

**CP133 Consultation on enhancements to the Central Bank Client Asset Requirements, as contained in the Central Bank Investment Firms Regulations**

**Submission from Investec Europe Limited**

10<sup>th</sup> March 2021

**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.**

Yes, it makes sense and will bring consistency of protection for Clients where they are undertaking MiFID Business.

**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.**

No. A consistent application of the rules should apply across the Industry will be very helpful.

**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?**

None that we can think of at this point.

**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.**

Yes, this would be helpful in terms of planning Systems Development, Client Communications, Required updates to the CAMP and getting it approved with appropriate Boarding Meeting Cycles. It will also enable External Auditors to plan accordingly.

**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.**

Yes, a consistent application of the rules and communicating this information to clients will be very helpful.

**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.**

This scenario does not apply to IEL as a MiFID Firm.

**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?**

No issues or implications of including Credit Institutions in the CAR Regime that we have identified.

**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.**

Yes, that is a necessary requirement to ensure the new Regulations are going to be embedded into the Credit Institutions in terms of Governance, Accountability and Adherence.

**Question 9: Do you agree with the Central Bank's proposal to require investment firms to maintain, for a period of 6 years, a copy of all relevant material in order to evidence that express consent has been obtained from a client prior to the investment firm entering into arrangements for securities financing transactions, or otherwise using the client's financial instruments? If not, please explain why.**

Yes - it makes it consistent with the record keeping requirements for all other aspects of the CAR Regulations.

**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.**

Yes - we expect to document a written agreement with the customer.

**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.**

Yes - we expect to document a written agreement with the customer to include the a) the terms of arrangement in terms of ownership transfer from Client to Firm b) terms of ownership transfer back from Firm to Client and c) The termination terms of the agreement.

**Question 12: Do you agree with the proposal that the written agreement containing the TTCA provisions be maintained by investment firms for a period of 6 years? If not, please explain why.**

Yes - it makes it consistent with the record keeping requirements for all other aspects of the CAR Regulations.

**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.**

Yes - it makes it consistent with the record keeping requirements for all other aspects of the CAR Regulations.

**Question 14: Do you agree with the Central Bank's proposals relating to a written notification by an investment firm to clients following the termination of a TTCA? If not, please explain why.**

Yes, IEL would expect to issue written notification to clients following the termination of a TTCA.

**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.**

Yes, but Not applicable to IEL, but this requirement makes sense from a Client Assets perspective in terms of Margining and any instances of Re-hypothecation etc.

**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.**

Yes - though this is not applicable to IEL.

**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.**

Yes, no immediate concerns on this. 3 months is a sufficient period of time. IEL would also require Client Consents to the transfer of client assets.

**Question 18: Do you agree with the Central Bank's proposal to include a reference to transfer of business in Regulation 59(1)(d)(iv) of the CAR, thereby requiring investment firms to include information in respect of transfer of business arrangements, in so far as they relate to client assets, in the terms of business? If not, please explain why.**

Yes, we would include this in the disclosures in the Firms Terms of Business.

**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.**

Yes, this could be very helpful. All of the information mentioned may not be available when Client signs consent form as part of their take on - but would be made available once the Asset Transfer initiative has been approved for implementation.

**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.**

Outside of the notification to the CBI of 3 months, guidelines on notifications to clients (timing, information, where consent has not been received) would be beneficial.

**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.**

Yes, this would be helpful and remove any ambiguity in terms of steps required to transfer those assets.

**Question 22: Do you agree with the Central Bank's proposal to clarify in the CAR guidance the expectation that client funds should be deposited directly into a third party client asset account? If not, please explain why.**

Yes - where Client Money is received for the purposes of MIFID Activity it should be received into a Client Asset Account.

However, IEL anticipate circumstances where this may not be practical. IEL does have a scenario where clients are paying Firm Nostros for the purposes of settling their FX Settlement obligations. There are scenarios where

a Client may pay margin into IELs own account (which may be held as Client Money by moving it to a client money account). These scenarios are rare - certainly less than 1% of receipts into those accounts - would this still be a breach? The funds are always moved to a Client Account within 24 hours. Additional guidance on deviations outside this would be beneficial in this regard.

