



Banc Ceannais na hÉireann
Central Bank of Ireland
Eurosystem

Settlement Agreement between the Central Bank of Ireland

and

Capita Life and Pensions Services (Ireland) Limited

The Central Bank of Ireland imposes a fine of €1,150,000 on Capita Life and Pensions Services (Ireland) Limited for conducting unauthorised business

The Central Bank of Ireland (the “Central Bank”) has fined Capita Life and Pensions Services (Ireland) Limited (the “Firm”) €1,150,000 and reprimanded it for breaches of the Investment Intermediaries Act, 1995 (the “IIA”) and the European Communities (Markets in Financial Instruments) Regulations 2007 (the “MiFID Regulations”). The breaches have been admitted by the Firm.

The two breaches occurred consecutively for a period of nine years and seven months and relate to:

- The Firm acting as an investment business firm between 1 February 2006 and 31 October 2007 without Central Bank authorisation as required under the IIA; and
- The Firm acting as an investment firm between 1 November 2007 and 18 September 2015 without Central Bank authorisation as required under the MiFID Regulations.

The Firm was also holding client assets without authorisation from the Central Bank.

In April 2014, regulatory concerns were raised by the Firm’s UK affiliate, which prompted the Firm to commence an investigation into its authorisation status regarding occupational pension scheme administration services. While the Firm acknowledges that it had sufficiently clarified its authorisation status by August 2014, it did not report the issue to the Central Bank until February 2015.

The Central Bank's Director of Enforcement, Derville Rowland, has commented as follows:

"The Central Bank treats the undertaking of unauthorised business as a very serious matter. The market and consumers must be able to have confidence that firms performing financial services in Ireland are doing so with all appropriate authorisations. The IIA and the MiFID Regulations establish comprehensive regulatory regimes which impose stringent prudential, conduct of business and reporting requirements on firms which are critical for the protection of investors and the stability and integrity of the market.

The Firm was authorised as an Insurance Intermediary but conducted unauthorised business, outside of its core business, for a period of more than nine years. The Firm's failure to obtain the required authorisations evidenced an unacceptable lack of proper compliance oversight, governance and control in the conduct of its occupational pension scheme administration services business.

The Central Bank requires all financial service providers to be sufficiently well controlled to ensure that they have all regulatory authorisations required at all times to conduct their business. Failure to do so will result in vigorous investigation and enforcement action by the Central Bank."

BACKGROUND

The Firm's Authorisation and Core Business

The Firm is a wholly owned subsidiary of Capita Life & Pensions Services Limited which is incorporated in England and Wales.

The Firm's core business is providing life policy administration services to life assurance companies. The services include back office administration, contact centre services, underwriting and claims administration, actuarial support and financial reporting. In respect of this activity, the Firm has been registered with the Central Bank since 7 September 2007 as an Insurance Intermediary under the European Communities (Insurance Mediation) Regulations 2005 (the "IMR").

A Discrete Business Service

The breaches in this case did not relate to the Firm's core business but related to occupational pension scheme administration services undertaken on behalf of a UK affiliate of the Firm.

PRESCRIBED CONTRAVENTIONS

1. Acting as an Investment Business Firm without authorisation under the IIA

The first breach in this case commenced on 1 February 2006, prior to the Firm's authorisation under the IMR, when CLPSI became the contracting party for occupational pension scheme administration services provided to Irish pension scheme trustee clients on behalf of an affiliated UK company.

The occupational pension scheme administration services included the receipt and transmission of orders for investment in, and divestment of, investment instruments, on instructions from clients. Such receipt and transmission services are qualifying investment business services under Section 2(1)(a) of the IIA.

Where a person is providing investment business services, it is acting as an investment business firm under the IIA. Section 9(1) of the IIA prohibits any person acting as an investment business firm in the State unless that person is authorised to do so by the Central Bank.

Between 1 February 2006 and 31 October 2007 (the day immediately preceding the coming into force of the MiFID Regulations), the Firm breached Section 9(1) of the IIA by providing investment business services in respect of 25 clients and thereby acting as an investment business firm without authorisation from the Central Bank.

Furthermore, in respect of 9 of those 25 clients, client assets were held by the Firm in accounts in the name of an affiliated nominee of the Firm, when neither the Firm nor the Firm's affiliated nominee were authorised by the Central Bank to hold client assets and when no contract was in place between the Firm and its affiliated nominee in respect of the operation of the client asset accounts.

2. Acting as an Investment Firm without authorisation under the MiFID Regulations

Had the Firm obtained the IIA authorisation it required, that authorisation would have been automatically transferred to an authorisation under the MiFID Regulations on the coming into effect of those regulations on 1 November 2007.

