



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

Addendum to the Guidance Note on the Central Bank Client Asset Requirements

[Draft]

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Application

1. The Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Investment Firms) Regulations 2023 (S.I. No.10 of 2023) (**the Investment Firms Regulations 2023**) was published by the Central Bank of Ireland (**the Central Bank**) on 3 February 2023 and is available [[here](#)].
2. The Guidance Note on the Central Bank Client Asset Requirements and this Addendum to the Guidance Note are intended to be read in conjunction with the revised version of the Client Asset Requirements as contained in Part 6 the Investment Firms Regulations 2023 (**the CAR**).¹

¹ The Guidance Note on the Central Bank Client Asset Requirements [Draft] is available on the Central Bank website [[here](#)]

Chapter 5: Client Disclosure and Consent

Information to be included in the terms of business

3. With reference to the requirement in Regulation 59(1)(i) of the CAR, investment firms are not expected to consider all eventualities and requirements of a potential transfer of business at the time of entering into the terms of business. However, an investment firm should consider including the following provisions in the terms of business, at a minimum:
 - a. A commitment to notify clients in writing of any potential transfer of business in accordance with the timeframes outlined in this Guidance Note;
 - b. A description of the information that the investment firm will provide to clients in relation to any potential transfer of business, including but not limited to:
 - i. The relevant timeframes involved;
 - ii. The options available to clients e.g. where clients may not wish for their assets to be transferred to the entity proposed by the investment firm and instead wish to make alternative arrangements;
 - iii. Any changes to client asset protections resulting from the proposed transfer i.e. whether or not the client assets will continue to be held in accordance with the Irish client asset regime, including the CAR and MiFID II safeguarding of client asset rules, once transferred to another entity; and
 - iv. In the case that client assets will not be held in accordance with the Irish client asset regime once transferred to another entity, an overview of the new/revised client asset protections that will be afforded to the client.

Chapter 9: Material Transfers of Client Assets

4. This chapter sets out guidance in relation to **material transfers of client assets** to or from another entity by an investment firm as part of a transfer of business. This includes guidance on:
 - a. The requirement to notify the Central Bank three months in advance of any material transfer of client assets **to another entity** taking place;
 - b. Client consent considerations in the context of any material transfer of client assets **to another entity**;
 - c. The requirement to notify the Central Bank three months in advance of any material transfer of client assets **from another entity** taking place;
 - d. Notifications to clients in the context of any material transfer of client assets **from another entity**; and
 - e. Residual balances.

5. This guidance is limited to an investment firm effecting a **material transfer of client assets** to or from another entity, as part of a transfer of business and does not replace or supersede other requirements or guidance that may be applicable to transfers of business. Examples of scenarios where a material transfer of client assets may be effected as part of a transfer of business may include, but are not limited to the following:
 - a. Merger by absorption;
 - b. Merger by acquisition; or
 - c. Market exit;

Effecting a material transfer of client assets to another entity

Notification to the Central Bank of Ireland

6. In accordance with Regulation 76(5) of the CAR, an investment firm shall provide a notification to the Central Bank of its intention to effect a **material** transfer of client assets **to another entity** at least three months in advance of the transfer taking place.

7. The notification to the Central Bank required under Regulation 76(5) of the CAR in relation to a material transfer of client assets should be provided by email to the Client Asset Specialist Team (CAST) at cast@centralbank.ie. This notification is for information purposes only and is not to be considered a request for approval.
8. An investment firm effecting a material transfer of client assets as part of a transfer of business to another entity should appoint an individual to act as a point of contact for the duration of the business transfer (preferably the Head of Client Asset Oversight (**HCAO**)) and include information in this regard in the notification to the Central Bank.
9. Where a material transfer of client assets is to take place between two investment firms that are subject to the CAR, the Central Bank expects both the investment firm transferring client assets and the investment firm receiving client assets to notify the Central Bank in accordance with Regulation 76(5) of the CAR.
10. When considering the materiality threshold for notifying the Central Bank, an investment firm effecting a transfer of business to another entity should take into account both quantitative and qualitative criteria, including but not limited to the following:
 - a. The monetary value/percentage of client assets that are involved in the transfer of business;
 - b. The number/percentage of clients impacted by the transfer of business and their client categorisation/jurisdiction; and
 - c. Whether the level of client asset protection may be impacted, for example where client assets are to be transferred to an entity that is not subject to the CAR.

In assessing whether the materiality threshold for notifying the Central Bank has been reached, an investment firm should consider the materiality of each criterion both independently and collectively. In the event of any doubt following the completion of this assessment, an investment firm should take a prudent approach and notify the Central Bank.

