



STATUTORY INSTRUMENTS.

S.I. No. 104 of 2015

CENTRAL BANK (SUPERVISION AND ENFORCEMENT) ACT 2013
(SECTION 48(1)) CLIENT ASSET REGULATIONS 2015 FOR
INVESTMENT FIRMS

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In exercise of the powers conferred on the Central Bank of Ireland (the “Bank”) by section 48 of the Central Bank (Supervision and Enforcement) Act 2013 (the “Act”), the Bank, having consulted with the Minister for Finance and the Minister for Enterprise, Jobs and Innovation in accordance with section 49(1) of the Act and, having received the prior approval of the Minister for Finance and the European Commission having been notified in accordance with Regulation 79 of the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007, the “MiFID Regulations”), hereby makes the following Regulations:

1. These Regulations may be cited as the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) Client Asset Regulations 2015.

2. In these Regulations:

“assurance report” has the meaning provided in Regulation 9(1);

“authorised person” means an employee or an officer of an investment firm who has the authority to commit the investment firm to a binding agreement;

“Bank” means the Central Bank of Ireland;

“bearer financial instrument” means a financial instrument, the holder of which is not registered on the books of the issuer and the value of which is payable to the person possessing the financial instrument;

“client” means any person to whom an investment firm provides financial services;

“client assets” means client funds and client financial instruments;

“client asset account” means an account with a third party which has the following features:

(a) is in the name of the investment firm or its nominee; and

(b) includes in its title an appropriate description to distinguish assets in the account from the investment firm’s own assets held elsewhere; and

may include an account where the assets of multiple clients are held in the one account;

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“client asset management plan” means the plan created pursuant to Regulation 8(3) for the purpose of safeguarding client assets;

“Client Assets Key Information Document” has the meaning given in Regulation 7(19);

“client financial instrument” means a financial instrument as defined in Regulation 3(1) of the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007) and an investment instrument as defined in section 2(1) of the Investment Intermediaries Act 1995, which is held by an investment firm on behalf of a client and includes, without limitation, any:

- (a) client financial instrument that is held with a nominee; and
- (b) claim relating to, or a right in or in respect of a financial instrument;

“client funds” means any money, to which the client is beneficially entitled, received from or on behalf of a client or held by the investment firm on behalf of a client and includes (without limitation):

- (a) client funds held by or with a nominee,
- (b) in the case of money that is comprised partly of client funds and partly of funds of any other type, that part of the money that is client funds,

but does not include money that an investment firm:

- (i) receives from or on behalf of the client, or
- (ii) owes to or retains on behalf of the client

and which relates exclusively to an activity of the investment firm which is not a regulated financial service;

“client money requirement” means the total amount of client funds that an investment firm owes to its clients;

“client money resource” means the total amount of client funds held in an investment firm’s client asset accounts;

“collateral” means, with respect to a client:

- (i) client funds, or
- (ii) a client financial instrument which has been paid for in full by the client,

which are or is held by an investment firm as security for amounts which may be due to that investment firm by that client;

“collateral margined transaction”

- (a) means a transaction effected by an investment firm with or for a client relating to a financial instrument under the terms of which the client will, or may, be liable to make a deposit of cash or collateral, either at the outset or subsequently, to secure performance of an obligation which the client may have to perform when the transaction falls to be completed or upon the earlier closing out of the client's position, and
- (b) includes, but is not limited to,
 - (i) futures,
 - (ii) options,
 - (iii) rollovers,
 - (iv) an option purchased by a client the terms of which option provide that the maximum liability of the client in respect of that option will be limited to the amount payable as premium;

“credit institution” means an undertaking the business of which is to take deposits or other repayable funds from the public and to grant credits for its own account;

“durable medium” means any medium that enables a client to store information addressed personally to the client in a way that renders it accessible for future reference for a period of time adequate for the purposes of the information and allows the unchanged reproduction of the information;

“eligible credit institution” means a credit institution or a credit institution authorised in a third country;

“eligible custodian” means:

- (a) a person whose authorisation from the Bank, or equivalent third country regulator, includes the safekeeping and administration of financial instruments on behalf of clients, including custodianship and related services such as cash management or collateral management, or
- (b) an eligible credit institution;

“Financial Instruments Facilities Letter” has the meaning provided in Regulation 4(5).

“Funds Facilities Letter” has the meaning provided in Regulation 4(4);

“Head of Client Asset Oversight ” has the meaning given in Regulation 8(1);

“investment firm” means a person authorised by the Bank pursuant to:

- (a) European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007) as an investment firm; or

- (b) the Investment Intermediaries Act 1995 as an investment business firm; or
- (c) the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (S.I. No. 352 of 2011) as a management company which is authorised to conduct services pursuant to Regulation 16(2) of S.I. No. 352 of 2011 and in respect of those services only; or
- (d) the European Union (Alternative Investment Fund Managers) Regulations 2013 (S.I. No. 257 of 2013) as an alternative investment fund manager which is authorised to conduct services pursuant to Regulation 7(4) of the S.I. No. 257 of 2013 and in respect of those services only;

but shall not include certified persons within the meaning of section 55 of the Investment Intermediaries Act 1995 or a person authorised pursuant to section 10 of the Investment Intermediaries Act 1995 to solely carry out:

- (a) the administration of collective investment schemes or fund accounting services or acting as a transfer agent or registration agent for such schemes; or
- (b) custodial operations involving the safekeeping and administration of investment instruments.

