

WILLIAM FRY

Our Ref PT

10 March 2021

Markets Policy Division
Central Bank of Ireland
New Wapping Street
Dublin 1

Consultation on enhancements to the Central Bank Client Asset Requirements – CP 133

Dear Sir or Madam

Thank you for the opportunity of responding to the Consultation.

We have a small number of suggested amendments to the proposed amended Regulations to replace S.I 604 of 2017.

These deal with two matters as follows:

1. Clarification that it is the intention only to extend CAR to core MiFID services and activities conducted by credit institutions and not to other business that may be conducted by credit institutions, including UCITS and AIF depositary safekeeping business and MiFID ancillary services (we understand from previous correspondence this to be the case);
2. Clarification that firms exempted from the definition of "investment firms" only need to fall within one and not all of the categories set out in sub-paragraphs (I) to (IV) (as drafted the current exemption makes no sense – the word "all" needs to be replaced with "any").

Set out below are the proposed amendments. Text in black represents the current text of the Regulations. text in blue represents suggested proposals by the Bank set out in the Consultation and text in red/highlighted in yellow represents amendments suggested by us.

Regulation 2

"MiFID Business" means the investment services and activities listed in Part 1 of Schedule 1 relating to any of the investments referred to in Part 3 of Schedule 1 of, the MiFID Regulations"

Regulation 47

"investment firm" means a person authorised by the Bank pursuant to—

(a) the MiFID Regulations as an investment firm, or

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(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, **or**
(e) Section 9 of the Act of 1971 as a credit institution **and in respect of any MiFID Business it conducts 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) (i) an investment business firm authorised under the Investment Intermediaries Act 1995 who satisfies **all any** of the following:
 - (I) 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;
 - (II) 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;
 - (III) a person so authorised but only to carry out custodial operations involving the safekeeping and administration of investment instruments;
 - (IV) 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;

Regulation 47

(1) A credit institution which relies on paragraph 3(2) of Schedule 3 to the MiFID Regulations shall **—**
(a) in advance of providing a MiFID investment service to, or performing a MiFID investment **an** activity for, a client **(which service or activity is MiFID Business)—**
- **(i)** **(a)** notify the client that its funds are held as deposits by the credit institution for that client in accordance with the Capital Requirements Directive and not under this Part or the MiFID Regulations; and
(ii) **(b)** set out in its terms of business the circumstances, if any, in which it will cease to hold such funds as deposits in accordance with the Capital Requirements Directive and shall hold client funds in accordance with this Part and the MiFID Regulations.

If you have any queries in relation to the above, please contact Patricia Taylor – 01 6395222 or email Patricia.Taylor@WilliamFry.com.

Yours faithfully

William Fry.

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