



STATUTORY INSTRUMENTS.

**S.I. No. 60 of 2017**



CENTRAL BANK (SUPERVISION AND ENFORCEMENT) ACT 2013  
(SECTION 48(1)) (INVESTMENT FIRMS) REGULATIONS 2017

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(SECTION 48(1)) (INVESTMENT FIRMS) REGULATIONS 2017

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S.I. No. 60 of 2017

CENTRAL BANK (SUPERVISION AND ENFORCEMENT) ACT 2013  
(SECTION 48(1)) (INVESTMENT FIRMS) REGULATIONS 2017

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 (No. 26 of 2013) (the “Act”), the Bank, having consulted the Minister for Finance and the Minister for Jobs, Enterprise and Innovation in accordance with section 49(1) of the Act, hereby makes the following regulations:

PART 1

PRELIMINARY AND GENERAL

*Citation*

1. (1) These Regulations may be cited as the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Investment Firms) Regulations 2017.

*Interpretation*

2. (1) In these Regulations—

“administration services” means services pertaining to the administration of an investment fund including, but not limited to, the following:

- (a) the performance of valuation services;
- (b) fund accounting services;
- (c) acting as a transfer agent or a registration agent for an investment fund;

“AIF” has the same meaning as is assigned to an “alternative investment fund” in Regulation 5(1) of the European Union (Alternative Investment Fund Managers) Regulations 2013 (S.I. 257 of 2013);

“applicable accounting framework” means the accounting standards to which the investment business firm is subject;

“Bank” means the Central Bank of Ireland;

“calendar month end” means the last day of the month;

“calendar quarter end” means the following in any year:

- (a) 31 March;
- (b) 30 June;

*Notice of the making of this Statutory Instrument was published in  
“Iris Oifigiúil” of 7th March, 2017.*

(c) 30 September;

(d) 31 December;

“chain outsourcing” means outsourcing where the outsourcing service provider subcontracts elements of the outsourced administration services to a subcontractor and “chain outsourced” shall be construed accordingly;

“client assets” has the same meaning as it has in Regulation 2 of the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) Client Asset Regulations 2015 (S.I. No. 104 of 2015);

“collateral margined transaction” means a transaction effected by an investment business firm for a client relating to an investment instrument under the terms of which the client will, or may, be liable to make a deposit of cash or give collateral, either at the outset or subsequently, in order 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 of the client’s position with such investment instruments;

“CRD Regulations” means the European Union (Capital Requirements) Regulations 2014 (S.I. No. 158 of 2014);

“Capital Requirement Regulation” means Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012<sup>1</sup>;

“deferred tax assets” has the same meaning as under the applicable accounting framework;

“deferred tax liabilities” has the same meaning as under the applicable accounting framework;

“director” with respect to an investment business firm has the meaning assigned to it in section 2(1) of the Investment Intermediaries Act 1995 (No. 11 of 1995);

“distributions” means the payment of dividends or interest in any form;

“final NAV” means a net asset value calculated for the purposes of dealing in an investment fund, provided to investors, published or otherwise released to the market by the fund administrator or its outsourcing service provider;

“financial accounts” means annual audited accounts and management accounts for the purposes of financial control and management information;

“financial sector entity” has the meaning assigned to it in point (27) of Article 4(1) of the Capital Requirement Regulation;

<sup>1</sup>OJ No. L176, 27.06.2013, p.1

“fund administrator” means an investment business firm which has been authorised by the Bank and appointed to provide administration services to investment funds;

“group” means the group of persons of which an investment firm forms a part, which also includes—

- (a) in relation to a MiFID investment firm, persons referred to in the definition of “group” in Regulation 3(1) of the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007), and
- (b) in relation to an investment business firm, persons referred to in the definition of “associated undertaking” or “related undertakings”, or both, in section 2(1) of the Investment Intermediaries Act 1995;

“intangible assets” has the same meaning as under the applicable accounting framework;

“investment advice” has the same meaning as it has in section 2(1) of the Investment Intermediaries Act 1995;

“investment business firm” means a person authorised by the Bank pursuant to section 10 of the Investment Intermediaries Act 1995 but shall not include the following:

- (a) a restricted activity investment product intermediary within the meaning of section 2(1) of the Investment Intermediaries Act 1995;
- (b) an investment business firm authorised under the Investment Intermediaries Act 1995 who satisfies all of the following:
  - (i) its authorisation is limited to the provision of the investment business service specified in section 26(1)(a)(i) of the Investment Intermediaries Act 1995 or the provision of investment advice in relation to that investment business service;
  - (ii) its authorisation permits it to transmit orders to a person, or class of persons, not specified in section 26(1A) of the Investment Intermediaries Act 1995;
- (c) a person so authorised but only to carry out custodial operations involving the safekeeping and administration of investment instruments;
- (d) a certified person within the meaning of section 55 of the Investment Intermediaries Act 1995;

“investment firm” means—

- (a) a MiFID investment firm, or

(b) an investment business firm;

“investment fund” means a UCITS or an AIF or a sub-fund of a UCITS or AIF;

“investment management agreement” means a written agreement in which the respective responsibilities of the investment business firm and its discretionary clients are set down;

“investment service 1” means the investment service referred to in subparagraph (1) in Part 1 of Schedule 1 to the European Communities (Markets in Financial Instruments) Regulations 2007;

“investment service 2” means the investment service referred to in subparagraph (2) in Part 1 of Schedule 1 to the European Communities (Markets in Financial Instruments) Regulations 2007;

“investment service 3” means the investment service referred to in subparagraph (3) in Part 1 of Schedule 1 to the European Communities (Markets in Financial Instruments) Regulations 2007;

“investment service 4” means the investment service referred to in subparagraph (4) in Part 1 of Schedule 1 to the European Communities (Markets in Financial Instruments) Regulations 2007;

“investment service 5” means the investment service referred to in subparagraph (5) in Part 1 of Schedule 1 to the European Communities (Markets in Financial Instruments) Regulations 2007;

“investment service 6” means the investment service referred to in subparagraph (6) in Part 1 of Schedule 1 to the European Communities (Markets in Financial Instruments) Regulations 2007;

“investor money” has the same meaning as it has in Regulation 2 of the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) Investor Money Regulations 2015 for Fund Service Providers (S.I. No. 105 of 2015);