“investment services” means the services of ‘investment advice’ and/or ‘investment services’ as defined in Regulation 3(1) of the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007) and/or the services of ‘investment advice’ and/or ‘investment business services’ as defined in section 2 of the Investment Intermediaries Act 1995;

“margin” means funds or other form of asset which a client deposits as security to open and maintain an investment position;

“nominee” means a person acting on behalf of an investment firm as nominee, custodian, or otherwise, in order to hold client assets and includes an eligible custodian and a nominee company;

“own asset” means any asset or money other than a client asset;

“physical financial instrument” includes a share certificate;

“pooled account” means a client asset account in which the client assets of more than one client are held;

“proprietary financial instrument” means any financial instrument other than a client financial instrument;

“qualifying money market fund” has the meaning given in Regulation 160(1) of the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007);

“registered financial instrument” means a financial instrument registered in the name of a person;

“related party”, in relation to an investment firm, means-

- (a) if the investment firm is a company, another company that is related to it within the meaning of section 2 of the Companies Act 2014,
- (b) a partnership of which the investment firm is a member,
- (c) if the businesses of the investment firm and another person have been so carried on that the separate business of each of them, or a substantial part thereof, is not readily identifiable, that other person,
- (d) if the decision as to how and by whom the businesses of the investment firm and another person shall be managed are, or can be, made either by the same person or by the same group of persons acting in concert, that other person,
- (e) a person who performs a specific and limited purpose by or in connection with the business of the investment firm, or
- (f) if provision is required to be made for the investment firm and another person in any consolidated accounts compiled in accordance with the Seventh Council Directive 83/349/EEC of 13 June 1983 [Note: OJ L 193, 18.7.1983, p.1], that other person.

“relevant party” means an exchange, clearing house, intermediate broker, OTC counterparty or investment firm;

“retail client” has the meaning assigned to it by Regulation 3(1) of the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007);

“safe custody account” means an account used for the safeguarding of client assets held by an investment firm on behalf of clients;

“securities financing transaction” has the meaning given to it in Article 2(10) of Commission Regulation (EC) No 1287/2006 of 10 August 2006; and

“third country” means any country that is not a Member State of the European Union or the EEA.

Segregation

3. (1) An investment firm shall act honestly, fairly and professionally in accordance with the best interests of its clients.

(2) An investment firm shall:

- (a) keep client assets separate from the investment firm's own assets; and
 - (b) take all steps as may be necessary to ensure that any client asset is held by it in trust for the benefit of the client on behalf of whom such client asset is being held.
- (3) Without prejudice to Regulation 3(12), an investment firm shall not place in a client asset account any asset other than a client asset except in accordance with Regulation 6(3).
- (4) Except in accordance with a legally enforceable agreement, an investment firm shall not use the assets of a client for any purpose other than for the sole account of that client.
- (5) Without prejudice to Regulations 3(19), 4(15), 7(10), 7(11), 7(12), 7(13) and 7(16), an investment firm shall not use, change or transfer a client asset otherwise than in accordance with an instruction relating to that client asset received by the investment firm from the client for whom that client asset is held or as required by law or by order of any court of competent jurisdiction. For avoidance of doubt, an 'instruction' for these purposes includes a written agreement by which a client has instructed the investment firm to manage the client asset on a discretionary basis.
- (6) Without prejudice to the generality of Regulation 3(3) and Regulation 3(12), an investment firm is not required to pay into a client asset account such client assets that it receives on behalf of a client where to do so would result in the investment firm breaching any law or order of any court of competent jurisdiction.
- (7) Where, in accordance with an instruction from the relevant client, a client asset is transferred to a third party, the investment firm shall ensure that such transfer is overseen and approved by a member of staff other than the staff member who conducts the transfer.

Holding Client Funds

- (8) All money received from a client, or on behalf of a client, shall be held as client funds unless this money relates exclusively to an activity of the investment firm which is not a regulated financial service.
- (9) For the purposes of these Regulations, an investment firm is deemed to hold client funds where-
- (a) the money has been lodged on behalf of a client of the investment firm to a client asset account with any one of the entities listed in Regulation 3(10) in the name of the investment firm or of any nominee of the investment firm; and
 - (b) the investment firm has the capacity to effect transactions on that client asset account.

(10) Client funds may not be held by an investment firm other than in a client asset account maintained by the investment firm at any one of the following:

- (a) a central bank;
- (b) a credit institution authorised pursuant to any law implementing the requirements of Directive 2013/36/EU;
- (c) a bank authorised in a non-EEA country;
- (d) a qualifying money market fund.

(11) Any client funds received shall be deposited in a client asset account without delay, and in any event not later than one working day after the receipt of such funds.

(12) Without prejudice to Regulation 3(13), where an investment firm receives from or on behalf of a client, money that:

- (a) is comprised of a mixture of client funds and other money, the investment firm shall first pay all of that money into a client asset account of that firm and thereafter shall, without delay, transfer out of or withdraw from the client asset account such money as is not client funds; and
- (b) has been received for the purposes of or through it performing a function in the performance of which the investment firm is regulated by the Bank and that money is mixed or combined with money that the investment firm has received for the purposes of or through the investment firm performing a function in the performance of which it is not regulated by the Bank, the investment firm shall deal with all the money so received as though sub-paragraph (a) applied to it.

