



Revised Client Asset Regulations – are you ready?



Evolution of requirements

In June 2022, the Central Bank of Ireland (Central Bank) issued updated Client Asset Requirements (CAR) in the form of updated Investment Firm Regulations and accompanying draft Guidance. These updates impact MiFID investment firms, investment business firms and, in certain circumstances, UCITS management companies and alternative investment fund managers (collectively, investment firms) and will become effective from 1 July 2023. CAR also applies to credit institutions providing MiFID services and holding client assets from 1 January 2024.

Even though there is an established CAR regime in place the Central Bank has concerns about the current complexity of the Irish client asset landscape, especially in the event of an insolvency. Therefore, in December 2020 the Central Bank issued a consultation paper containing several proposals to ensure that client assets remain appropriately safeguarded and this consultation has resulted in the revised requirements.

The protection of client assets remains a key priority for the Central Bank. It has been since the regime was first introduced in 2007 and updated with the enactment of MiFID II¹ and Regulations² in 2015 and 2017.

Stages of revised CAR implementation

Consultation	Issued December 2020 and closed March 2021
Feedback	Issued in July 2021
Revised Investment Firm Regulations	Issued in June 2022 and enacted in the form of S.I. 10 of 2023
Draft Guidance and Addendum	Issued in June 2022 and February 2023
Application	Investment firms 1 July 2023 Credit institutions 1 January 2024

What should firms be doing now?

The timeline for implementation of the revised regime is swiftly approaching. This is a good juncture for firms to fully assess the impact on their individual business models, taking the complexity of custody/depository operations into account. Impacted firms should be taking stock and

be well advanced in assessing required changes to their operating models including any required developments or enhancements to processes, IT systems, contractual arrangements or client communications required to meet the new obligations.

¹ European Union (Markets in Financial Instruments) Regulations 2017

² Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Investment Firms) Regulations 2017 (the Investment Firms Regulations)

Key changes and some questions the Heads of Client Asset Oversight should be considering include;

Client Disclosure and Consent

1.	Certain disclosures will need to be included in the impacted firm’s terms of business.	<ul style="list-style-type: none"> • Have you reviewed your client communications and agreements and conducted a gap analysis of them to the new disclosure and consent requirements? • As a credit institution conducting MiFID services, have you assessed whether client assets are held as deposits or in third-party accounts?
2.	In respect of transfers of client assets, notifications need to be made to the Central Bank where the transfers are material, and client consent needs to be obtained.	
3.	In wholesale market activity, consent will need to be acquired and agreements put in place for financial instruments, and title transfer collateral arrangements. Additionally, disclosures will need to be provided by firms providing prime brokerage services.	
4.	Credit institutions will need to disclose to clients how their assets are being held.	

Segregation

1.	Client Funds must be directly deposited into the client asset account, and where this is not possible, these circumstances must be identified, and the transfer process to the client asset account must be documented in the firm’s Client Asset Management Plan (CAMP).	<ul style="list-style-type: none"> • Have you identified circumstances where it’s not possible to deposit funds directly into the client asset account?
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Reconciliation

1.	Where a third party does not hold financial instruments, the reconciliation process must take place monthly with an entity responsible for maintaining the record of the legal entitlement to the financial instrument. Physical assets must also be reconciled.	<ul style="list-style-type: none"> • Are your records and processes adequate to conduct the new reconciliations?
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Calculation

1.	Under the new requirements, firms will have to perform a calculation on a monthly basis for financial instruments to determine if the firm’s client financial instrument resource is sufficient to meet its client financial instrument requirement for each client.	<ul style="list-style-type: none"> • Do you require a new process and/ or system changes to meet this new obligation for financial instruments? • Are your records adequate to conduct the new calculation process? • Are you satisfied that you’ve identified material reconciliation differences and material shortfall/excess thresholds that are meaningful for your business? • Are you in a position to fund any shortfalls identified in your client asset resource?
2.	There is also a deposit/withdrawal obligation in respect of client assets in the event of a shortfall or excess arising and an obligation to resolve promptly any discrepancy identified in client asset records	

Key changes and some questions the Heads of Client Asset Oversight should be considering include (continued);

Risk Management

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| <p>1. The firm’s CAMP is a fundamental feature of the firm’s client asset risk management framework. In order to strengthen the CAMP, under the new requirements, the following sections will need to be included;</p> <ul style="list-style-type: none"> • Client Asset Applicability Matrix – setting out an overview of the firm’s products and services and how they are in or out of the scope of each of the client asset provisions • Client Asset Risk Matrix – setting out a firm’s risks and controls related to client assets | <ul style="list-style-type: none"> • Have you developed and implemented a CAMP that reflects the changes, is based on a detailed assessment and articulates the extent to which the CAR applies to your business? • Is your revised CAMP meaningfully addressing risk, and is it “fit for purpose” for approval by the board? • Do you have a robust process to keep the CAMP updated? |
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Reporting

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| <p>1. A revised Monthly Client Asset Report (MCAR) is being introduced with prescribed detail</p> | <ul style="list-style-type: none"> • Have you assessed whether the firm has access to the data required to populate the revised reporting template? |
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How can KPMG help?

Our Risk and Regulatory team are a multi-disciplinary team of regulatory and risk experts, including professionals who have worked in various divisions of the Central Bank and industry professionals with extensive experience in providing risk-focused outcomes that meet regulatory expectations. The team has extensive experience in helping firms meet their regulatory obligations including from an operational uplift perspective, specifically developing CAMPs, conducting CAMP reviews, and managing regulatory change programmes. Our Risk and Regulatory team are closely aligned with our Audit practice who have extensive experience in conducting client asset examinations. This approach provides the right experience and insight, which is key to ensuring ongoing compliance with the Central Bank’s requirements.

KPMG can assist firms to meet their new Client Asset obligations in any of the following ways;

- Provide support to you to design or enhance your operating model including identifying and embedding any process, system or documentation changes required
- Complete a compliance assessment of your revised client asset arrangements
- Assist with the development of the new artefacts included in the CAMP, namely the Client Asset Applicability Matrix and the Client Asset Risk Matrix or review and challenge any artefacts already developed to ensure they are fit for purpose
- Brief the boards, Heads of Client Asset Oversight and relevant staff in impacted firms of their client asset obligations
- Perform an independent audit of controls and issuance of an opinion on the firm’s compliance with the new requirements

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