“margin” is the amount of cash or collateral which a person is required to deposit at any time as security for an investment position;

“MiFID investment firm” means a firm authorised or deemed authorised pursuant to Regulation 11 or 6(2), respectively, of the European Communities (Markets in Financial Instruments) Regulations 2007;

“NAV” means net asset value;

“officer” in relation to an investment firm, has the meaning assigned to it in section 2(1) of the Investment Intermediaries Act 1995;

“Online Reporting System” means the web-based application through which persons submit regulatory information to the Bank;

“outsourcing” means an arrangement of any form between a fund administrator and an outsourcing service provider by which the outsourcing service provider performs administration services which would otherwise be undertaken by the fund administrator itself and “outsourced” shall be construed accordingly;

“outsourcing service provider” means the provider of administration services where those services have been outsourced and may include other fund administrators or persons within the fund administrator’s group;

“profit” has the same meaning as under the applicable accounting framework;

“reporting half year end” means 6 months after the reporting year end in any year;

“reporting year end” means the end of the financial reporting year in any year;

“retained earnings” means profits and losses brought forward as a result of the final application of profit or loss under the applicable accounting framework;

“senior management” means the persons who effectively run the business of the fund administrator including, but not limited to, the following:

- (a) the fund administrator’s board of directors (or equivalent in the case of a partnership or other unincorporated body of persons);
- (b) irrespective of the title provided to the role, persons within the fund administrator responsible for—
  - (i) core management functions,
  - (ii) high level decision making, or
  - (iii) implementing the strategies devised and policies approved by the board of the fund administrator;
- (c) persons appointed to perform a pre-approval controlled function as defined in section 18 of the Central Bank Reform Act 2010 (No. 23 of 2010);

“share premium account” has the same meaning as under the applicable accounting framework;

“subcontractor” means a person that carries out part or all of an existing outsourcing arrangement for an outsourcing service provider;

“supervisory and regulatory requirements” means any condition or requirement imposed on an investment firm by, or by virtue of, financial services legislation;

“terms of business” means the document in which the respective responsibilities of the investment business firm and its clients are set down in circumstances where the investment business firm has no discretion to deal outside a client’s instructions;

“trading book” has the same meaning assigned to it in point (86) of Article 4(1) of the Capital Requirement Regulation;

“transaction” means—

- (a) the purchase or sale by an investment business firm of an investment instrument,
- (b) the subscription for an investment instrument,
- (c) the underwriting of an investment instrument, or
- (d) the placing or withdrawal of a deposit;

“UCITS” has the same meaning as it has in Regulation 4(3) of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (S.I. No. 352 of 2011).

(2) References in these Regulations to books, data, records or other documents, or to any of them, shall be construed as including any document or information kept in a non-legible form (whether stored electronically or otherwise) which is capable of being reproduced in a legible form, or aurally where relevant, and all the electronic or other automated means, if any, by which such document or information is so capable of being reproduced and to which the firm has access.

(3) A word or expression used in these Regulations or the description or explanation of a matter set out in these Regulations has, unless the contrary intention appears, the same meaning, description or explanation in these Regulations that it has in the Investment Intermediaries Act 1995 or the European Communities (Markets in Financial Instruments) Regulations 2007.

*Scope and application*

3. Save where the context provides otherwise—

- (a) MiFID investment firms are subject to the requirements in Part 2,
- (b) investment business firms who are not fund administrators are subject to the requirements in Parts 2 and 3, and
- (c) fund administrators are subject to the requirements in Parts 2 to 5.

## PART 2

GENERAL SUPERVISORY REQUIREMENTS FOR INVESTMENT  
FIRMS

## Chapter 1

*General Requirements**Relationship with the Bank*

4. (1) An investment firm shall consult the Bank before—
- (a) engaging in any new area of business or field of activity,
  - (b) establishing any branch, office or subsidiary, or
  - (c) introducing material changes to the investment firm's operating model.
- (2) An investment firm shall notify the Bank, in writing, as soon as it becomes aware of any of the following:
- (a) a breach by the investment firm of—
    - (i) these Regulations,
    - (ii) supervisory and regulatory requirements, and
    - (iii) any other enactment or legal instrument which may reasonably be considered to be of prudential concern to the Bank or which may impact on the reputation or good standing of the investment firm;
  - (b) any situation or event which impacts, or potentially impacts, on the investment firm to a significant extent;
  - (c) the commencement of any legal proceedings by, or against, the investment firm;
  - (d) the initiation of any criminal prosecution against—
    - (i) the investment firm, or
    - (ii) any officer or employee of the investment firm for offences relating to money laundering, terrorist financing, fraud, misrepresentation, dishonesty or breach of trust;
  - (e) a visit to the investment firm by—
    - (i) any regulatory, professional, statutory or law enforcement authority or body operating in the State, or

- (ii) an authority in any other jurisdiction that performs a function similar to the functions performed by the Bank;
  - (f) the imposition on the investment firm of any sanction, fine, penalty or other administrative measure by any of the authorities or bodies referred to in subparagraph (e).
- (3) An investment firm shall—
- (a) not change its name without the prior written approval of the Bank,
  - (b) notify the Bank within 5 working days, in writing, of any change to the investment firm's registered office address, postal address, telephone number or email address, and
  - (c) state on its headed paper that it is regulated by the Bank.
- (4) An investment firm shall not provide the Bank, in purported compliance with supervisory and regulatory requirements, with information which it knows or ought reasonably to know to be false or misleading in a material respect.

*Acquisition and disposal of assets*

5. (1) Subject to paragraph (2), an investment firm shall notify the Bank, in writing, before any direct or indirect acquisition, or disposal, by it of shares or other interest in any other undertaking or business.

(2) Paragraph (1) does not apply to a MiFID investment firm acquiring shares or other interest to be held, or disposing of shares or other interest held, by it in any undertaking or business where these are for the purpose of trading book activities.

*Internal audit requirements*

6. Where an internal audit function exists within an investment firm, or within a group of which the investment firm is a member, the investment firm shall provide the Bank, as soon as practicable, with a copy of any internal audit report which refers to the investment firm.

