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Central Bank of Ireland

Eurosystem

## Settlement Agreement between the Central Bank of Ireland

and

BCWM plc

### The Central Bank of Ireland imposes a fine of €220,000 on BCWM plc for Client Asset Requirement breaches

On 27 March 2018, the Central Bank of Ireland (the “Central Bank”) fined BCWM plc (the “Firm” or “BCWM”) €220,000 and reprimanded it for three breaches of the Client Asset Requirements 2007 (the “CAR”) and two breaches of the European Communities (Markets in Financial Instruments) Regulations 2007 (the “MiFID Regulations”). The breaches have been admitted by the Firm.

The Central Bank’s enforcement investigation identified failures by BCWM in respect of its arrangements for opening client asset accounts.

The breaches in this case relate to:

- the Firm’s failure to adequately designate the title of client asset accounts to clearly distinguish them as accounts holding client assets;
- the Firm’s failure to obtain the required confirmation letters from banks and custodians when opening client asset accounts to hold client funds; and
- the Firm’s failure to obtain the required acknowledgement letters from custodians when opening client asset accounts to hold client financial instruments.

The Central Bank also identified failures relating to the adequacy of the Firm’s written procedures and internal controls in relation to opening client asset accounts with third parties. The breaches persisted for almost 6 years, between November 2009 and September 2015.

The Central Bank's Director of Enforcement and Anti-Money Laundering, Seana Cunningham, has commented as follows:

*"The protection of financial services consumers is one of the Central Bank's key objectives. The Client Asset Requirements put in place extensive rules to ensure that investment firms protect client assets. Consumers and investors must have confidence that their assets are safe and afforded all of the required protections when held by investment firms.*

*One of the principal objectives of any client asset regime is to ensure there is clear and unambiguous ownership of client assets, which allows for the efficient and cost effective return of those assets in the event of the insolvency of a regulated firm. While there was no evidence of a loss of client assets in this case, BCWM breached key provisions of the Client Asset Requirements relating to certainty of ownership of client assets. In this case, the Firm's non-compliance with fundamental obligations for opening client asset accounts could have resulted in a delay in returning clients' assets in the event of the Firm's insolvency. Any delay can lead to consumers losing access to their assets for a period of time which can result in a loss of investment opportunity and consumer disruption.*

*In this case, the Firm failed to ensure that all client asset accounts with third parties were opened in accordance with the Client Asset Requirements. The Firm did not adequately designate the title of all client asset accounts in such a way as to make it clear that the accounts held client assets. The Firm also failed to obtain the necessary acknowledgements from banks, brokers and custodians that confirm, amongst other matters, the manner in which client assets will be held.*

*The Central Bank has repeatedly highlighted compliance with the Client Asset Requirements as a matter of significant importance. Given the potential serious impact on consumers, failure to comply with the requirements for the protection of client assets will result in vigorous investigation and enforcement action by the Central Bank."*

## **BACKGROUND**

BCWM was authorised as an investment firm under the MiFID Regulations on 12 November 2009 and is authorised to hold client assets. The Firm provides non-discretionary investment advice and retirement planning services to investors.

In February 2015, the Client Asset Specialist Team of the Central Bank conducted an on-site client asset inspection of BCWM as part of a Full Risk Assessment. The focus of the inspection was on the Firm's compliance with aspects of the CAR. This inspection and the subsequent follow up steps by the Central Bank identified a number of issues in respect of the Firm's compliance with the CAR and the MiFID Regulations, prompting an Enforcement investigation into those issues.

The CAR were revoked in 2015 and the updated client asset requirements are now contained in Part 6 of S.I. No. 604 of 2017 Central Bank (Supervision and Enforcement) Act, 2013 (Section 48(1) (Investment

Firms) Regulations 2017. The provisions of the CAR under which this case proceeded were maintained in substance.

## **PRESCRIBED CONTRAVENTIONS**

The investigation identified three breaches of the CAR and two breaches of the MiFID Regulations, namely:

### **Designation of Client Asset Accounts**

Requirement 4.3.6 of the CAR required investment firms to designate all client asset accounts with an eligible credit institution, relevant party or eligible custodian in such a way as to make it clear that the client assets do not belong to the Firm and were subject to the MiFID Regulations.

Following the Central Bank's investigation, it was established that between November 2009 and April 2015, in respect of a sample of 11 client asset accounts held with banks and custodians, the title of the accounts were not adequately designated to make it clear that the assets in those accounts were (1) client assets, and (2) subject to the statutory protections afforded to client assets.

The investigation found that where the Firm maintained segregated client accounts, it used a combination of client name and/or client code in the title of the account. This form of designation alone was not sufficient to meet the requirements to clearly demonstrate that the accounts contained client assets that did not belong to the Firm AND were regulated assets which are afforded statutory protections.

### **Obtaining Written Confirmations**

Requirement 5.2.1 of the CAR required investment firms to obtain a written confirmation from a credit institution or custodian, before the first lodgement of client funds to a client asset account. The written confirmation sets out the manner in which client funds will be held, and includes a provision acknowledging that the client funds in the client asset account are held in trust by the investment firm on behalf of the client.