(13) If an investment firm receives client funds where:

- (i) it is not clear which client owns such client funds, or
- (ii) there is insufficient documentation to identify the client who owns such client funds,

the investment firm, having due regard to other legislation, shall, first pay the client funds into a client asset account of that investment firm and within 5 working days of the initial receipt of such client funds, either identify the client concerned or return the client funds.

(14) Client funds shall only be deposited with any one of the entities listed in Regulation 3(10) where the investment firm:

- (a) is satisfied that the legal, jurisdictional, regulatory requirements and market practices relevant to the holding of client funds with that

entity in the manner proposed do not adversely affect clients' rights;
and

- (b) has exercised due skill, care and diligence in the selection and appointment of that entity.

(15) Where clients funds are deposited with any of the entities listed in Regulation 3(10), the investment firm shall, at least every 6 months, review the arrangements for the holding of client funds with that entity as against the criteria set out in Regulation 3(14), and such a review shall be approved in writing by the Head of Client Asset Oversight.

Holding Client Financial Instruments

(16) For the purposes of these Regulations, an investment firm is deemed to 'hold' client financial instruments where the investment firm-

- (a) has been entrusted by or on account of a client with those instruments, and
- (b) either-
 - (i) holds those instruments, including by way of holding documents of title to them, or
 - (ii) entrusts those instruments to any nominee,

and the investment firm has the capacity to effect transactions in respect of those instruments.

(17) A client financial instrument shall not be deposited by an investment firm with a third party otherwise than in a client asset account maintained by the investment firm at that third party and only where the investment firm:

- (a) is satisfied that the legal, jurisdictional, regulatory requirements and market practices relevant to the holding of client financial instruments with that third party in the manner proposed do not adversely affect the clients' rights.
- (b) has exercised due skill, care and diligence in the selection and appointment of that third party.

(18) Where clients financial instruments are deposited with a third party, the investment firm shall, at least every 6 months, review the arrangements for the holding of the client financial instruments with that third party as against the assessment criteria set out in Regulation 3(17), and such a review shall be approved in writing by the Head of Client Asset Oversight.

(19) An investment firm shall not deposit any client financial instrument with a third party in a third country that does not regulate the holding and safekeeping of client financial instruments unless:

- (a) the nature of the financial instrument or of the investment services connected to that financial instrument requires that financial instrument to be deposited with such a third party in that country; and
- (b) the client has been informed of this and has given prior written consent to such an arrangement.

Client Asset Records

(20) An investment firm shall keep an accurate record of each transaction on a client asset account in such a manner and form that:

- (a) the client for or in respect of whom the transaction was conducted is identified;
- (b) the transaction is accounted for by the investment firm separate from all other transactions of the investment firm.

(21) An investment firm shall keep the records required under Regulation 3(20) separate from records relating to transactions which are not related to the client asset account.

(22) Where an investment firm receives client funds the investment firm shall, as soon as practicable after receiving those client funds, send to the client a receipt in writing for those client funds except where the client funds are received by electronic transfer or in settlement of a specific contract.

(23) An investment firm shall retain for 6 years such records as are required by these Regulations and such records as are necessary to demonstrate compliance with these Regulations.

(24) Where under or in relation to these Regulations, an investment firm holds a record or another party holds a record on behalf of an investment firm electronically, the investment firm shall ensure that it can produce such records without delay.

(25) An investment firm shall report such matters to the Bank, pertaining to these Regulations, as may be determined by the Bank from time to time. Such a determination may be in respect of:

- (a) investment firms generally, investment firms sharing any particular characteristic or a particular investment firm; and
- (b) any one or more Regulations, or all of the Regulations, of these Regulations.

Designation and Registration

4. (1) In advance of opening a client asset account with a third party, an investment firm shall designate in its own financial records each client asset account it will hold with any third party as a 'client asset account' in the account name.

(2) In advance of opening a client asset account with a third party, an investment firm shall ensure that the third party will designate in the financial records of the third party, the name of a client asset account held with it in a manner which makes it clear that the client assets are not assets of the investment firm.

(3) Prior to or within one working day of the initial lodgement of client assets in a client asset account with a third party, an investment firm shall verify that the client assets are held in an account which is designated as a client asset account and keep a record of such verification and if the third party does not, in its external financial records make a designation in accordance with Regulations 4(2), the investment firm shall withdraw the client assets without delay, and in any event within 3 working days of the carrying out of the verification assessment.

Funds Facilities Letter and Financial Instruments Facilities Letter

(4) In advance of opening a client asset account with a third party, an investment firm shall enter into an agreement (in these Regulations to be known as a “Funds Facilities Letter”) and the terms of such Funds Facilities Letter shall be that:

- (a) the parties acknowledge that the client funds in the client asset account are held by the investment firm in trust for the relevant clients;
- (b) the third party shall hold and record the client funds in the client asset account separate from the investment firm’s own funds and the funds of the third party;
- (c) the third party will designate the name of the client asset account in its records in such a way as to make it clear that the client funds do not belong to the investment firm;
- (d) the third party is not entitled to combine the client asset account with any other account and the third party is not entitled to exercise any right of set-off or counterclaim against client funds in that client asset account in respect of any sum owed to it by any person, including any other account of the investment firm;
- (e) the third party will provide the investment firm with a statement as often as is required to enable the investment firm comply with Regulations 5(1) to 5(2) and such statement shall specify all client funds held by the third party for the investment firm; and
- (f) the third party will not make withdrawals from the client asset account other than by instruction received from an authorised person of the investment firm.

