

Central Bank of Ireland  
North Wall Quay  
North Dock  
D01 F7X3  
Email: INVFIRMSpolicy@centralbank.ie.

09 March 2021

**Subject: Mercer Ireland Limited's Response to CP133 Consultation on enhancements to the Central Bank Client Asset Requirements, as contained in the Central Bank Investment Firms Regulations**

Dear Team,

Within Mercer Ireland Limited ("MIL", "the Firm"), we fully support the concept of enhancing the current Client Asset Requirements ("CAR"). We believe that this can only be beneficial to ensuring that client assets are protected and that it will promote transparency and consistency between all firms.

We welcome the opportunity to contribute to an industry wide discussion. We have highlighted below our view to the key relevant questions set out in the consultation paper. As MIL is currently subject to the current CAR, MIL did not provide commentary where not applicable.

*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.*

**Response:** As MIL is already subject to the current CAR and not a credit institution, this is not applicable. The Firm therefore did not provide commentary in relation to this particular proposal.

*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.*

**Response:** As MIL is already subject to the current CAR and not a credit institution, this is not applicable. The Firm therefore did not provide commentary in relation to this particular proposal.

*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?*

**Response:** MIL does not envisage any consequences extending the CAR to credit institutions so long as the regulation remains proportionate to each firm's business model.

*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*

**Response:** As MIL is already subject to the current CAR and not a credit institution, this is not applicable. The Firm therefore did not provide commentary in relation to this particular proposal.

*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.*

**Response:** Whilst MIL is not a credit institution, the Firm agrees and supports the decision to introduce measures if it will provide clarity to clients as to how their assets will be held and protected.

*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.*

**Response:** As MIL is already subject to the current CAR and not a credit institution, this is not applicable. The Firm therefore did not provide commentary in relation to this particular proposal.

*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?*

**Response:** As MIL is already subject to the current CAR and not a credit institution, this is not applicable. The Firm therefore did not provide commentary in relation to this particular proposal.

*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.*

**Response:** Whilst MIL is not a credit institution, MIL agrees and believes that the PCF-45 role would be an extremely important role for any firm subject to the regime to have in place.

## **Section II: Enhancements to the CAR, including proposals relating to wholesale activities**

*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*

**Response:** As this will not impact MIL, the Firm did not provide feedback in relation to this particular proposal.

*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.*

**Response:** As this will not impact MIL, the Firm did not provide feedback in relation to this particular proposal.

*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.*

**Response:** As this will not impact MIL, the Firm did not provide feedback in relation to this particular proposal.

*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.*

**Response:** As this will not impact MIL, the Firm did not provide feedback in relation to this particular proposal.

*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.*

**Response:** As this will not impact MIL, the Firm did not provide feedback in relation to this particular proposal.

*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?*

**Response:** As this will not impact MIL, the Firm did not provide feedback in relation to this particular proposal.

*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.*

**Response:** As this will not impact MIL, the Firm did not provide feedback in relation to this particular proposal

*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.*

**Response:** As this will not impact MIL, the Firm did not provide feedback in relation to this particular proposal

*Question 17: Do you agree with the Central Bank's proposal to require an investment firm to notify the Central Bank of its intention to effect a material transfer of client assets at least three months in advance of the transfer taking place? If not, please explain why.*

**Response:** MIL agrees with the CBI's proposal to implement a three-month notification period if a material transfer of client assets is going to take effect.

*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.*

**Response:** MIL does not see an issue with having to include information in respect of transfer of business arrangements within the 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.*

**Response:** MIL welcomes all guidance which will support investment firms in implementing the CAR regime.

*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.*

**Response:** MIL does not have any further comments in relation to the transfer of business.

*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?*

**Response:** MIL would welcome if the guidance sets out the regulatory expectation and measures to be taken if clients cannot be contacted during a transfer of business. Further, the Firm would appreciate if the CBI sets out the acceptable measures that constitute "client contact" (e.g. email, letter).

*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.*

**Response:** Yes, the Firm agrees with this proposal. As MIL is currently subject to the CAR, this proposal would not result in any material change of process for the firm.