*Change in auditor*

7. An investment firm shall—
- (a) notify the Bank prior to any proposed or anticipated change of its auditor, and
  - (b) include the reasons for the proposed or anticipated change in the notification referred to in subparagraph (a).

## Chapter 2

*Reporting Requirements**General reporting requirements for investment firms*

8. (1) In this Regulation “data item” means an account, record, report, return or other information referred to in column 1 of each of the Parts of the Schedule;

(2) A fund administrator shall submit to the Bank all data items specified—

(a) in Part 1 of the Schedule, and

(b) on the Online Reporting System in respect of the fund administrator.

(3) An investment business firm who is not a fund administrator shall submit to the Bank all data items specified—

(a) in Part 2 of the Schedule, and

(b) on the Online Reporting System in respect of the investment business firm.

(4) A MiFID investment firm which is subject to the CRD Regulations and is authorised for investment service 3 or investment service 6 and does not apply Article 96(1) of the Capital Requirement Regulation shall submit to the Bank all data items specified—

(a) in Part 3 of the Schedule, and

(b) on the Online Reporting System in respect of the MiFID investment firm.

(5) A MiFID investment firm which is subject to the CRD Regulations and is authorised for investment service 3 or investment service 6 and applies Article 96(1) of the Capital Requirement Regulation shall submit to the Bank all data items specified—

(a) in Part 4 of the Schedule, and

(b) on the Online Reporting System in respect of the MiFID investment firm.

(6) A MiFID investment firm which is subject to the CRD Regulations but not authorised for investment service 3 or investment service 6 shall submit to the Bank all data items specified—

(a) in Part 5 of the Schedule, and

(b) on the Online Reporting System in respect of the MiFID investment firm.

(7) A MiFID investment firm not subject to the CRD Regulations but authorised for investment service 2 or investment service 4 shall submit to the Bank all data items specified—

- (a) in Part 6 of the Schedule, and
- (b) on the Online Reporting System in respect of the MiFID investment firm.

(8) A MiFID investment firm not subject to the CRD Regulations and authorised only for investment service 1 or investment service 5, or both, shall submit to the Bank all data items specified—

- (a) in Part 7 of the Schedule, and
- (b) on the Online Reporting System in respect of the MiFID investment firm.

(9) An investment firm subject to reporting requirements under these Regulations shall-

- (a) submit data items to the Bank—
  - (i) through the Online Reporting System,
  - (ii) in such form and manner as may be specified on the Online Reporting System from time to time,
  - (iii) as frequently as is specified in column 2 of the applicable Part of the Schedule, and
  - (iv) by—
    - (I) the day specified in column 3 of the applicable Part of the Schedule, or
    - (II) where the day specified in column 3 of the applicable Part of the Schedule is not a working day, the next working day, and
- (b) ensure that data items submitted to the Bank pursuant to this Regulation are—
  - (i) complete, and
  - (ii) in the case of an estimate or a judgement, supported by adequate evidence which evidence includes documents or information—
    - (I) relied upon during the formulation of the estimate or judgement, and

- (II) describing the manner in which the documents or information referred to in subclause (I) were applied or relied upon when formulating the estimate or judgement.

### PART 3

#### ADDITIONAL SUPERVISORY REQUIREMENTS FOR INVESTMENT BUSINESS FIRMS

##### *Organisational requirements — general*

9. (1) An investment business firm shall, at all times, have in place policies, resources and systems to identify, monitor, report on and manage risks to which it is or may be exposed in respect of their activities.

(2) Without prejudice to the generality of paragraph (1), an investment business firm shall have—

- (a) management resources required to conduct its activities in an effective manner,
- (b) financial resources—
  - (i) required to meet its investment business objectives, and
  - (ii) which reflect the risks to which its business is subject,
- (c) control systems and accounting procedures required to ensure that it is in a position to satisfy supervisory and regulatory requirements, and
- (d) robust governance arrangements, which include a clear organisational structure with well defined, transparent and clearly identifiable lines of reporting.

(3) An investment business firm shall have in place accounting policies and procedures that enable the investment business firm to deliver to the Bank, in accordance with the reporting deadlines specified in column 3 of the applicable Part of the Schedule, financial accounts which—

- (a) reflect a true and fair view of the investment business firm's financial position, and
- (b) comply with the applicable accounting framework.

(4) An investment business firm shall have in place a business continuity policy to ensure, in the event of an interruption to its systems and procedures—

- (a) the preservation of essential data and functions or, where that is not possible, the timely recovery of such data and functions, and
- (b) the maintenance of services and activities or, where that is not possible, the timely resumption of such services and activities.

(5) An investment business firm shall carry out, on an annual basis, testing on the effectiveness of the business continuity policy referred to in paragraph (4) in meeting the objectives referred to in paragraphs (4)(a) and (b).

*Organisational requirements: appointment of a compliance officer*

10. (1) An investment business firm shall ensure that a suitably qualified person is appointed to oversee the compliance function of the investment business firm (in this Regulation referred to as the “compliance officer”).

(2) An investment business firm shall ensure that the compliance officer is responsible for the compliance function of the investment business firm, and such function shall include the following tasks:

- (a) overseeing compliance with all supervisory and regulatory requirements;
- (b) reporting in writing, on at least an annual basis, compliance with all supervisory and regulatory requirements to senior management of the investment business firm;
- (c) acting as the investment business firm’s point of contact with the Bank with respect to compliance with supervisory and regulatory requirements.

(3) An investment business firm shall ensure that the compliance officer has at all times—

- (a) access to all of the investment business firm’s systems and records necessary for the purposes of the performance of the compliance function, and
- (b) unrestricted reporting lines, and access, to the board of the investment business firm (or equivalent in the case of a partnership or other unincorporated body of persons) to facilitate the reporting of compliance risks faced by the investment business firm.

*Client borrowing*

11. (1) An investment business firm shall not provide credit to a client except where the provision of credit is in accordance with the investment business firm’s approved credit policy and is for the purpose of—

- (a) settling a securities transaction on a regulated market in the event of default or late payment by the client, or
- (b) paying an amount to cover a margin call made on a client.

(2) Where a situation referred to paragraph (1) occurs, the investment business firm shall, in accordance with its terms of business or the relevant investment management agreement, close out the relevant position as soon as possible.