11. When providing the notification to the Central Bank, an investment firm effecting a material transfer of client assets as part of a transfer of business to another entity should include the following information, at a minimum:

- a. Details of the entity to which the investment firm is transferring client assets;
 - b. A breakdown of the number of clients (client categorisation, jurisdiction and value of client assets) expected to be impacted by the transfer;
 - c. A breakdown of the number of clients that the investment firm will need to contact to obtain client consent;
 - d. The investment firm’s proposed approach to obtaining client consent;
 - e. The expected timeframe for the transfer to take place; and
 - f. The investment firm’s proposed plan to notify clients of the transfer of business.
12. As part of the engagement between the Central Bank and the investment firm, the investment firm may be requested to make available a copy of the notification(s) to clients/request(s) for client consent for consideration by the Central Bank.

Client consent

13. An investment firm must at all times comply with its contractual obligations to its client as regards how client assets should be held.
14. In addition to reviewing the existing terms of business between the client and the investment firm to understand what provisions have been included in relation to the transfer of client assets and to understand its client consent and/or notification obligations, the investment firm should consider its obligations under the CAR, with particular regard to its obligations under Regulation 63(1).
15. This section of the Guidance Note provides guidance to investment firms in respect of client notification and consent obligations in the following scenarios:
- a. Where client consent to a transfer of client assets is provided for in terms of business/contractual arrangements with clients; and
 - b. Where client consent to a transfer of client assets is not provided for in terms of business/contractual arrangements with clients.

Scenario A: Client consent to transfer of client assets provided for in terms of business

16. Where client consent to the transfer of client assets has already been provided for in the terms of business/contractual arrangements with a client, an investment firm must notify that client in advance of the transfer of assets, in accordance with the timeframes and expectations set out in this Guidance Note.
17. An investment firm should notify all impacted clients of its intention to transfer client assets to another entity at least two months in advance of the transfer taking place. This notice period seeks to ensure that clients have the opportunity to make alternative arrangements, should they not wish to have their assets transferred to the entity proposed by the investment firm.
18. Prior to issuing the notification, an investment firm should determine, as far as reasonably possible, the correct contact details for all impacted clients.
19. The initial notification to clients should be in a durable medium and include the following information, at a minimum:
 - a. An explanation of the impact that the transfer of business will have on client's relationship with the investment firm;
 - b. Details of a dedicated point of contact within the investment firm for client queries;
 - c. Details of the proposed transfer, including but not limited to:
 - i. The timeframe for the transfer of business;
 - ii. Information about the entity to which the client assets will be transferred;
 - iii. Whether or not the client assets will be held by the entity to which they will be transferred in accordance with the Irish client asset regime (CAR and MiFID II safeguarding of client asset rules) and if not, how the assets being transferred will be held by the receiving entity and what changes to client asset protections will occur, if any;
 - iv. Whether the client assets will be held in omnibus or in individual client asset accounts and/or deposited with a third party outside the State post transfer; and

- v. Whether the client assets will be protected under an applicable investor protection scheme and/or deposit guarantee scheme following the transfer.
- d. The options available to clients that do not wish their assets to be transferred to the entity proposed by the investment firm, such as:
 - i. The client may opt to have their assets returned to them without delay at the client’s request (where it is possible to do so); and
 - ii. The client may transfer their assets to an alternative entity of the client’s choosing, that has agreed to receive the client assets, without delay.
 - e. The deadline (which should be a minimum of two months from the date the notification is issued) by which clients are requested to respond to the investment firm providing details of the alternative arrangements they wish to make where they do not wish to have their assets transferred to the entity proposed by the investment firm.

20. The investment firm should issue at least two follow up notifications to all impacted clients before the transfer takes place, reminding clients of the upcoming transfer of business and the information included in the initial notification. These notifications should reiterate the options available to clients and the deadline by which the client is requested to respond with details of alternative arrangements should they not wish to have their assets transferred to the entity proposed by the investment firm.

Scenario B: Client consent to transfer of client assets not provided for in terms of business

- 21. Where client consent to the transfer of client assets to another entity has been not been provided for in the terms of business, an investment firm should take all reasonable steps to obtain written consent from clients prior to the transfer taking place.
- 22. An investment firm should contact clients to obtain their consent to the transfer of client assets at least two months in advance of the transfer taking place. This seeks to ensure that clients have the opportunity to make alternative arrangements, should they not consent to the transfer.
- 23. In seeking to obtain client consent, an investment firm should determine, as far as reasonably possible, the correct contact details for all impacted clients and

consider using multiple methods of communication to contact those clients e.g. letter, telephone, email.