**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.**

Yes - we currently have the internal Ledger Reconciliation step in place.

**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.**

Yes - we currently have the internal Ledger Reconciliation in place on a monthly basis.

**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.**

Yes - but not applicable to IEL. These would relate to policy type holdings or where the Register for the Assets are held with another Investment Firm.

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

No - provided the 3rd Party makes the information available in a timely manner.

**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?**

Yes - this is currently in place for IEL.

**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.**

Yes - this is currently in place for IEL.

**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.**

Yes, but we would see this as a current regulation and investigate and resolve all Stock breaks within the guidelines already set out. The identification of the cause of the difference within 5 days is adequate.

**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.**

It depends - if there is a genuine Reconciliation break and a Client Position is not correctly held at the Custodian - then Cash / or Stock should be segregated to meet the Client short fall.

**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.**

It depends - if there is a genuine Reconciliation break and a Client Position is not correctly held at the Custodian - then Cash / or Stock should be segregated to meet the Client short fall.

**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.**

Yes - no concerns with this - this will be part of our Daily Calc and Daily Log process.

**Question 33: Do you agree with the Central Bank's proposal for investment firms to maintain a record of the actions it has taken in respect of the remediation of a reconciliation difference or discrepancy? If not, please explain why.**

Yes - no concerns with this. This is another column (Resolution Steps) in our Daily Client Money Log.

**Question 34: Do you agree with the Central Bank's proposal to align process for the remediation of client fund differences or discrepancies identified through the performance of the daily calculation with the process for remediating reconciliation differences as set out in Regulation 57(7)? If not, please explain why. Details of any suggested alternative processes to ensure that the internal records used in the performance of the daily calculation are accurate to (i.e. meet the objective of the proposed enhancement) should also be included.**

Yes - no concerns with this. This is another column (Resolution Steps) in our Daily Client Money Log.

**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.**

Yes - no concerns with this.

**Question 36: Do you agree with the Central Bank's proposal to enhance existing requirements to include a section in the CAMP that identifies all entities to which an investment firm outsources any activity relating to the safeguarding of client assets and details of how the investment firm proposes to exercise oversight of the activities? If not, please explain why.**

Yes - This detail should be included in the CAMP particularly the Orderly Wind down Section of the CAMP.

**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.**

Yes - we're happy to include this information in the Orderly Wind down section of 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.**

Yes - we're happy to include this information in the Orderly Wind down section of the CAMP.

**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.**

Yes - a comprehensive list of information should be included as it better informs the Board of all Risks, Controls and structures that are in place at the firm to safeguard Client Assets.

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

No - provided all of the headings / sections outlined by the CBI have been completed in detail, the CAMP Document will have all necessary details required.

**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.**

Yes, additional guidance on the CAMP structure is helpful - particularly for new entrants. We have had our CAMP audited externally - so the changes that we would envisage making would be in relation to the additional changes identified in the New / Enhancements to the CAR Regulations identified post December 2020.

**Question 42: Do you agree with the Central Bank's proposal to grant a 12 month transitional period following the publication of the third edition of the Investment Firms Regulations for investment firms to comply with the revised CAR? If not, please explain why.**

Yes, the 12 month transition period is helpful to plan and fully adopt the Regulatory Changes.

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

There will be reporting enhancements required to address the additional reporting requirements and these reporting changes can be planned, scoped, developed, tested and deployed to LIVE assuming the 12 month transition period to fully implement all of the CAR Enhancements is in place.

**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?**

As part of the HCAO role, CAR Regulations are reviewed in terms of how they apply to our business model in IEL. We assess the Risks to Clients Assets and the mitigating controls we have in place to safeguard Client Assets on a Semi Annual basis as part of our Internal Risk Assessments and in preparation for our Boards Semi Annual Review of the IEL CAMP.

**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.**

Yes.

**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.**

Not Applicable to IEL as we do not operate a trading venue.