(3) Before entering into a collateral margined transaction on behalf of a client, an investment business firm shall—

- (a) take account of—
  - (i) the financial resources available to the client, and
  - (ii) whether the client would be in a position to meet margin calls and fund a loss on the transaction.

(4) Where an investment business firm enters into a collateral margined transaction on behalf of an officer or employee of the investment business firm and such a position is outstanding and shows a loss, the investment business firm shall—

- (a) take immediate steps to have the loss repaid by the officer or employee concerned, and
- (b) immediately close out any unpaid position in accordance with the investment business firm's terms of business.

*Books, records, financial control and management information*

12. (1) An investment business firm shall maintain the following, in a readily accessible form, for a period of at least 6 years:

- (a) a full record of each transaction entered into by it whether on its own behalf or on behalf of clients;
- (b) a complete written record of all investment advice, including oral advice, given to clients;
- (c) all records required to demonstrate compliance with these Regulations;
- (d) details of all money received and expended by the investment business firm whether on its own behalf or on behalf of clients, together with details of how such receipts and payments arose;
- (e) a record of all assets and liabilities of the investment business firm including long and short positions, off-balance sheet items and any commitments or contingent liabilities;
- (f) a record of all investment instruments or documents of title held by the investment business firm setting out—
  - (i) the physical or electronic location,
  - (ii) the beneficial owner,
  - (iii) the purpose for which they are held, and
  - (iv) whether they are subject to any charge;

- (g) records that are adequate for the purposes of financial control and management information and which are maintained in such a manner which discloses or is capable of disclosing the financial and business information which will enable the investment business firm's senior management to—
  - (i) identify, quantify, control and manage the risk exposures,
  - (ii) make timely and informed decisions,
  - (iii) monitor the performance of all aspects of the business,
  - (iv) monitor the asset quality, and
  - (v) safeguard the assets of the investment business firm, including any client assets and investor money;
- (h) the records referred to in Regulations 44 to 46.

(2) An investment business firm shall have adequate procedures for the maintenance, security, privacy and preservation of records, working papers and documents of title held by the investment business firm, including the documents referred to in paragraph (1), so that they are reasonably safeguarded against loss, unauthorised access, alteration or destruction.

(3) Where an investment business firm contracts all or part of its record-keeping activities to another person, it shall only do so in accordance with the provisions of a written agreement entered into with that other person.

*Telephone recordings*

13. (1) Where an investment business firm records a telephone conversation, it shall retain such recording for a period of at least 6 months.

(2) Where an investment business firm has reasonable cause to believe that a telephone recording referred to in paragraph (1) is, or might be, relevant to a complaint, disciplinary action or investigation, it shall retain the telephone recording until it ceases to be of relevance to such complaint, disciplinary action or investigation.

PART 4

FUND ADMINISTRATOR REQUIREMENTS

Chapter 1

*Organisational Requirements*

*Directors*

14. (1) A fund administrator shall ensure that no person appointed as a director of the fund administrator is a director of a depository, trustee or custodian appointed to an investment fund in respect of which the fund administrator provides administration services.

- (2) A fund administrator, who is not a sole trader, shall ensure that—
- (a) it has a minimum of 2 directors who are present in the State for the whole of 110 working days in a year, and
  - (b) its directors disclose, in writing, to the fund administrator any concurrent directorship which they hold on the board of an investment fund or an entity which provides services to such investment fund.

*Client Assets*

15. A fund administrator shall not hold client assets or investor money without the prior written approval of the Bank.

Chapter 2

*Outsourcing Requirements*

*Scope*

16. (1) A fund administrator shall comply with the requirements on outsourcing of administration services imposed under this Part in relation to investment funds to which it provides, directly or indirectly, administration services.

(2) The requirements in this Chapter do not apply where additional investment funds are added to an existing outsourcing arrangement in respect of which the Bank has not objected.

*Prohibition on outsourcing in certain circumstances*

17. (1) A fund administrator shall not enter into an outsourcing arrangement in the following circumstances:

- (a) where the fund administrator has not notified the Bank of the proposed outsourcing arrangement notified pursuant to Regulation 18;
- (b) where the Bank seeks further information from the fund administrator in respect of a proposed outsourcing arrangement notified pursuant to Regulation 18;
- (c) where the Bank objects to a proposed outsourcing arrangement;
- (d) where a period of 12 months has passed since the date on which the Bank did not object to the fund administrator entering into the outsourcing arrangement under this Chapter and the fund administrator did not commence the outsourcing arrangement during that period.

(2) With reference to paragraphs 1(b) and (c), the Bank shall—

- (a) seek any further information it requires from the fund administrator, or
- (b) notify the fund administrator of whether the Bank objects to the outsourcing arrangement,

within one month commencing on the date on which the fund administrator submits to the Bank the notification referred to in Regulation 18.

(3) Where the Bank has sought further information from the fund administrator pursuant to this Regulation, the Bank shall notify the fund administrator of whether the Bank objects to the outsourcing arrangement within one month commencing on the date on which the fund administrator submits the further information to the Bank.

*Outsourcing proposal notification to the Bank*

18. (1) Subject to paragraph (2), a fund administrator shall notify the Bank in writing before entering into a proposed outsourcing arrangement.

(2) A fund administrator shall include the following in the notification required to be provided pursuant to paragraph (1):

- (a) the administration services to be outsourced;
- (b) the identity of the impacted investment funds;
- (c) the name of the outsourcing service provider;
- (d) whether the outsourcing service provider is part of the fund administrator's group;
- (e) the outsourcing service provider's regulatory status;
- (f) the location where the outsourced administration services will be carried out;
- (g) confirmation from senior management that the requirements in Regulations 19 to 24 has been fully complied with;
- (h) the timeframe within which the proposed outsourcing arrangement is to be ratified.

(3) If the Bank has not objected to a proposed outsourcing arrangement within the period set out in Regulations 17(2) and (3), the fund administrator may outsource administration services in accordance with the terms specified in the notification submitted by the fund administrator pursuant to this Regulation.

*Check and release of the Final NAV and prohibition on outsourcing of the maintenance of the shareholder register*

19. (1) A fund administrator shall ensure that—

- (a) a member of senior management of the fund administrator completes, signs and dates a review of the check and release of each investment fund final NAV prior to the release of that final NAV, and
- (b) documentary evidence of the check on the final NAV is maintained for a period of at least 6 years.

