

Additional Regulations to address risks to investor protection or to market integrity that are of particular importance to Ireland.

1. Principle of Daily Calculation- No Excess Funds in a Designated Client Asset Bank Account ('Buffer')

Regulation 13(1) extends the current requirement for an investment firm to perform a Daily Calculation each business day to ensure that its Client Money Resource as at the close of business on the previous day is equal to its Client Money Requirement.

In the interest of protecting clients, Regulation 13(3) will continue to require that in the event of a shortfall in a client asset account an investment firm should, without delay and in any event within one working day, deposit in a client asset account such money from the investment firm's own assets as is necessary to cover the shortfall. The money deposited by the investment firm in a client asset account for the purpose of covering the shortfall will be regarded as client money.

Reason for maintaining Provision

Various approaches were previously adopted with some investment firms holding an exact 'buffer' as previously required by the pre-2015 Client Asset Requirements (8%) while other investment firms were holding well in excess of this buffer and in some cases could not explain the reason for this excess money.

There is an ongoing concern that the co-mingling of client and investment firm money in this manner could create unnecessary cost and time delay in the event of a failure of an investment firm.

2. Principle of Risk Management- Client Assets Management Plan ("CAMP")

A key provision of the current framework is a Regulation that requires an investment firm to create and maintain a CAMP. Regulation 19(1) maintains the current requirement for an investment firm to have a CAMP in order to safeguard client assets. The main purpose of the CAMP remains:

- a) to document an investment firm's business model and related risks in respect of the safeguarding of client assets and the controls in place to mitigate these;
- b) to demonstrate how an investment firm's systems and controls meet the principles of the client assets regime;

- c) to enable the Board to document and monitor material changes to an investment firm's business model, changes to controls and processes and therefore the changes in the associated risks to safeguarding client assets;
- d) to make information readily available to assist in the prompt distribution of client assets particularly in the event of the investment firm's insolvency.

Regulation 19(4) sets out what should continue to be included in the CAMP, it should continue to be of sufficient detail to enable a reader to understand the business model, the resulting risks to safeguarding client assets and the mitigants in place to minimise the impact of these risks depending on the nature, scale and complexity of an investment firm's business model. The CAMP will continue to be a 'live' working document overseen by the HCAO and approved by the Board of the investment firm.

Reason for maintaining Provision

Evidence had shown a deficiency in detailed information held by an investment firm in respect of its client assets. The current framework addresses these deficiencies where there had been a lack of documentation on areas such as:

- an investment firm's business model;
- the risks to client assets,;
- the controls in place to mitigate these risks;
- the daily oversight and monitoring of these controls;
- who is responsible for the oversight and monitoring; and
- what level of oversight is being exercised by the Board or where applicable the partners of a firm.

The purpose of the CAMP remains to capture such information. Also, in the event of an insolvency of an investment firm, an insolvency practitioner will need to know where the assets are and the type of client assets. The CAMP should remain sufficiently detailed to enable the insolvency practitioner to understand the business model and controls for safeguarding client assets. The CAMP should continue to contain sufficient information to enable the distribution of client assets to take place as quickly as possible with minimum cost and delay to clients. This information could also be required in the event that an investment firm is required to facilitate an orderly transfer of assets to another investment firm.

3. Principle of Client Disclosure and Client Consent

Reason for maintaining Provision

In practice, it was found that an investment firm may not be providing all of the relevant information to its clients and such information was provided infrequently, i.e. it was provided before or after receiving client assets from the client. While the MiFID II client asset requirements do address these points the Central Bank is proposing to continue Client Disclosure and Client Consent Regulations under one core principle; with the exception of the provision of the CAKID, all clients will continue to be treated equally in relation to providing information at the same time (prior to receiving the initial client assets) and in obtaining written client consent.

There is also an ongoing concern that despite being provided with information, retail clients sometimes struggle to understand or overlook the technical text in a client document. In order to address this concern, the Central Bank will continue to require an investment firm to provide the CAKID to its retail clients. The objective of having a CAKID is that it will continue to inform a retail client, without the technical jargon, of how and where his/her assets are held, the resulting risks if any at each stage and what protection is available.

4. Principle of Client Asset Examination (“CAE”)

As proposed in Regulation 20(1), an investment firm will continue to be required to arrange for an external auditor to prepare a report in relation to an investment firm’s safeguarding of client assets on at least an annual basis. While this is provided for in Article 8 of Commission Delegated Directive 2017/593, the assessment by the external auditor will be more detailed.

The output of the CAE will continue to result in an assurance report from the external auditor containing;

- a) a reasonable assurance opinion on whether the investment firm has maintained processes and systems adequate to meet the requirements of the Regulations throughout the period of the examination and whether the investment firm was in compliance with the Regulations as at the period end date.
- b) a limited assurance opinion as to whether any matter has come to the attention of the auditor to suggest that the investment firm has acted in a manner which is not consistent with that documented within the client asset management plan which has been in operation throughout the period to which the examination relates and whether changes made to the CAMP since the date of the last report have been drafted in sufficient detail to meet the requirements of the Regulations capturing the risks faced by the entity in holding client assets given the nature and complexity of the entity.

The Regulations under the Client Asset Examination Principle will continue to require an investment firm to take ownership and responsibility for the client asset examination process, by for example;

- Engaging an appropriately experienced auditor with the necessary skillset;
- Assessing the findings of the report and where necessary putting remedial action into place;

Reason for maintaining Provision

Previously, the external auditor's assessment of an investment firm's compliance was a 'tick box' exercise. The external auditor will under these provisions continue carrying out a more in-depth level of assessment. This will continue to be enhanced by having Regulations as outlined above that will continue to require the investment firm to take ownership and responsibility for the Client Asset Examination.