From 1 November 2007, the continued provision by the Firm of the aforementioned receipt and transmission services required it to possess an authorisation under the MiFID Regulations in place of

an IIA authorisation, but the Firm failed to obtain it. Receipt and transmission services are qualifying investment services as defined in Schedule 1, Part 1 of the MiFID Regulations.

Where a person is providing investment services, it is acting as an investment firm under the MiFID Regulations. Regulation 7(1) of the MiFID Regulations prohibits any person acting as an investment firm in the State unless that person is authorised to do so by the Central Bank.

Between the coming into force of the MiFID Regulations on 1 November 2007 and 18 September 2015, the Firm breached Regulation 7(1) of the MiFID Regulations by providing investment services in respect of 27 clients and thereby acting as an investment firm without authorisation from the Central Bank. Furthermore, in respect of 12 of those 27 clients, client assets were held by the Firm in accounts in the name of the Firm's affiliated nominee.

The Firm considered certain regulatory issues when it established the occupational pension scheme administration services. However, the Central Bank found that during the period of both the IIA and MiFID Regulations breaches, there were a number of instances where the Firm could, and should, have properly reconsidered the regulatory status of the investment services and thereby discovered its error. The Firm's failure to do so evidenced a lack of proper compliance oversight and control in the conduct of its occupational pension scheme administration services.

Once the Firm had a concern about its authorisation status, the Firm should have immediately reported the matter and engaged with the Central Bank at that time to resolve the issue. There was an unacceptable delay in reporting the breaches which was a matter taken into account by the Central Bank in determining the appropriate penalty to apply.

Effect of the Breaches

As a result of the Firm's breaches:

- The Firm was not complying with the prudential, conduct of business and reporting obligations imposed by the IIA and the MiFID Regulations. As such, the Firm's activities created counterparty, investor and market risks without appropriate regulatory safeguards being in place; and
- The Firm was not complying with the Central Bank's Client Asset Requirements in respect of the client assets it held in accounts in the name of the Firm's affiliated nominee. This exposed clients to the risk of loss, or at least delay, in the return of assets had the Firm or the Firm's affiliated nominee become insolvent. The Client Asset Requirements are designed

to avoid this situation by ensuring certainty of ownership and the cost-effective return of assets to clients in the event of insolvency of a regulated firm.

Rectification

On 18 September 2015, the Firm completed the last in a series of steps to remedy the breaches. The occupational pension scheme administration services have been transferred to a UK affiliate of the Firm which has the requisite MiFID authorisation and client asset permission from the Financial Conduct Authority in the United Kingdom. The occupational pension scheme administration services are now provided in Ireland by that UK affiliate on a cross-border basis pursuant to Article 31 of the Markets in Financial Instruments Directive (2004/39/EC).

PENALTY DECISION FACTORS

In deciding the appropriate penalty to impose, the Central Bank considered the following matters:

- The breaches relate to the most fundamental of regulatory requirements – that a financial services provider ensures it has all permissions it requires to carry out its business;
- The market and consumers must have confidence that financial service providers have all permissions required and are subject to a level of supervision that is appropriate to their activities;
- The breaches revealed a lack of proper compliance oversight and control in the conduct of its occupational pension scheme administration services;
- The extended period of time over which the breaches occurred;
- Client assets held by the Firm in the period of time during which the breaches occurred were not subject to the protections of the Client Asset Requirements.
- No loss was suffered by any clients of the Firm as a result of the admitted breaches;
- The delay between the Firm's concern about its authorisation status and its notification to the Central Bank during which time it continued to conduct unauthorised business;
- The need to impose an effective and dissuasive sanction on the Firm;
- The impact of such an effective and dissuasive sanction on other regulated entities; and
- The co-operation of the Firm during the investigation and in settling at an early stage in the Central Bank's Administrative Sanction Procedure.

The Central Bank confirms its investigation into the Firm in respect of this matter is closed.

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NOTES TO EDITORS

1. The Investment Intermediaries Act, 1995 is available to download [here](#).
2. The European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007) are available to download [here](#).
3. The European Communities (Insurance Mediation) Regulations 2005 (S.I. No. 13 of 2005) are available to download [here](#).
4. The Client Money Requirements February 2004 were replaced by the Client Asset Requirements November 2007 which are [here](#).
5. The fine imposed by the Central Bank was imposed under Section 33AQ of the Central Bank Act 1942. The maximum penalty was €10,000,000.
6. The fine reflects the application of the maximum percentage settlement discount of 30%, as per the Early Discount Scheme set out in the Central Bank's "Outline of the Administrative Sanctions Procedure" which is [here](#).
7. The protection of client assets in the Markets sector has consistently appeared as an Enforcement priority. The Central Bank's Enforcement priorities for 2015 are available on the Central Bank website [here](#).