

Briefing
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MiFID II: Central Bank consults on changes to Client Asset Regulations and Investor Money Regulations

KEY CONTACTS

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In its recent [Feedback Statement](#) on its [2016 MiFID II Consultation](#), the Department of Finance signalled that the existing [2015 Client Asset Regulations for Investment Firms](#) would be maintained, with minor amendments to take account of the fact that there will be some overlap between the detailed MiFID II Level 2 measures and the 2015 Client Asset Regulations.

The 2015 Client Asset Regulations are super-equivalent to MiFID II and their retention has been approved by the European Commission. While the majority of matters that need to be addressed as part of the implementation of MiFID II in Irish law will be dealt with by way of the transposing regulations to be published by the Department of Finance “*in the coming weeks*”, changes to the 2015 Client Asset Regulations are being implemented separately.

CENTRAL BANK PROPOSAL

As signposted by the Central Bank in [CP97](#) (its 2015 consultation on its Investment Firms Regulations), the Central Bank has, for some time, been considering the integration of its rules in relation to client assets and investor money into a “*living single document*” with its [2017 Investment Firms Regulations](#). That integration is now

expected to take place by 3 January 2018.

In its new consultation paper, [CP111 \(Consultation Paper on the Second Edition of the Central Bank's Investment Firms Regulations including changes related to MiFID II\)](#), published this week, the Central Bank has set out its proposal to update the 2015 Client Asset Regulations to take account of MiFID II and to then integrate the following into its [2017 Investment Firms Regulations](#):

- » the updated 2015 Client Asset Regulations;
- » the [2015 Investor Money Regulations](#) (as [amended in 2016](#)); and
- » the Central Bank's rules on capital requirements applied to market operators (as set out in its [CP101 Feedback Statement](#) relating to its consultation on a capital requirements framework for market operators).

STRUCTURE OF THE CONSOLIDATED INVESTMENT FIRMS REGULATIONS

The revised Investment Firms Regulations will contain very limited changes to the existing Parts 2 (*General Supervisory Requirements*

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for Investment Firms), 4 (Fund Administrator Requirements) and 5 (Own Funds and Capital Adequacy Requirements for Fund Administrators), together with Part 1 of the schedule of reporting requirements for fund administrators.

The revised Client Asset Requirements will be contained at Part 6 and a number of matters previously set out in the Central Bank's [Guidance on Client Asset Regulations for Investment Firms](#) will be incorporated into Part 6 (i.e. given legislative standing), meaning that the Central Bank Guidance will need to be substantially revised.

The Investor Money Requirements will be contained at Part 7 and a number of matters previously set out in the Central Bank's [Guidance on Investor Money Regulations for Fund Service Providers](#) will be incorporated into Part 7 (i.e. given legislative standing), meaning that the Central Bank Guidance will need to be substantially revised.

The Central Bank's policy position on capital requirements for market operators will be integrated into Part 8.

KEY CONSULTATION QUESTIONS

Terminology

The existing Client Asset Regulations use several defined terms to refer to third parties with whom client assets (i.e. client funds or client financial instruments) may be held or deposited, including "eligible credit institution", "eligible custodian", "relevant party" and "related party".

Those Regulations also use a number of different definitions and terms in

relation to nominees including "nominee", "nominee company" and "eligible nominee".

The Central Bank acknowledges that the use of multiple terms may be unnecessary and could lead to confusion. In light of that, it is seeking views on whether the various definitions could be better aligned with MiFID II and streamlined.

The Central Bank is also proposing to amend certain defined terms in the Client Asset Regulations and in the Investor Money Regulations for the purposes of clarity and consistency, and is seeking feedback on the changes that it has proposed. It does not expect those changes to have any significant operational impact.

Alignment of Client Asset Regulations with MiFID II

In the draft regulations set out in Consultation Paper, the Central Bank has proposed removing or amending parts of the existing Client Asset Regulations (which will form Part 6 of the revised Investment Firms Regulations) to remove duplication or to complement the wording of MiFID II. This is with a view to ensuring that Irish domestic rules regarding client assets are not read in isolation from MiFID II. The Central Bank is seeking feedback on its proposed approach and whether any existing client asset rules have not been adequately reflected in the revised Part 6.

Investor Money Regulations

The Central Bank is seeking feedback on its drafting changes to the Investor Money Regulations generally.

NEXT STEPS

The consultation period closes on 27 September 2017, and the revised Investment Firms Regulations, incorporating the revised 2015 Client Asset Regulations, the revised 2015 Investor Money Regulations, and the revised 2016 capital requirements for market operators) are expected to be in place by 3 January 2018. We will issue a further update when the revised Regulations are published.

For further information on the status of MiFID II in Ireland, please read our recent Client Briefings: [MiFID II: Department of Finance publishes Feedback Statement on MiFID II Consultation](#) and [MiFID II: Safe Harbour Update](#).