New Irish Client Asset Rules Effective

Updates to the requirements pertaining to the safeguarding of client assets and investor money in Ireland are due to take effect for investment firms from 1 July 2023. These updates will also become applicable to credit institutions from 1 January 2024. These changes reflect CP130.

Background

The Central Bank of Ireland (CBI) had proposed changes to the client asset regulations (CAR) in their paper "Consultation on enhancements to the Central Bank Client Asset Requirements as contained in the Central Bank Investment Firm Regulations" (CP130).

Part 6 of S.I No.10 of the 2023 Central Bank (Supervision and Enforcement) Act 2013, (section 48(1)) (investment firms) Regulations 2023 includes the changes pursuant to this act as finalised from the consultation process. These revised Client Asset Regulations will revoke and replace S.I. No. 604 of 2017.

Key Changes

Before providing services or conducting activities credit institutions must disclose in writing under Regulation 62 whether the client's money will be held as a deposit in accordance with the Capital Requirements Directive or be held as client funds in accordance with the CAR regulations.

Under Regulation 66 the firm must maintain a copy of all evidence it obtained for consent to enter into arrangements for securities financing transactions or to use client financial instruments for their own account and maintain copies of this consent. A Client Asset Applicability Matrix is now required under Regulation 72 to be included within the client asset management plan (CAMP). This should facilitate managing insolvencies.

TTCAs

Regulation 67 addresses the terms of Title Transfer Contractual Arrangements (TTCAs). Regulation 69 contains new requirements regarding prime brokerage agreements.

Reconciliations and Calculations

There have been changes to Regulations 57 and 58 of CAR which relate to client financial instrument reconciliations and involve new obligations for related calculations as well as documentation requirements under the CAMP. Monthly reconciliations of financial instruments must be performed including a count of any physical client financial instruments. Firms have 5 days to fix shortfalls or excess from the Client Financial Instrument Calculation before they need to take action further. Firms must outline their oversight of third-party service providers where obligations have been delegated to them.

Additional Guidance

The CBI also issued the "Addendum to the Guidance Note on the Central Bank Client Asset Requirements" to address transfers of businesses. This includes guidance on determining whether a transfer is "material" which would require three months' notice prior to any business transfer.

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