(2) A fund administrator shall not outsource the—

- (a) maintenance of the shareholder register, or
- (b) subject to paragraph (3), the check and release of the investment fund final NAV.

(3) An outsourcing service provider may check and release the final NAV in such circumstances and to the extent and subject to such conditions as may be determined by the Bank from time to time.

(4) Where the check and release of the final NAV is outsourced in accordance with paragraph (3), an additional check of the investment fund final NAV shall be completed by the fund administrator on the day following the release of the final NAV by the outsourcing service provider, in accordance with the procedures set out paragraphs(1)(a) and (b).

*Management of outsourcing risks*

20. (1) A fund administrator shall retain responsibility for the outsourced administration services.

(2) Without prejudice to the generality of paragraph (1), a fund administrator shall—

- (a) carry out, on an on-going basis, an assessment of the operational risk and the concentration risk associated with each of its outsourcing arrangements, and
- (b) inform the Bank of any material developments in relation to the management of the risks referred to in subparagraph (a).

(3) Before outsourcing administration services, a fund administrator shall—

- (a) identify measures that could mitigate the risks associated with outsourcing,
- (b) set out in a risk management document the measures identified in subparagraph (a), and
- (c) ensure that—
  - (i) all existing clients who may be impacted by a proposed outsourcing arrangement are made aware of the proposed arrangement, and
  - (ii) all future clients are advised of any outsourced arrangements in place that may be of relevance to them prior to the commencement of business.

*Outsourcing requirements — general*

21. (1) Where a fund administrator outsources administration services, it shall ensure compliance with the following:

- (a) the outsourcing shall not alter the fund administrator's relationship with, and obligations towards, its clients;
- (b) the fund administrator shall retain full and unrestricted responsibility under, and the ability to comply with, all supervisory and regulatory requirements;
- (c) the outsourcing shall not impair the ability of the Bank to supervise the fund administrator;
- (d) the fund administrator shall take special care when entering into and managing outsourcing agreements in order to ensure that it can comply with the requirements under this Chapter and all relevant legal obligations under the Data Protection Acts 1988 and 2003;
- (e) the outsourcing shall not affect the ability of senior management of the fund administrator to manage and monitor the fund administrator's business;
- (f) the fund administrator shall retain adequate core competence at a senior operational level to enable the fund administrator to resume the performance of an outsourced activity in unexpected or emergency situations;
- (g) the outsourcing shall not impair the fund administrator's ability to—
  - (i) have full access and control over its administration systems, and
  - (ii) generate a full set of the books and records for each investment fund serviced;
- (h) the outsourcing service provider shall have all authorisations required by law to perform the outsourced functions or activities;
- (i) the fund administrator and the outsourcing service provider shall be in a position to comply with any directions, instructions or orders from the Bank;
- (j) the outsourcing service provider shall disclose to the fund administrator any development that may have a material impact on its ability to carry out the outsourced functions effectively and in compliance with applicable laws and regulatory requirements;
- (k) the manner in which the outsourced administration services are carried out satisfies the performance and quality standards that would apply if the outsourced administration services were performed by the fund administrator;
- (l) the fund administrator shall take remedial action, which may include termination of the outsourcing arrangement, if the outsourcing service provider's performance is inadequate;

- (m) the fund administrator shall inform the Bank of any material development affecting the outsourcing service provider and the ability of the fund administrator to fulfil its obligations to its customers;
- (n) the fund administrator shall ensure that the outsourcing service provider's external auditor makes available on request to the Bank all information in relation to any outsourced activity;
- (o) the performance of the outsourcing service provider shall be evaluated by the fund administrator on an on-going basis with such evaluation to include using mechanisms including, but not limited to,—
  - (i) key performance indicators,
  - (ii) service delivery reports,
  - (iii) self-certification, and
  - (iv) independent review carried out by the—
    - (I) fund administrator, or
    - (II) outsourcing service provider's internal or external auditors;
- (p) the fund administrator's internal auditors and compliance function shall—
  - (i) examine the outsourcing arrangement within the first 12 months of its operation,
  - (ii) complete a report on the examination referred to in subparagraph (i), and
  - (iii) provide a copy of the report to the Bank within 3 months of completion of the examination;
- (q) where the outsourcing service provider is located outside the State, the fund administrator shall ensure that the Bank can exercise its information gathering functions and powers, including its powers to require the production of documents and audits and to carry out inspections.

*Documented policy on outsourcing*

22. (1) A fund administrator shall—

- (a) prepare and maintain a written policy on its approach to outsourcing, including contingency plans and exit strategies, and
- (b) ensure that the procedures, steps and processes set out in the policy referred to in subparagraph (a) are implemented and adhered to.

- (2) A fund administrator shall ensure that the policy referred to in paragraph (1)(a)—
- (a) covers all aspects of outsourcing, including intra-group outsourcing,
  - (b) specifies the persons responsible, within the fund administrator, for monitoring and managing each outsourcing arrangement,
  - (c) explicitly recognises that no form of outsourcing is risk free,
  - (d) recognises that the management of intra-group outsourcing must be proportionate to the risks presented by these arrangements,
  - (e) explicitly addresses the potential effects of outsourcing on certain significant functions, in particular, the ability of the internal audit and compliance functions to carry out their roles,
  - (f) covers the monitoring and assessment of the outsourcing service provider's financial performance and any significant changes in the outsourcing service provider's organisation and ownership structure so that any necessary corrective measures can be taken promptly, and
  - (g) addresses the main phases that make up the life cycle of the fund administrator's outsourcing arrangements, including, but not limited to, the following:
    - (i) the decision to outsource or change an existing outsourcing arrangement (the decision making phase);
    - (ii) due diligence checks on the outsourcing service provider, including both pre-contractual and on-going due diligence checks;
    - (iii) the drafting of a written outsourcing contract and service level agreement;
    - (iv) the implementation, monitoring, and management of an outsourcing arrangement (the contractual phase), including, but not limited to, monitoring changes affecting the outsourcing service provider such as a major change in ownership, strategies, or profitability of operations;
    - (v) dealing with the expected or unexpected termination of a contract and other service interruptions (the post contractual phase).
- (3) With reference to paragraph (2)(g)(ii), due diligence checks on the outsourcing service provider shall include periodic visits by the fund administrator to the premises of the outsourcing service provider and in determining the frequencies of such visits, the fund administrator shall have regard to the nature, scale and complexity of the outsourced activities.