(5) In advance of opening a client asset account with a third party, an investment firm shall enter into an agreement (in these Regulations to be known as a

“Financial Instruments Facilities Letter”) and the terms of such Financial Instruments Facilities Letter shall be that:

- (a) the parties acknowledge that client financial instruments in the client asset account are held by the investment firm in trust for the relevant clients;
 - (b) the third party shall hold and record client financial instruments separate from the investment firm’s financial instruments and financial instruments of the third party;
 - (c) the third party will designate the name of the client asset account in its records in such a way as to make it clear that the client financial instruments do not belong to the investment firm;
 - (d) the third party is not entitled to combine the client asset account with any other account or to exercise any right of set-off or counterclaim against client financial instruments in that client asset account in respect of any sum owed to it by any person, except:
 - (i) to the extent of any charges relating to the administration or safekeeping of that client’s financial instruments, or
 - (ii) where that client of the investment firm has failed to settle a transaction by its due settlement date;
 - (e) the third party will specify what the arrangements will be for registering client financial instruments if they will not be registered in the client’s name;
 - (f) the third party will not make withdrawals from the client asset account other than by instruction from an authorised person of the investment firm;
 - (g) the third party may only claim a lien or security interest over a client’s financial instruments:
 - (i) to the extent of any charges relating to the administration or safekeeping of that client’s financial instruments, or
 - (ii) where that client has failed to settle a transaction by its due settlement date; and
 - (h) the third party will provide the investment firm with a statement or similar document as often as is required to enable the investment firm to comply with Regulation 5(3) and such statement shall specify all client financial instruments held and a description and the amount of all client financial instruments held in the client asset accounts.
- (6) An investment firm shall:

- (a) arrange for a review of every Funds Facilities Letter and Financial Instruments Facilities Letter, where applicable, by the Head of Client Asset Oversight to ensure that every such letter adheres to the requirements in Regulations 4(4) or 4(5) (as the case may be);
- (b) retain evidence of the review provided for in paragraph (a) for 6 years; and
- (c) retain every Funds Facilities Letter and Financial Instruments Letter between the investment firm and a third party for 6 years.

(7) On commencement of these Regulations, an investment firm shall review existing client asset accounts and shall ensure that the requirements in Regulations 4(4), 4(5) and 4(6) are complied with for those accounts within 3 months of the commencement of these Regulations.

(8) Prior to, or within 3 working days of the initial deposit of client assets in a client asset account, an investment firm shall obtain, in writing from the third party:

- (a) confirmation of the details of the client asset account, including the account number; and
- (b) confirmation that the conditions applicable to the client asset account are as documented in the Funds Facilities Letter or Financial Instruments Facilities Letter, as the case may be.

(9) An investment firm shall without delay, obtain confirmation in writing, from the third party with whom the client asset account was opened, when a client asset account is closed and confirmation that it had a nil balance on the date it was closed.

Treatment of Client Financial Instruments

(10) An investment firm shall hold every client financial instrument in a place and a manner that, clearly and at all times, identifies it as a client financial instrument and distinguishes it from any financial instrument that the investment firm may hold that is not a client financial instrument.

(11) An investment firm shall hold documents of title to client financial instruments:

- (a) itself, or
- (b) with a nominee company of an investment firm, or
- (c) with a relevant party or an eligible custodian in a safe custody account designated as a client asset account subject to the investment firm maintaining the capacity to effect transactions on the account in question.

(12) An investment firm shall have procedures to record client financial instruments, including procedures to receive, hold and withdraw physical financial instruments and such procedures shall enable the effective monitoring of the movement of such client financial instruments.

(13) The procedures referred to in Regulation 4(12) shall be included in the investment firm's client asset management plan.

(14) Where an investment firm deposits client funds it holds on behalf of a client with a qualifying money market fund, the units in that money market fund shall be held in accordance with the requirements for holding financial instruments belonging to clients.

Registration of Client Financial Instruments

(15) An investment firm shall arrange for the registration of client financial instruments in the name of the client save where the client has given prior written consent for the registration of the client's financial instruments in the name of:

- (a) an eligible nominee which is:
 - (i) a person nominated in writing by the client who is not a related party to the investment firm;
 - (ii) a nominee company of an investment firm;
 - (iii) a nominee company of an exchange which is a regulated market;
 - (iv) a nominee company of a relevant party or eligible custodian; or
- (b) an eligible custodian or relevant party outside the State or the EEA, but only where it is not feasible to do otherwise due to the nature of the law or market practice of the relevant jurisdiction outside the State or the EEA.