24. When contacting clients to obtain written consent to a transfer of client assets, an investment firm should provide, at a minimum, the following information to clients in a durable medium:
- a. An explanation of the impact that the transfer of business will have on the client's relationship with the investment firm, including the terms the client is being requested to provide written consent to;
 - b. The deadline (which should be a minimum of two months from the date the notification is issued) by which clients are requested to respond to the investment firm providing either:
 - i. Written consent to the transfer of client assets; or
 - ii. Details of the alternative arrangements they wish to make where they do not consent to the transfer of their assets to the entity by the investment firm;
 - c. Details of a dedicated point of contact within the investment firm for client queries;
 - d. Details of the proposed transfer, including but not limited to:
 - i. Information in relation to the entity receiving the client assets;
 - ii. The timeframe for the transfer of business;
 - iii. Whether or not the client assets will be held by the entity to which they will be transferred in accordance with the Irish client asset regime (CAR and MiFID II safeguarding of client asset rules) and if not, how the assets being transferred will be held by the receiving entity and what changes to client asset protections will occur;
 - iv. Whether the client assets will be held in omnibus or in individual client asset accounts following the transfer; and
 - v. Whether the client assets will be protected under an applicable investor protection scheme and/or deposit guarantee scheme following the transfer;
 - e. The options available to clients that do not wish to consent to their assets being transferred to the entity by the investment firm, such as:

- i. The client may opt to have their assets returned to them without delay at the client’s request (where it is possible to do so); and
 - ii. The client may transfer their assets to an alternative entity of the client’s choosing, that has agreed to receive the client assets, without delay;
- f. Where applicable, the default position that will be implemented, subject to the investment firm having exhausted all reasonable steps to obtain the client’s consent to transfer their client assets to another entity. This may include the default position in the following scenarios:
- i. Where a client does not respond to the request for written consent to the transfer; or
 - ii. Where a client responds to say they do not consent to the proposed transfer but does not request a return of their assets or does not identify an alternative investment firm.

The default position should be in accordance with the firm’s contractual obligations to its clients, as well as any other applicable legal requirements.

25. Following this initial contact attempt, an investment firm should make at least two further attempts to obtain clients’ written consent prior to the transfer of client assets taking place. The investment firm should reiterate the options available to clients and the deadline by which the client is requested to respond with details of alternative arrangements in the event they do not consent to the proposed transfer of their assets.

26. An investment firm should keep a record e.g. a log of the steps taken to contact clients in order to obtain their written consent to the transfer of client assets as part of a transfer of business. The investment firm should also keep a record of the responses received from clients.

27. Where a client has not responded to the investment firm’s requests for written consent to the transfer of client assets by the specified deadline, the investment firm should attempt to contact the client on at least one further occasion by any means other than that used previously, including by post, e-mail, telephone or media advertisement.²

² An investment firm should have regard to its obligations under the General Data Protection Regulation when attempting to make contact with clients.

28. Where a client has not responded to the further notification outlined in paragraph 27, the investment firm should write again to the client either by post to the client's last known address or by e-mail to the client's last known e-mail address to inform them of the default position to be implemented, subject to the contractual terms in place between the client and the investment firm.
29. The Central Bank expects an investment firm to maintain a record of uncontactable clients identified in the course of a transfer of business. An investment firm should also consider recording the following information, at a minimum:
- a. The date of the last known successful contact with the client;
 - b. The date of the last attempt to contact the client; and
 - c. The means by which the last contact attempt was made.

Effecting a material transfer of client assets from another entity

Notification to the Central Bank of Ireland

30. In accordance with Regulation 76(5) of the CAR, an investment firm shall provide a notification to the Central Bank of its intention to effect a **material** transfer of client assets **from another entity** at least three months in advance of the transfer taking place.
31. The notification to the Central Bank required under Regulation 76(5) of the CAR in relation to a material transfer of client assets should be provided by email to the Client Asset Specialist Team (CAST) at cast@centralbank.ie. This notification is for information purposes only and is not to be considered a request for approval.
32. An investment firm receiving a material transfer of client assets as part of a transfer of business from another entity should appoint an individual to act as a point of contact for the duration of the business transfer (preferably the HCAO) and include information in this regard in the notification to the Central Bank.
33. Where a material transfer of client assets is to take place between two investment firms that are subject to the CAR, the Central Bank of Ireland (**the Central Bank**) expects both the investment firm transferring client assets and the investment firm receiving client assets to notify the Central Bank in accordance with Regulation 76(5) of the CAR.