(4) With reference to paragraph (2)(g)(v), a fund administrator shall plan and implement arrangements to maintain the continuity of its business in the event that the provision of services by an outsourcing service provider fails or deteriorates to an unacceptable degree.

*Outsourcing to be subject to a written agreement*

23. (1) All outsourcing arrangements shall be based on a legally binding contract or service level agreement (in these Regulations referred to as an “outsourcing contract”).

(2) Before concluding an outsourcing contract, a fund administrator shall assess the outsourcing service provider’s ability to meet performance requirements in both quantitative and qualitative terms.

(3) A fund administrator shall ensure that an outsourcing contract—

(a) contains provisions which—

- (i) are proportionate to the risks involved and the size and complexity of the outsourced activity, and
- (ii) take into account the outsourcing service provider’s ability to meet performance targets in both quantitative and qualitative terms,

(b) defines clearly the operational activity that is to be outsourced,

(c) specifies and documents the precise requirements concerning the performance of the outsourced service taking account of the objective of the outsourcing solution,

(d) specifies and documents the respective rights and obligations of the fund administrator and the outsourcing service provider to ensure compliance with applicable laws and regulatory requirements for the duration of the outsourcing arrangement,

(e) includes a termination and exit management clause which permits the fund administrator to transfer the activities being provided by the outsourcing service provider to another outsourcing service provider or to be reincorporated into the fund administrator,

(f) includes a provision which requires the outsourcing service provider to protect confidential information relating to the fund administrator and its clients and which subjects the outsourcing service provider to the same requirements on the safety and confidentiality of information as the fund administrator,

(g) includes provisions to ensure that the fund administrator can continuously monitor and assess the outsourcing service provider’s performance,

- (h) includes an obligation on the outsourcing service provider to provide the fund administrator with full access and unrestricted rights of inspection to all its data relating to the outsourced activities and to its premises as required,
- (i) includes an obligation on the outsourcing service provider to allow immediate and full access by the Bank and its authorised officers and agents to relevant data and its premises as required,
- (j) includes an obligation on the outsourcing service provider to immediately inform the fund administrator of any material changes in circumstances which could have a material impact on the continuing provision of the outsourced services, and
- (k) includes a provision allowing the fund administrator to terminate the contract or service level agreement if such termination is required by the Bank.

*Chain outsourcing*

24. (1) A fund administrator shall not permit chain outsourcing unless the subcontractor agrees to fully comply with the obligations existing between the fund administrator and the outsourcing service provider, including the obligations and commitments of each of those parties to the Bank.

(2) A fund administrator shall take all necessary steps to address the risk of any weakness or failure in the provision of the chain outsourced activities that may have a significant effect on the outsourcing service provider's ability to meet its responsibilities under the outsourcing contract referred to in Regulation 23.

(3) A fund administrator shall treat the chain outsourcing of outsourced administration services to a subcontractor by it as equivalent to a primary outsourcing arrangement and the outsourcing contract between the fund administrator and the outsourcing service provider shall contain a clause requiring the prior consent of the fund administrator in respect of any proposed chain outsourcing arrangement.

(4) A fund administrator shall seek confirmation from the outsourcing service provider that the contractual terms agreed between the outsourcing service provider and the subcontractor conform, or at least are not contradictory, to the provisions of the outsourcing contract with the fund administrator.

*Annual return — outsourcing*

25. (1) A fund administrator shall submit to the Bank the outsourcing return specified in Part 1 of the Schedule containing the following information:

- (a) all outsourcing arrangements entered into by the fund administrator;
- (b) the location of the outsourcing service provider;
- (c) the date from which the fund administrator was permitted to enter into the outsourcing arrangement under this Chapter;

- (d) the names of all investment funds in the event that the fund administrator has, in accordance with such circumstances as have been determined by the Bank, outsourced the release of the final NAV where permitted.

(2) A fund administrator shall submit the annual return referred to in paragraph (1) at the end of the calendar year.

### Chapter 3

#### *Miscellaneous*

##### *Fund prospectus*

26. Where a fund administrator provides administration services to an investment fund that is not authorised by the Bank, the fund administrator shall be satisfied that the prospectus issued by the investment fund does not state or suggest, directly or indirectly, that the investment fund is authorised by the Bank.

### PART 5

#### OWN FUNDS AND CAPITAL ADEQUACY REQUIREMENTS FOR FUND ADMINISTRATORS

##### *Interpretation*

27. In this Part—

“expenditure requirement” means the amount arising from the calculation under Regulation 29;

“own funds” means the amount arising from the calculation under Regulations 31 to 41;

“own funds requirement” means the amount of own funds required under Regulation 28.

##### *Fund administrator own funds requirement*

28. (1) A fund administrator shall have, at all times, own funds that are at least equal to the higher of—

(a) €125,000, or

(b) the fund administrator’s expenditure requirement calculated in accordance with Regulation 29.

(2) A fund administrator shall calculate its own funds by applying the requirements set out in Regulations 31 to 41.

*Expenditure requirement — calculation*

29. The expenditure requirement is calculated as one quarter of a fund administrator's fixed overheads of the preceding year and for the purpose of identifying its expenditure requirement, a fund administrator shall calculate its fixed overheads for the preceding year by—