Collateral Margined Transactions

(16) With respect to collateral margined transactions, an investment firm, in advance of depositing collateral with, or pledging, charging or granting a security arrangement over the collateral to, an eligible credit institution, relevant party or eligible custodian, shall:

- (a) notify the eligible credit institution, relevant party or eligible custodian that the investment firm:
 - (i) is under an obligation to keep this collateral separate from the investment firm's collateral; and
 - (ii) that the eligible credit institution, relevant party or eligible custodian must not claim any lien or right of retention or sale over the collateral except to cover the obligations to the eligible credit

institution, relevant party or eligible custodian which gave rise to that deposit, pledge, charge or security arrangement or any charges relating to the administration or safekeeping of the collateral;

- (b) instruct the eligible credit institution, relevant party or eligible custodian that:
 - (i) the value of the collateral passed by the investment firm on behalf of clients must be credited to the investment firm's client asset account with that party;
 - (ii) in the case that the collateral has been passed and the initial margin has been liquidated to satisfy margin requirements, the balance of the sale proceeds must be immediately paid into a client asset account; and
 - (iii) in the case that the collateral is passed to an exchange or clearing house, the sale proceeds must be dealt with in accordance with the rules of the relevant exchange or clearing house;
- (c) ensure that a client's fully paid (non-collateral) financial instruments account and its margin financial instruments account will be held in separate accounts and that no right of set-off will apply.

Reconciliation

5. (1) In relation to client asset accounts which hold client funds, an investment firm shall reconcile daily, the balance of all client funds held, as recorded by the investment firm with the balance of all client funds held, as recorded by third parties as set out in a statement or other form of confirmation from the third party and such reconciliation shall be carried out by the end of the working day immediately following the working day to which the reconciliation relates.

(2) Without prejudice to Regulation 5(1), an investment firm shall reconcile fixed term deposit accounts, at least monthly, the balance of all client funds held, as recorded by the investment firm with the balance of all client funds held, as recorded by third parties as set out in a statement or other form of confirmation from the third party and such a reconciliation shall be carried out within 3 working days of the date to which the reconciliation relates.

(3) An investment firm shall reconcile, at least monthly, the balance of client financial instruments held, as recorded by the investment firm, with the balance of all client financial instruments held, as recorded by third parties as set out in a statement or other form of confirmation from the third party, and such a reconciliation shall be carried out within 10 working days of the date to which the reconciliation relates.

(4) An investment firm shall ensure that the quantity and type of client financial instruments held by the investment firm or nominee, are the same quantity and type as those which the investment firm should be holding on behalf of the clients.

(5) An investment firm shall keep a record of:

- (a) each reconciliation required by these Regulations;
- (b) the information upon which the reconciliation is based;
- (c) the person who carried out such reconciliation; and
- (d) the person who reviewed such reconciliation.

(6) Each reconciliation shall be carried out by a person who is independent of the production and maintenance of the records used for the purpose of carrying out the reconciliation.

(7) Each reconciliation shall be reviewed by a person who is independent of the person who carried out the reconciliation and of the person who produced and maintained the records used for the purpose of carrying out the reconciliation.

(8) If an investment firm outsources the performance of the reconciliation to a third party, the investment firm shall take reasonable steps to ensure that the third party has appropriate processes, systems and controls in place to ensure continuity in the effective performance of the outsourced activity.

(9) An investment firm shall inform the Bank when the investment firm has failed to carry out any reconciliation referred to in Regulations 5(1), 5(2) and 5(3) together with the reasons for such a failure. The investment firm shall provide this information to the Bank without delay, and in any event within one working day of the date on which the reconciliation should have been performed.

(10) An investment firm shall:

- (a) investigate within one working day the cause of any reconciliation difference in the reconciliation required pursuant to Regulations 5(1), 5(2) and 5(3);
- (b) identify the cause of any such reconciliation difference identified in Regulation 5(10)(a) within 5 working days; and
- (c) resolve any reconciliation difference identified in Regulation 5(10)(b) as soon as practicable.

(11) Without prejudice to Regulation 3(25), an investment firm shall report such matters pertaining to these Regulations as may be determined by the Bank from time to time.

Daily Calculation

6. (1) An investment firm shall, each working day, ensure that its client money resource as at the close of business on the previous day is equal to its client money requirement.

(2) For the purposes of Regulation 6(1), an investment firm shall use values in its own accounting records which may have been reconciled with statements from credit institutions or other third parties rather than values contained in statements received from credit institutions or other third parties.

(3) In the event of a shortfall of client funds, an investment firm shall deposit into a client asset account, without delay and in any event within one working day from the date to which the calculation relates, such money from the investment firm's own assets as is necessary to ensure that its client money resource is equal to its client money requirement.

(4) In the event of an excess of client funds, an investment firm shall withdraw from a client asset account, without delay and in any event within one working day from the date to which the calculation relates, such money from a client asset account as is necessary to ensure that its client money resource is equal to its client money requirement.

(5) Without prejudice to Regulation 3(25), an investment firm shall report such matters pertaining to these Regulations as may be determined by the Bank from time to time.

(6) An investment firm shall keep a record of:

- (a) each calculation required by these Regulations;
- (b) the information upon which the daily calculation is based;
- (c) the person who carried out such calculation; and
- (d) the person who reviewed such calculation.

(7) The daily calculation shall be carried out by a person who is independent of the production and maintenance of the records used for the purpose of carrying out the daily calculation.

(8) The daily calculation shall be reviewed by a person who is independent of the person who carried out the daily calculation and of the person who produced and maintained the records used for the purpose of carrying out the calculation.

(9) If an investment firm outsources the performance of the daily calculation to a third party, the investment firm shall take reasonable steps to ensure that the third party has appropriate processes, systems and controls in place to ensure continuity in the effective performance of the outsourced activity.

(10) An investment firm shall inform the Bank when the investment firm has failed to carry out the daily calculation referred to in Regulation 6(1) together with the reasons for such a failure. The investment firm shall provide this information to the Bank without delay and in any event within one working day of the date on which the calculation should have been performed.