34. When considering the materiality threshold for notifying the Central Bank, an investment firm effecting a transfer of business from another entity should take into account both quantitative and qualitative criteria, including but not limited to the following:

- a. The value of client assets (in absolute terms and as a percentage of the total balance of client assets held by the investment firm) that are involved in the transfer of business;
- b. The amount of clients (in absolute terms and as a percentage of the investment firm's population of clients) impacted by the transfer of business and their client categorisation/jurisdiction;
- c. Whether the transfer forms part of a new line of business being taken on by the investment firm; and
- d. Whether the level of client asset protection for clients may be impacted, e.g. where the investment firm will receive client assets from an entity that is not subject to the CAR.

In assessing whether the materiality threshold for notifying the Central Bank has been reached, an investment firm should consider the materiality of each criterion both individually and collectively. In the event of any doubt following the completion of this assessment, an investment firm should take a prudent approach and notify the Central Bank.

35. When providing the notification to the Central Bank, an investment firm receiving a material transfer of client assets as part of a transfer of business from another entity should include the following information, at a minimum:

- a. Details of the entity from which the investment firm is receiving client assets;
- b. A breakdown of the number of clients, their client categorisation, jurisdiction and value of client assets expected to transfer to the investment firm;
- c. The expected timeframe for the transfer to take place; and
- d. The investment firm's proposed plan to contact the newly transferred clients following the completion of the transfer of business.

Notification to clients post transfer

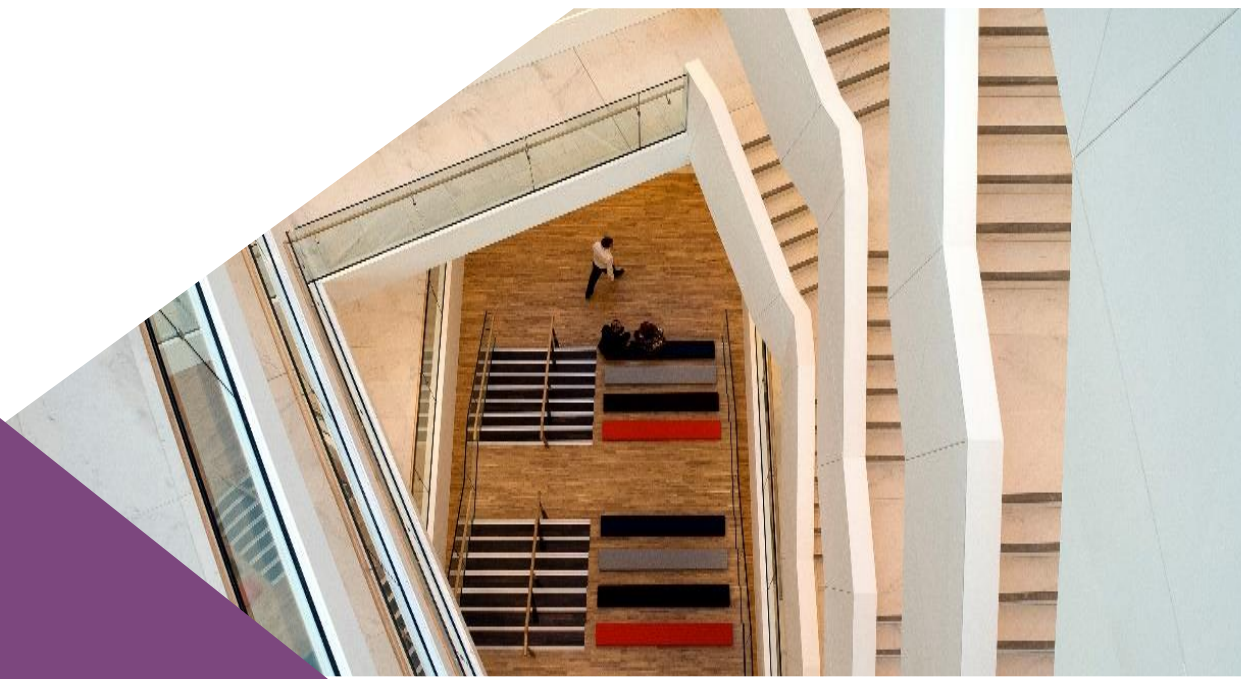
36. An investment firm effecting a **material** transfer of client assets **from** another entity, should send a communication to all impacted clients notifying them that their client assets are now being held by the investment firm within one month of the conclusion of the transfer of business. This notification should include the following information, at a minimum:

- a. Details of any changes to the clients' existing products and services;
- b. Where not already been provided, the revised terms of business that are applicable to the client and the Client Assets Key Information Document; and
- c. Any other relevant information.

37. Where an investment firm receives client assets from another entity as part of a transfer of business, that investment firm should obtain a list of any uncontactable clients identified by that entity in the course of that transfer.

Residual balances

38. Small value and/or illiquid client assets are subject to the CAR in the same way as other client assets and investment firms must continue to treat them as such.



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