The Central Bank's investigation established that the Firm failed to obtain the required confirmations as set out in Requirement 5.2.1 in respect of 28 sample client asset accounts from 9 banks and custodians. The first lodgement of client funds into these sample accounts occurred between 2009 and 2014.

### **Obtaining Custodian Agreements**

Requirement 6.5.1 of the CAR provided that before an investment firm opened an account for client financial instruments with a qualifying money market fund, relevant party, or eligible custodian, it must have notified the institution concerned and received an acknowledgement from the institution in respect

of certain matters. The acknowledgement sets out the manner in which client financial instruments will be held, and includes a provision confirming that the client financial instruments in the client asset account are held in trust by the investment firm on behalf of the client.

The Central Bank's investigation established that the Firm failed to provide written notification and obtain acknowledgements in writing from 6 brokers, custodians and/or relevant parties prior to opening 11 sample client asset accounts.

### **Adequate Client Asset Procedures**

Regulation 33(1)(a) of the MiFID Regulations requires an investment firm to establish adequate policies and procedures sufficient to ensure compliance of the firm and the persons who are the firm's managers, employees or tied agents with the firm's obligations under the MiFID Regulations.

The Central Bank's investigation established that, between November 2009 and September 2015, the Firm's documented client asset procedures were deficient for the following reasons:

- The Firm did not have an adequate procedure to ensure that a written confirmation letter was requested and obtained from a bank or a custodian before client funds were lodged to a client account with that institution, in accordance with Requirement 5.2.1 of the CAR; and
- The Firm did not have an adequate procedure to ensure that a custody acknowledgement letter was requested and obtained from a custodian before the Firm opened an account for client financial instruments with that custodian, in accordance with Requirement 6.5.1 of the CAR.

### **Adequate Internal Control Mechanisms**

Regulation 33(1)(f)(i) of the MiFID Regulations requires an investment firm to ensure that it has in place and uses sound administrative and accounting procedures and internal control mechanisms.

Following the Central Bank's investigation, it was established that, between November 2009 and June 2015, the Firm failed to ensure that it had in place and used sound internal control mechanisms in respect of its holding of client assets. Specifically:

- There was insufficient Board oversight and inadequate compliance monitoring within the Firm to identify and address deficiencies in the Firm's compliance with the CAR;
- The Firm failed to introduce sound internal controls in respect of the opening and operation of client asset accounts with regard to (1) account designations with third parties, and (2) obtaining confirmation and acknowledgement letters from third parties in accordance with the CAR.

## **RECTIFICATION**

The Firm has taken all necessary steps to rectify the breaches identified in the Central Bank investigation. The Firm undertook a review of its client asset account opening arrangements. As a result, the Firm updated all affected client asset account designations, and obtained confirmation and acknowledgement letters to ensure they complied with the CAR. Updated procedures and enhanced internal control mechanisms have been put in place in respect of the Firm's client asset account opening arrangements.

## **PENALTY DECISION FACTORS**

This case and the sanctions imposed reflect the importance to the Central Bank of compliance with the client asset requirements which are now contained in the Central Bank (Supervision and Enforcement) Act, 2013 (Section 48(1) (Investment Firms) Regulations 2017, particularly the principle of certainty of ownership of client assets.

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

- The seriousness of the breaches – the client assets at issue were not protected in the way required by the CAR in terms of certainty of ownership, which could have led to delay in the return of those assets to the clients in the event of the Firm's insolvency;
- The extended period of time over which the breaches persisted (almost 6 years);
- The need to have an appropriate deterrent impact; 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 Client Asset Requirements 2007 were replaced on 1 October 2015, by S.I. No. 104 of 2015 Central Bank (Supervision and Enforcement) Act, 2013 (Section 48(1)) Client Asset Regulations 2015 for Investment Firms (the “**Client Asset Regulations**”). The provisions of the CAR under which this case proceeded were maintained in substance. Following on from the publication of consultation paper CP111 in July 2017, the Client Asset Regulations have been repealed and are now contained in Part 6 of S.I. No. 604 of 2017 Central Bank (Supervision and Enforcement) Act, 2013 (Section 48(1) (Investment Firms) Regulations 2017, which are [here](#).
2. The European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007) were repealed and replaced by the European Union (Markets in Financial Instruments) Regulations 2017 (S.I. No. 375 of 2017) which are available [here](#) and the European Union (Markets in Financial Instruments) (Amendment) Regulations 2017 (S.I. No 614 of 2017) which are available [here](#).
3. The protection of client assets in the Markets sector has consistently appeared as a Supervisory priority. Details of the Central Bank’s approach to the supervision of client assets can be found on the Central Bank’s website [here](#).
4. The fine was imposed under Section 33AQ of the Central Bank Act 1942. The maximum penalty available under that Act is €10,000,000, or an amount equal to 10% of the annual turnover of a regulated financial service provider, whichever is the greater.
5. 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](#).
6. This is the Central Bank’s 118<sup>th</sup> settlement since 2006 under its Administrative Sanctions Procedure, bringing total fines imposed by the Central Bank to over €61 million.