gain. An alternative approach would be for the Central Bank to extend the scope of the existing Regulation 57(3) to incorporate the additional requirement if it deems it necessary.

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

The firm does not agree with the 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).

Regulations 58(3) and 58(4) already require firms to mitigate the risk posed to clients by any shortfall (in particular) or excess of assets in the client asset resource within one working day. The firm therefore cannot see the advantage to clients of a firm entering into a separate 5 day process (which would overlap with 4 further daily calculations) to identify the cause of the surplus or deficit when (a) the risk to clients has already been mitigated and (b) the root cause of the surplus/deficit will typically be either (i) trade settlement, which will be resolved when settlement takes place and which may well have been resolved before the investigation has been complete or (ii) reconciliation issues, for which a daily client funds reconciliations is already undertaken in accordance with Regulation 57(1).

The firm is of 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 further daily calculations would cause confusion and would introduce operational risk without benefitting the client, whose risk has been fully mitigated.

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

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

If not, please explain why.

Regarding item (f) above, the firm is not clear about what information regarding third party filesystems would be required by the guidance notes nor if this information would be provided by third parties for reasons of information security. The firm has no objection to including information about its own filesystems, in particular detailing where third-party files are stored, but it is not certain that this meet the requirements that will be written into the revised guidance. For this reason and, as outlined in our cover letter, the firm requests the opportunity to provide feedback on a draft of the guidance prior to its publication.

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

The firm is of the view that clarification should be provided on what is required in situations where a client is transferring their account from one entity to another but where the client's portfolio includes illiquid or low-value assets that cannot be transferred

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into the firm's client asset account at the custodian. In such situations, firms have adopted a practice of putting Facilities Agreements in place with each other but, in reality, the entity from which the client is transferring is not the custodian. The required content of the Facilities Agreement makes the relevance of the Agreement in such a situation questionable. The firm is fully committed to ensuring that any such assets are allocated and segregated appropriately at the entity from which the client has transferred but beyond that, the firm is not in a position to control the registration of those assets nor guarantee that the other entity will provide statements for reconciliation. Clarification on the requirements in this situation would be welcome.