Client Disclosure and Consent***Disclosure of information by an investment firm to its clients***

7. (1) An investment firm shall ensure that any information provided to its clients shall:

- (a) be clear and concise and that key information shall be brought to the attention of the client;
- (b) be maintained up to date;
- (c) not disguise, diminish or obscure important information.

Information to be provided to clients regarding arrangements for holding client assets prior to first receiving client assets.

(2) Prior to first receiving client assets an investment firm shall:

- (a) disclose to clients in writing its arrangements relating to the receipt of client funds;
- (b) provide to clients a statement detailing its exchange rate policy, if applicable, in its terms of business or investment agreement as appropriate; and
- (c) disclose to clients in writing, in its terms of business or investment agreement, as appropriate, whether interest is payable in respect of the client's funds and the terms on which such interest is payable.

(3) Where applicable, prior to first receiving client assets or first receiving collateral from clients, an investment firm shall notify the client in writing, of the arrangements in relation to:

- (a) the registration of client financial instruments and collateral if these are not to be registered in the client's name;
- (b) claiming and receiving dividends, interest payments and other rights accruing to the client;
- (c) the exercise of conversion and subscription rights;
- (d) dealing with take-overs and capital re-organisations; and
- (e) the exercise of voting rights.

(4) Where client assets are to be held in a pooled account, prior to first receiving client assets an investment firm shall explain to the client in writing the nature of a pooled account and the risks of client assets being held in a pooled account.

Information to be provided to clients in respect of any third party that holds client assets for the investment firm prior to first receiving client assets

(5) Prior to first receiving client assets, an investment firm shall inform the client in writing of the following information:

- (a) the trading name, registered address and internet address of any third party with whom the client assets are to be held;
- (b) if the third party is a related party, the trading name, registered address and internet address of that related party;
- (c) the extent of the investment firm's liability in the event of default of the third party with whom the client assets are held;
- (d) the measures taken by the investment firm to ensure the protection of client assets;
- (e) any relevant investor compensation scheme applicable to the investment firm by virtue of its activities carried out in the State.

(6) Where an investment firm has considered the factors set out in Regulation 3(17) and where it is not possible under the law of the jurisdiction in which client financial instruments are held with a third party to be held in a manner in which they can be separately identifiable from the proprietary financial instruments of the third party or the investment firm, the investment firm shall:

- (a) inform the client in writing of this fact; and
- (b) provide a warning in writing of the risks arising.

Information to be provided if an investment firm has any Security Interest on Client Assets

(7) Prior to first receiving any client assets, an investment firm shall inform the client in writing of:

- (a) the terms of any security interest or lien which the investment firm may have over the client's assets;
- (b) any right of set-off the investment firm holds in relation to those client assets; and
- (c) where applicable, the fact that a depository may have a security interest or lien over, or right of set-off in relation to, those client assets.

Information to be Provided to Clients where Assets are Held in Another Jurisdiction

(8) Prior to depositing client assets outside of the State or the EEA, the investment firm shall provide a statement in writing to the client, before taking

any action in relation to the client assets concerned, which contains the following information:

- (a) that the client assets will be subject to the law of a jurisdiction other than the State or the EEA;
- (b) that the legal and regulatory regime applying to the central bank, qualifying money market fund, eligible credit institution, relevant party or eligible custodian with whom the client asset account is held may be different to that of the State or the EEA and that the rights of the client relating to those client assets may differ accordingly; and
- (c) that in the event of a default of such an institution those assets may be treated differently from the position which would apply if the assets were held in a central bank, qualifying money market fund, eligible credit institution, relevant party or eligible custodian in the State or the EEA.

Information to be provided to clients regarding collateral arrangements

(9) In the case of collateral margined transactions, before an investment firm deposits collateral with, pledges, charges or grants a security arrangement over the collateral to, an eligible credit institution, relevant party or eligible custodian, it shall notify the client in writing:

- (a) that the collateral will not be registered in the client's name if this is the case;
- (b) of the procedure which will apply in the event of the client's default, where the proceeds of sale of the collateral exceed the amount owed by the client to the investment firm.

(10) Without prejudice to any other provision in these Regulations requiring the consent of a client, an investment firm shall obtain the prior written consent of the client in the case of collateral margined transactions:

- (i) before an investment firm deposits collateral with, pledges, charges or grants a security arrangement over the collateral to, an eligible credit institution, relevant party or eligible custodian, or
- (ii) where it proposes to return to the client collateral other than the original collateral or original type of collateral.

(11) Prior to entering into the following arrangement, an investment firm shall clearly explain to its clients the circumstances in which the investment firm shall use a client's financial instruments in this manner and shall not:

- (a) use collateral in the form of a client's financial instruments as security for the investment firm's own obligations, without the prior written consent of the client,

- (b) use collateral in the form of a client's funds as security for the investment firm's own obligations, without the prior written consent of the client, or
- (c) use one client's collateral as security for the obligations of another client or another person, unless legally enforceable agreements to do so are in place.

