

# FINNIUS

## **Consultation Financial Markets Amendment Act 2022 – finally: a segregated account for client money**

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17 November 2020

 3 MINUTES

On 6 November 2020, the Minister of Finance [published](#) the Financial Markets Amendment Act 2022 (*Wijzigingswet financiële markten 2022*) for consultation (in Dutch only). This legislative proposal contains several significant changes to the Financial Supervision Act (*Wet op het financieel toezicht, Wft*).

## Segregated account for client money

This legislative proposal changes the Wft among other things to provide the possibility for investment firms, payment institutions, electronic money institutions and settlement institutions to use a segregated bank account for client money held via these firms. In practice this leads to a significant system change: the relevant firms no longer need a separate legal entity (i.e. a customer accounts foundation (*stichting derdengelden*) or a depositary institution (*bewaarinstelling*) to separate client money from their own estate.

The legislative proposal provides that the segregated bank account is held in the financial institution's own name (the **account holder**), whereby the reference name of the account indicates that the account holder holds the account in its own name for one or more third parties (such as clients), stating the capacity of the account holder. By operation of law the funds on this account form a segregated pool that only serves to fulfil (i) the claims of the relevant third parties for whom the funds on the segregated bank account are deposited and (ii) the account bank at which the segregated bank account is held, where it concerns claims that are related to the management of the account (the **beneficiaries**) and where those claims are related to entrusting the funds to the account holder. The exclusive recourse included in this legislative proposal implies that in case of bankruptcy of the financial institution, the bankruptcy trustee has to cooperate with the position of the beneficiaries to the segregated client money. Other creditors cannot take recourse on the segregated bank account.

This legislative proposal responds to the wishes of both market parties and the Dutch Central bank (*De Nederlandsche Bank, DNB*) and the Dutch Financial Markets Authority (*Autoriteit Financiële Markten, AFM*) to implement a statutory segregated client money account. A reason for this is that the separate client accounts foundations – a common form of segregating funds used by financial firms – are a virtually unknown phenomenon abroad. This situation complicates the settlement of cross-border transactions. In addition, this proposal simplifies total segregation of client funds for i.a. investment firms and payment institutions both legally and operationally. In practice, this is a very relevant and welcome change.

## Other changes

In addition, the legislative proposal contains a number of other changes:

- Changes to the Financial Supervision Funding Act 2019 (*Wet bekostiging financieel toezicht 2019*), enabling DNB and the AFM to maintain reserves for incidental costs within the funding system.
- The introduction of statutory audits on financial statements of payment institutions and EGI's. In previous years DNB noticed that financial data in financial statements of the aforementioned institutions were not always sufficiently reliable. A mandatory audit must increase the reliability.
- Opening up the AIFMD light regime to small foreign investment funds managers from another Member State that market units to professional investors. The marketing of units to non-professional / retail investors within the light regime will not be possible for foreign managers.
- An arrangement for managing UCITS with a registered office in the Netherlands by managers with their registered office in another Member State. To use this arrangement, the manager must have permission from the AFM and be in possession of an authorisation (from the home Member State) to manage the relevant type of UCITS.
- The direct submission of the adopted annual accounts (and related documents) by securities issuers (whose securities are admitted to a regulated market and of which the Netherlands is the home Member State) to the Dutch trade register (*handelsregister*). It is no longer required to send the adopted annual accounts to the AFM.

Market parties have until 18 December 2020 to respond to the consultation. We expect that the aim is to have the amendment act enter into force on 1 January 2022.

## Specialists



**Bart Bierman**

Partner

T +31 (0)20 767 01 80

T +31 (0)20 767 01 85 (direct)

M +31 (0)6 31 67 03 93

[bart.bierman@finnius.com](mailto:bart.bierman@finnius.com)



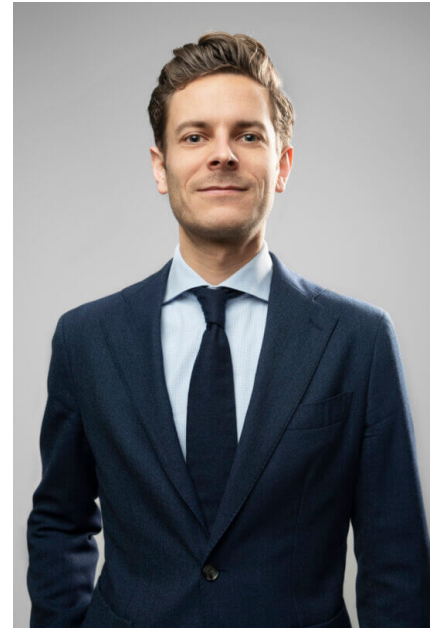
**Rosemarijn Labeur**

T +31 (0)20 767 01 80

T +31 (0)20 767 01 86 (direct)

M +31 (0)6 31 67 03 94

[rosemarijn.labeur@finnius.com](mailto:rosemarijn.labeur@finnius.com)



**Tim de Wit**

T +31 (0)20 767 01 80

T +31 (0)20 820 80 32 (direct)

M +31 (0)6 11 00 45 26

[Tim.de.Wit@finnius.com](mailto:Tim.de.Wit@finnius.com)