- (a) using figures resulting from the applicable accounting framework, subtracting the following items from the total expenses after distribution of profits to shareholders in its most recent audited financial statements, or, where audited statements are not available, in annual financial statements validated by the Bank:
  - (i) fully discretionary staff bonuses;
  - (ii) employees', directors' and partners' shares in profits, to the extent that they are fully discretionary;
  - (iii) other appropriations of profits and other variable remuneration, to the extent that they are fully discretionary;
  - (iv) shared commission and fees payable which are directly related to commission and fees receivable, which are included within total revenue, and where the payment of the commission and fees payable is contingent upon the actual receipt of the commission and fees receivable;
  - (v) fees, brokerage and other charges paid to clearing houses, exchanges and intermediate brokers for the purposes of executing, registering or clearing transactions;
  - (vi) interest paid to customers on client funds or investor money;
  - (vii) non-recurring expenses from non-ordinary activities,
- (b) where fixed expenses have been incurred on behalf of a fund administrator by third parties, and these fixed expenses are not already included within the fund administrator's total expenses referred to in subparagraph (a), adding these fixed expenses to the figure resulting from the calculation referred to in subparagraph (a),
- (c) where a fund administrator's most recent audited financial statements do not reflect a 12 month period, dividing the result of the calculation of subparagraphs (a) and (b) by the number of months that are reflected in those financial statements and subsequently, multiplying the result by 12, so as to produce an equivalent annual amount, and
- (d) where a fund administrator has not completed business for one year from the day it starts trading, using, for the calculation of items in subparagraphs (a) to (c), the projected fixed overheads included in the fund administrator's budget for the first 12 months of trading, as submitted to the Bank with its application for authorisation.

*Expenditure requirement — notification of material change to Bank*

30. (1) A fund administrator shall notify the Bank where a change to the fund administrator's business results in a material change to the fund administrator's expenditure requirement.

(2) For the purpose of paragraph (1), a material change in the fund administrator's expenditure requirement occurs where—

(a) the figure resulting from completing the calculation set out in Regulation 29 (a) to (d) using projected overheads for the current financial year in place of overheads for the preceding year, differs by 20 per cent or more than the figure resulting from completing the calculation strictly as set out in Regulation 29(a) to (d), or

(b) the figure resulting from completing the calculation set out in Regulation 29(a) to (d) using projected overheads for the next financial year in place of overheads for the preceding year, differs by 20 per cent or more than the figure resulting from completing the calculation strictly as set out in Regulation 29(a) to (d).

(3) Where a material change as referred to in this Regulation occurs, the Bank may adjust the fund administrator's expenditure requirement accordingly.

*Own funds*

31. (1) A fund administrator's own funds shall consist of the sum of the Tier 1 capital, specified in paragraph (2), and Tier 2 capital, specified in paragraph (5), subject to the restriction that the inclusion of Tier 2 capital is limited to a maximum of one third of the fund administrator's Tier 1 capital.

(2) The Tier 1 capital of a fund administrator consists of the sum of the Common Equity Tier 1 capital, specified in paragraph (3), and Additional Tier 1 capital, specified in paragraph (4), of the fund administrator, subject to the restriction that the inclusion of Additional Tier 1 capital is limited to a maximum of one third of Common Equity Tier 1 capital.

(3) The Common Equity Tier 1 capital of a fund administrator consists of the Common Equity Tier 1 items of the fund administrator as set out in Regulation 32 after the prudential filters and deductions referred to in Regulation 33 have been applied.

(4) The Additional Tier 1 capital of a fund administrator consists of the Additional Tier 1 items of the fund administrator as set out in Regulation 34 after the deductions referred to in Regulation 35 have been applied.

(5) The Tier 2 capital of a fund administrator consists of the Tier 2 items of the fund administrator as set out in Regulation 36 after the application of Regulation 37 and the deductions referred to in Regulation 38.

*Common Equity Tier 1 — items*

32. (1) Common Equity Tier 1 items of fund administrators consist of the following:

- (a) capital instruments meeting the conditions set out in paragraph (3);
- (b) share premium accounts related to the capital instruments referred to subparagraph (a);
- (c) retained earnings, subject to the restrictions set out in paragraph (4);
- (d) capital contributions that meet the criteria set out in paragraph (5).

(2) The items referred to in paragraphs (1)(c) and (d) shall be recognised as Common Equity Tier 1 items only where they are available to the fund administrator for unrestricted and immediate use to cover risks or losses as soon as these occur.

(3) Capital instruments shall only qualify as Common Equity Tier 1 instruments—

- (a) with the prior written permission of the Bank, and
- (b) where all of the following conditions are met:
  - (i) the capital instruments are issued directly by the fund administrator, are paid up and their purchase is not funded directly or indirectly by the fund administrator;
  - (ii) the capital instruments are classified as equity within the meaning of the applicable accounting framework and are clearly and separately disclosed on the balance sheet in the financial statements of the fund administrator;
  - (iii) the capital instruments are perpetual;
  - (iv) the principal amount of the capital instruments may not be reduced or repaid, except in either of the following cases:
    - (I) the liquidation of the fund administrator;
    - (II) discretionary repurchases or other discretionary means of reducing the amount of Common Equity Tier 1 capital in accordance with Regulation 40;
  - (v) the provisions governing the capital instruments do not indicate that the principal amount of the capital instruments would or might be reduced or repaid other than in the liquidation of the fund administrator;
  - (vi) the capital instruments meet the following conditions as regards distributions:
    - (I) the terms governing the capital instruments do not provide preferential rights to payment of distributions;

- (II) the conditions governing the capital instruments do not include any obligation for the fund administrator to make distributions to their holders and the fund administrator is not otherwise subject to such an obligation;
  - (III) non-payment of distributions does not constitute an event of default of the fund administrator;
  - (IV) the cancellation of distributions imposes no restrictions on the fund administrator;
  - (V) the conditions governing the capital instruments do not include a cap or other restriction on the maximum level of distributions;
  - (VI) the level of distributions is not determined on the basis of the amount for which the capital instruments were purchased at issuance.
- (vii) compared to all the capital instruments issued by the fund administrator, the capital instruments absorb the first and proportionately greatest share of losses as they occur, and each capital instrument absorbs losses to the same degree as all other Common Equity Tier 1 instruments;
  - (viii) the capital instruments rank below all other claims in the event of insolvency or liquidation of the fund administrator and are not subject to any arrangement, contractual or otherwise, that enhances the seniority of the claims under the instruments in insolvency or liquidation;
  - (ix) the capital instruments are neither secured nor subject to a guarantee that enhances the seniority of the claim by any group entity or entity with which the fund administrator has a close link;
  - (x) the capital instruments entitle their owners to a claim on the residual assets of the fund administrator, which, in the event of its liquidation and after the payment of all senior claims, is proportionate to the amount of such capital instruments issued and is not fixed or subject to a cap.