Information to be Provided to Clients regarding Securities Collateral

(12) Without prejudice to the generality of Regulation 3(5), an investment firm shall not enter into arrangements for securities financing transactions in respect of client financial instruments held by the investment firm on behalf of a client, or otherwise use such client financial instruments for its own account or the account of another client of the investment firm, unless the following conditions are met:

- (a) the client must have given prior written consent to the use of the client financial instruments on specified terms;
- (b) the use of the client's financial instruments is restricted to the specified terms to which the client consents;
- (c) the investment firm has received written confirmation from the client, of either the counterparty credit ratings acceptable to the client or that the client does not wish to specify such rating; and
- (d) the investment firm ensures that:
 - (i) collateral is provided by the borrower in favour of that client,
 - (ii) the current realisable value of the client financial instrument and of the collateral is monitored daily, and
 - (iii) where the current realisable value of the collateral falls below that of the client financial instruments concerned, the investment firm has arrangements in place to provide further collateral to make up the difference.

(13) An investment firm shall not:

- (a) enter into arrangements for securities financing transactions in respect of client financial instruments which are held on behalf of a client in a pooled account; or
- (b) use client financial instruments held in such a client asset account for the investment firm's own account or the account of another client;

unless in addition to the conditions set out in Regulation 7(12)(a) at least one of the following conditions is met:

- (i) each client whose client financial instruments are held together in a pooled account must have given prior written consent in accordance with Regulation 7(12)(a);
- (ii) the investment firm must have in place systems and controls which ensure that only client financial instruments belonging to clients who have given prior written consent in accordance with Regulation 7(12)(a) are so used.

(14) Prior to entering into securities financing transactions in relation to client financial instruments held by the investment firm on behalf of a client or using client financial instruments for its own account or for the account of another client, an investment firm shall, before the use of those client financial instruments, provide to the client a statement, in a durable medium, containing the following information:

- (a) the obligations and responsibilities of the investment firm with respect to the use of those client financial instruments;
- (b) the terms for their restitution;
- (c) the risks involved.

Information to be Provided to a Client in an Annual Statement

(15) An investment firm shall, at least annually, send to each client for whom it holds client assets, a written statement in a durable medium and such a statement shall cover the following information:

- (a) details of all the client financial instruments held by the investment firm for the client at the end of the period covered by the statement;
- (b) the extent to which any client assets have been the subject of securities financing transactions;
- (c) the extent of any benefit that has accrued to the client by virtue of participation in any securities financing transactions and the basis on which that benefit has accrued;
- (d) the amounts of cash balances (which may be shown on a separate statement) held by the investment firm as of the statement date;
- (e) identification of those client financial instruments registered in the client's name which are held in custody by, or on behalf of, the investment firm separately from those registered in any other name; and
- (f) the market value of any collateral held as at the date of the statement.

Client Consent

(16) Where applicable, prior to first receiving client assets and without prejudice to any other provision in these Regulations requiring the consent of a client,

an investment firm shall obtain the consent in writing of the client in any of the following circumstances:

- (a) where granting to any third party a lien, security interest and/or right of set-off over the client's assets;
- (b) with respect to the arrangements for the giving and receiving of instructions by, or on behalf of, the client and any limitations to that authority, in respect of the provision of safe keeping services which it provides;
- (c) where client assets are passed to a third party outside the State or the EEA;
- (d) where a client instructs an investment firm to deposit client assets with a specific third party that does not meet the investment firm's internal risk assessment;
- (e) when client assets are to be held in a pooled account;
- (f) where interest earned on client funds is to be retained by the investment firm; and
- (g) where client financial instruments are to be deposited with a third party in a third country that does not regulate the holding and safe keeping of client financial instruments.

(17) On commencement of these Regulations, an investment firm shall review the consents relating to each existing client as of the date of such commencement and shall ensure that consents are obtained for the circumstances outlined in Regulation 7(16) in respect of those accounts within 3 months of the commencement of these Regulations.

Client Assets Key Information Document

(18) Prior to a retail client signing a terms of business or investment agreement as appropriate to open an account with an investment firm, an investment firm shall provide the retail client with a Client Assets Key Information Document and ensure that the document shall be:

- (a) written in a language and a style that is clear, succinct and comprehensible;
- (b) a separate and stand-alone document to any other document;
- (c) accurate and relevant; and
- (d) provided in a durable medium.

(19) The Client Assets Key Information Document shall cover:

- (a) an explanation of the key features of these Regulations;

- (b) an explanation of what constitutes client assets under these Regulations;
- (c) the circumstances in which these Regulations apply and do not apply;
- (d) an explanation of the circumstances in which the investment firm will hold client assets itself, hold client assets with a third party and hold client assets in another jurisdiction; and
- (e) the arrangements applying to the holding of client assets and the relevant risks associated with these arrangements.

(20) An investment firm shall, within 3 months of the commencement of these Regulations, make available to each existing retail client as of the date of such commencement, the Client Assets Key Information Document as outlined in Regulation 7(19).

(21) An investment firm shall:

- (a) review, at least annually, the content of the Client Assets Key Information Document, which has been provided to all retail clients; and
- (b) ensure that the information contained therein is accurate and relevant having regard to Regulation 7(19).

(22) An investment firm shall inform all retail clients of any material changes to the Client Assets Key Information Document in a durable medium within one month of such changes having been issued.