*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.*

**Response:** This is not applicable for MIL therefore the Firm did not provide any feedback in relation to this particular proposal.

*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.*

**Response:** This is not applicable for MIL therefore the Firm did not provide any feedback in relation to this particular proposal.

*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.*

**Response:** This is not applicable for MIL therefore the Firm did not provide any feedback in relation to this particular proposal.

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

**Response:** This is not applicable for MIL therefore the Firm did not provide any feedback in relation to this particular proposal.

*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?*

**Response:** This is not applicable for MIL therefore the Firm did not provide any feedback in relation to this particular proposal.

*Question 28: Do you agree that the reconciliation of physical client financial instruments should be conducted on at least a monthly basis? If not, please explain why.*

**Response:** This is not applicable for MIL therefore the Firm did not provide any feedback in relation to this particular proposal.

*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.*

**Response:** This is not applicable for MIL therefore the Firm did not provide any feedback in relation to this particular proposal.

*Question 30: Do you agree with the Central Bank's proposal to require investment firms to place money, financial instruments or a combination of both from the investment firm's own assets into the relevant third party client asset account to address a client financial instrument shortfall identified through the performance of an 'internal' reconciliation of client financial instruments? If not, please explain why.*

**Response:** This is not applicable for MIL therefore the Firm did not provide any feedback in relation to this particular proposal.

*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.*

**Response:** This is not applicable for MIL therefore the Firm did not provide any feedback in relation to this particular proposal.

*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.*

**Response:** This is not applicable for MIL therefore the Firm did not provide any feedback in relation to this particular proposal.

*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.*

**Response:** Yes, the Firm agrees with this proposal. MIL believes that there should be a clear audit trail of any remediation/discrepancy of a reconciliation and therefore would agree with this proposal.

*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.*

**Response:** Yes, the Firm agrees with this proposal. As MIL is currently subject to the CAR and operates on this basis, this proposal would not result in any change of process for the firm.

*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.*

**Response:** Yes, the Firm agrees with this proposal. As MIL is currently subject to the CAR and operates on this basis, this proposal would not result in any material change of process for the firm.

*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.*

**Response:** Yes, the Firm agrees with this proposal. As MIL is currently subject to the CAR, this proposal would not result in any material change of process for the firm.

*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.*

**Response:** Yes, the Firm agrees with this proposal. As MIL is currently subject to the CAR and includes this reference in its' CAMP, this proposal would not result in any material change of process for the firm.

*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.*

**Response:** Yes, the Firm agrees with this proposal. As MIL is currently subject to the CAR, this proposal would not result in any material change of process for the firm.

*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.*

**Response:** Yes, the Firm agrees with this proposal. As MIL is currently subject to the CAR, this proposal would not result in any material change of process for the firm.

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

**Response:** At present, the Firm does not envisage any additional information, which should be included in the CAMP. As MIL is already subject to the CAR regime, we believe that all firms should treat the CAMP as a living document which is capable of evolving to respond to any regulatory, political, and/or environmental changes which may occur.

*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.*

**Response:** Given that some firms are already subject to the CAR regime and have CAMP in place, there should be discretion for each firm to structure it in the manner that they see fit as long as it includes all relevant information.

*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.*

**Response:** As MIL is currently subject to the CAR and the Firm does not envisage any material changes to its CAR Framework as a result of this proposal, a 12 month transitional period would be reasonable.

*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.*

**Response:** As MIL is currently subject to the CAR, this proposal would not result in any material change of process for the firm.

### **Section III: 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?*

**Response:** At this point, MIL has not identified any such areas.

*Section IV: Other amendments to the Investment Firms Regulations*

*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.*

**Response:** This is not applicable for MIL therefore the Firm did not provide any feedback in relation to this particular proposal.

*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.*

**Response:** This is not applicable for MIL therefore the Firm did not provide any feedback in relation to this particular proposal.

Sincerely,  
Ciara Porter  
Chief Compliance Officer  
**Mercer Ireland Limited**