

Update to Client Asset Requirements (CAR) 2023

The Impact on Banks, MiFID and Investment Firms



Update to Client Asset Requirements (CAR) 2023

In 2017, the Central Bank introduced client asset regulations into the investment firm space for the first time. Following an industry consultation last year, the Central Bank updated the existing client assets regulatory regime, resulting in increased requirements for MiFID firms as well as new requirements for credit institutions executing MiFID business (and only in relation to MiFID business). The revised client asset regulations, together with the addendum published by the Central Bank in March 2023,

go into effect on 1 July 2023 for investment firms and on 1 January 2024 for credit institutions.

Alongside the inclusion of credit institutions, the new version of the rules also introduces requirements around the reconciliation of client financial instruments, extends the daily calculation to financial instruments and adds new information to be disclosed to clients.

CAR 2023 UPDATED: CORE PRINCIPLES AND RELATED CHANGES

SEGREGATION 	
EXISTING OBLIGATION	UNDER THE UPDATED CAR
Firms must keep client assets separately from their own accounts, either in individual accounts or pooled. Records should be kept to ensure client assets can be identified and balances are recorded accurately.	No material updates in regards to this section in the regulations. However, the guidance is more specific that firms should place client assets directly into third-party accounts. It also provides more details on different types of client assets and how they should be treated.
DESIGNATIONS 	
EXISTING OBLIGATION	UNDER THE UPDATED CAR
Firms should ensure that client asset accounts are clearly designated as such in financial records to show them as separate from assets of the firm.	No material updates to this section; however, the inclusion of credit institutions into the scope of the rules requires these firms to ensure relevant documentation is in place to demonstrate that client assets have been suitably designated.
RECONCILIATION 	
EXISTING OBLIGATION	UNDER THE UPDATED CAR
Firms should reconcile the records they hold on client assets with the balances of the third parties where the assets are held. Firms should also be able to demonstrate the reconciliation at any time upon request.	Reconciliation requirements have been extended to cover client financial instruments which are not held in third-party accounts. Physical assets held internally should also be reconciled monthly with different frequencies permitted for EOP clients subject to certain conditions.



DAILY CALCULATION

EXISTING OBLIGATION

On a daily basis, firms should calculate the client fund resources and the client fund requirements, and they should ensure that the two values are equal. If discrepancies are found, firms must fix them by either withdrawing or depositing funds from their own resources. Firms should also be able to demonstrate evidence of these calculations upon request.

UNDER THE UPDATED CAR

The calculation rules have also been extended to include client financial instruments, albeit on a monthly rather than a daily basis. Any discrepancies should be rectified in the same way as client funds, with any actions taken recorded.

Deposits made to cover a shortfall in client funds should be made within one working day for rectifying discrepancies discovered in the calculations. Withdrawals to address an excess may be made within five days.



CLIENT DISCLOSURE AND CONSENT

EXISTING OBLIGATION

Firms should ensure that client asset accounts are clearly designated as such in financial records to show them as separate from assets of the firm.

UNDER THE UPDATED CAR

Firms must keep records to demonstrate that express consent has been received from clients for the firm:

- To enter into securities financing transactions or
- To use client financial instruments for their own account for at least six years.

Where entering into Title Transfer Collateral Arrangements, firms should ensure these arrangements are subject to a written agreement between the firm and the client and that they maintain written records of the termination of any such agreements.

Firms providing prime broker services and holding client assets must provide a daily statement to the client with balances and any other relevant information. The firm must include in all prime brokerage agreements a Client Asset Annex setting out the key provisions of the use of client assets.

Firms should notify clients of arrangements regarding any potential transfers in their terms of business. These communications should include a commitment to notify clients in writing ahead of any transfer and to discuss details such as timeframes, changes to client asset protections and the options available to clients if they are unhappy with the details of the transfer.



RISK MANAGEMENT AND CAMP

EXISTING OBLIGATION

Firms must have a designated head of client asset oversight, and have a Client Asset Management Plan (CAMP) in place to safeguard client assets. The CAMP is a key part of the risk management framework, outlining the risks and controls in place around client assets.

UNDER THE UPDATED CAR

The CAMP must now include a “Client Asset Applicability Matrix”. This matrix explains how the client asset rules apply to the business model of the firm and outlines which parts of the business are in or out of scope of the rules.

The CAMP must also include the location of the firm’s internal client asset breach and incident log.

Credit institutions coming into scope of the rules will need to appoint a head of client asset oversight.



CLIENT ASSET EXAMINATION

EXISTING OBLIGATION

An external auditor should produce a report on a firm’s client asset arrangements on an annual basis, with any remedial actions required being reported to the CBI.

UNDER THE UPDATED CAR

Clarification has been included around the timing of the report. The report must be completed in time for the firm to file with the CBI within four months after the CAMP’s period end.

NEW CAR UPDATES BEYOND CHANGES TO THE CORE PRINCIPLES

In addition to the changes around the core principles, the updated CAR imposes a new obligation on firms to notify the Central Bank of any intention to materially transfer assets to or from another entity at least three months before the transfer is due to take place. The notification should include details of the individual at the firm who will act as a point of contact, preferably the head of client asset oversight. When a firm is planning a material transfer, it must comply with contractual obligations around client assets at all times. Firms should also take into account whether there have been provisions around transfers in the terms of business provided to clients previously. If not, firms should seek client consent before enacting the transfer. For firms receiving the transfer, they should provide notification of the new arrangements to any impacted clients.

The new regulations will require that in-scope firms take action to ensure current processes are updated in line with the additional requirements.

However, credit institutions coming into scope for the first time must shoulder a greater burden even though they have more time to implement the changes. Credit institutions must now:

- Implement policies and procedures to ensure compliance with the regulations;
- Ensure existing agreements do not contradict any of the CAR requirements; and
- Appoint a head of client asset oversight for the first time.

Credit institutions should also be aware of requirements specific to them under the new CAR, namely client disclosures and the new monthly report on client assets which must be submitted to the Central Bank. The Central Bank has also published additional guidance has also been published to assist firms with the implementation of the new requirements in respect of the **regulations** and **transfer of business obligations** therein.

How Grant Thornton Can Help

Grant Thornton's **Financial Services Risk, Consulting** and **Advisory** teams are made up of dedicated experts who have extensive experience in supporting firms with meeting regulatory requirements highlighted by the Central Bank.

In particular, our **Prudential Risk Team** understand the regulation driving the agenda for MiFID firms and credit institutions.

With CAR and other related areas likely to be high on the regulatory agenda for years to come, our specialised Prudential Risk Team can assist clients across the financial services sector in navigating the maze of regulations, supporting them in identifying regulatory obligations and working towards full compliance balanced with their business needs.

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