Risk Management

8. (1) An investment firm shall have an individual with a client asset oversight role in order to ensure the safeguarding of client assets (in these Regulations referred to as the “Head of Client Asset Oversight”) and shall ensure that the Head of Client Asset Oversight shall perform relevant duties including but not limited to the following:

- (a) ensuring that the client asset management plan referred to in Regulation 8(3) is produced, maintained, reviewed and updated as the information upon which the client asset management plan is based, changes;
- (b) ensuring that any potential or actual breaches of these Regulations are reported in writing to the board of the investment firm in the case of a company or to each of the partners in the case of a partnership;
- (c) ensuring that the Bank is notified of any breaches of these Regulations without delay;
- (d) approving any returns that are required by these Regulations to be submitted to the Bank in relation to client assets;

- (e) report in writing to the board of the investment firm in the case of a company or to each of the partners in the case of a partnership in respect of any issues raised by the internal and external auditors in relation to client assets;
- (f) ensuring that the persons performing the daily calculations as required under Regulation 6(1) and the reconciliations required under Regulations 5(1) to 5(3) are adequately trained and have sufficient skill and expertise to perform those functions;
- (g) undertaking an assessment of risks to client assets arising from the investment firm's business model;
- (h) ensuring that the Client Asset Examination as required by Regulation 9 is completed and the assurance report is submitted within the agreed time;
- (i) ensuring that every Funds Facilities Letter and Financial Instruments Facilities Letter is obtained and maintained;
- (j) reviewing at least on an annual basis the provisions of every Funds Facilities Letter and Financial Instruments Letter to ensure its compliance with these Regulations; and
- (k) performing the duties specified in Regulations 3(15) and 3(18).

(2) An investment firm shall ensure that the Head of Client Asset Oversight shall have the necessary resources, including staff that are adequately trained with sufficient skill and expertise, to carry out the responsibilities listed in Regulation 8(1) having regard to the nature, scale and complexity of the business of the entity.

(3) An investment firm shall have a client asset management plan in order to safeguard client assets and shall have produced the plan within 3 months of the commencement of these Regulations.

(4) A client asset management plan shall be reviewed:

- (a) at least once a year; and
- (b) if there is any change to the investment firm's business model which affects the manner by which client assets are held;

in order to ensure that the information contained therein is accurate and a record shall be maintained of such reviews and such record shall be preserved for 6 years.

(5) An investment firm shall approve the client asset management plan on an annual basis or sooner if there is any change to the investment firm's business model which affects the manner by which client assets are held.

- (6) The client asset management plan shall record, the following:
- (a) details of an investment firm's business model, operational structures and governance arrangements;
 - (b) the range and type of client assets held by an investment firm;
 - (c) the range of investment services carried out;
 - (d) risks to the safeguarding of client assets;
 - (e) processes and controls to mitigate those risks; and
 - (f) information to facilitate the distribution of client assets, particularly in the event of an investment firm's insolvency.

Client Asset Examination

9. (1) An investment firm shall arrange for an external auditor to prepare a report (in these Regulations referred to as an "assurance report") in relation to that investment firm's safeguarding of client assets at least on an annual basis and shall ensure that the external auditor appointed for this purpose receives full cooperation in a timely manner in relation to the preparation of the assurance report.

(2) The investment firm shall ensure that such an external auditor has the necessary resources and skills relating to the business of the investment firm.

(3) The investment firm shall ensure that the external auditor provides an assurance report as to whether:

- (a) the investment firm has maintained processes and systems adequate to meet the requirements of these Regulations throughout the period of the examination;
- (b) the investment firm was compliant with the Regulations as at the period end date;
- (c) any matter has come to the attention of the auditor to suggest that the investment firm has acted in a manner which is not consistent with that documented within the client asset management plan which has been in operation throughout the period to which the examination relates; and
- (d) changes made to the client asset management plan since the date of the last report have been drafted in sufficient detail to meet the requirements of these Regulations capturing the risks faced by the entity in holding client assets given the nature and complexity of the business of the entity under examination up to the date of the current report.

(4) The investment firm shall:

- (i) ensure that the external auditor provides the assurance report to the investment firm in a timely manner; and
- (ii) provide the assurance report to the Bank not later than 4 months after each year end.

(5) The investment firm shall assess the findings of such a report.

(6) The investment firm shall ensure that any remedial actions necessary arising from the report is set out in writing and that such remedial actions are carried out without delay.

(7) If an investment firm, which is permitted to hold client assets, claims not to have held client assets for the period in question, the investment firm shall:

- (a) arrange that an external auditor shall perform such procedures as the auditor deems appropriate to enable the auditor to determine whether anything has come to its attention that causes the auditor to believe that the investment firm held client assets during that period;
- (b) shall ensure that the external auditor provides this report to the investment firm in a timely manner; and
- (c) provide the report to the Bank not later than 4 months after each year end.

10. The Client Asset Requirements 2007 are revoked on the coming into operation of these Regulations.

11. The revocation of the Client Asset Requirements 2007 by these Regulations-

- (a) does not affect any investigation undertaken, or disciplinary or enforcement action undertaken by the Bank or any other person, in respect of any matter in existence at, or before, the time of the revocation, and
- (b) does not preclude the taking of any legal proceedings, or undertaking of any investigation, or disciplinary or enforcement action by the Bank or any other person, in respect of any contravention of an enactment (including anything revoked by these Regulations) or any misconduct which may have been committed before the time of the revocation.

12. These Regulations come into operation on 1 October 2015.

Signed for and on behalf of the CENTRAL BANK OF IRELAND
25 March 2015.

CYRIL ROUX,
Deputy Governor (Financial Regulation).

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations set rules for the safeguarding of client assets in investment firms.

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