(4) For the purposes of paragraph (1)(c), a fund administrator may include interim or year-end profits in Common Equity Tier 1 capital before it has taken a formal decision confirming its final profit or loss for the year, only with the prior written permission of the Bank and only where the following conditions are met:

- (a) the fund administrator has demonstrated to the satisfaction of the Bank that any foreseeable charge or dividend has been deducted from the amount of those profits;

- (b) the fund administrator's auditors have evaluated and verified the profits in accordance with the principles set out in the applicable accounting framework and have confirmed this verification in writing to the Bank.

(5) For the purposes of paragraph (1)(d), a fund administrator may include capital contributions in Common Equity Tier 1 capital only with the written prior permission of the Bank.

*Common Equity Tier 1 — prudential filters and deductions*

33. (1) A fund administrator shall exclude from any element of own funds any increase in equity under the applicable accounting framework that results from a securitisation transaction, such as that associated with expected future margin income resulting in a gain on sale for the fund administrator.

(2) A fund administrator shall deduct the following from Common Equity Tier 1 items:

- (a) losses for the current financial year;
- (b) intangible assets including goodwill less any associated deferred tax liabilities that would be extinguished if the intangible assets became impaired or were derecognised under the applicable accounting framework;
- (c) deferred tax assets as set out in paragraph (3);
- (d) defined benefit pension fund assets on the balance sheet of the fund administrator less the items set out in the following:
  - (i) any associated deferred tax liabilities that would be extinguished if the defined benefit pension fund assets became impaired or were derecognised under the applicable accounting framework;
  - (ii) the amount of assets in the defined benefit pension fund which the fund administrator has an unrestricted ability to use, provided that the fund administrator has received the prior written permission of the Bank.
- (e) any holdings by the fund administrator of its own Common Equity Tier 1 instruments including own Common Equity Tier 1 instruments that a fund administrator is under an actual or contingent obligation to purchase by virtue of an existing contractual obligation;
- (f) any holdings by the fund administrator of the Common Equity Tier 1 instruments of financial sector entities where those entities have a reciprocal cross holding with the fund administrator that the Bank considers to have been designed to artificially inflate the own funds of the fund administrator;

- (g) subject to paragraph (4), any holdings by the fund administrator of capital instruments of financial sector entities where the fund administrator holds more than 10 per cent of the capital of those entities;
  - (h) subject to paragraph (4), where the fund administrator has holdings in capital instruments of financial sector entities that represent less than 10 percent of the capital of those entities and where, in aggregate, the total amount of such holdings exceeds 10 per cent of the fund administrator's own funds calculated after all prudential filters and deductions other than those set out in subparagraph (g) and this subparagraph, the amount of such holdings exceeding 10 per cent of the fund administrator's own funds calculated after all prudential filters and deductions other than those set out in subparagraph (g) and this subparagraph;
  - (i) the amount of items required to be deducted from Additional Tier 1 items in accordance with Regulation 35 that exceeds the Additional Tier 1 capital of the fund administrator;
  - (j) any tax charge relating to Common Equity Tier 1 items foreseeable at the moment of its calculation, except where the fund administrator suitably adjusts the amount of Common Equity Tier 1 items insofar as such tax charges reduce the amount up to which those items may be used to cover risks or losses.
- (3) A fund administrator shall determine the amount of deferred tax assets that require deduction in accordance with the following:
- (a) except where the conditions set out in subparagraph (b) are met, the amount of deferred tax assets to be deducted shall be calculated without reducing it by the amount of the associated deferred tax liabilities of the fund administrator;
  - (b) the amount of deferred tax assets to be deducted may be reduced by the amount of the associated deferred tax liabilities of the fund administrator provided the deferred tax assets and the deferred tax liabilities relate to taxes levied by the same tax authority and on the same taxable entity and the fund administrator has a legally enforceable right to set off those deferred tax assets against deferred tax liabilities;
  - (c) associated deferred tax liabilities used for the purposes of subparagraph (b) may not include deferred tax liabilities that reduce the amount of intangible assets or defined benefit pension fund assets required to be deducted.
- (4) With reference to paragraphs (2)(g) and (h), a fund administrator shall not deduct holdings of capital instruments issued by a regulated financial sector entity that do not qualify as regulatory capital of that entity.

*Additional Tier 1 — items*

34. (1) Additional Tier 1 items of a fund administrator shall consist of the following:

- (a) capital instruments where the conditions laid down in paragraph (2) are met;
- (b) the share premium accounts related to the instruments referred to in subparagraph (a).

(2) Capital instruments shall only qualify as Additional Tier 1 instruments with the prior written permission of the Bank and where all of the following conditions are met:

- (a) the capital instruments are issued directly by the fund administrator, are paid up and their purchase is not funded directly or indirectly by the fund administrator;
- (b) the capital instruments rank below Tier 2 instruments in the event of the insolvency of the fund administrator;
- (c) the capital instruments are neither secured nor subject to a guarantee that enhances the seniority of the claim by any group entity or entity with which the fund administrator has a close link;
- (d) the capital instruments are not subject to any arrangement, contractual or otherwise, that enhances the seniority of the claim under the capital instruments in insolvency or liquidation;
- (e) the capital instruments are perpetual and the provisions governing them include no incentive for the fund administrator to redeem them;
- (f) where the provisions governing the capital instruments include one or more call options, the option to call may be exercised at the sole discretion of the fund administrator;
- (g) the provisions governing the capital instruments do not indicate that the capital instruments would or might be called, redeemed or repurchased and the fund administrator does not otherwise provide such an indication, except in the following cases:
  - (i) the liquidation of the fund administrator;
  - (ii) discretionary repurchases or other discretionary means of reducing the amount of Additional Tier 1 capital in accordance with Regulation 40.
- (h) the fund administrator does not indicate that the Bank would consent to a request to call, redeem or repurchase the capital instruments;

- (i) distributions under the capital instruments meet the following conditions:
  - (i) the level of distributions made on the capital instruments will not be amended on the basis of the credit standing of the fund administrator or its parent undertaking;
  - (ii) the provisions governing the capital instruments give the fund administrator full discretion, at all times, to cancel the distributions on the instruments for an unlimited period and on a non-cumulative basis and the fund administrator may use such cancelled payments without restriction to meet its obligations as they fall due;
  - (iii) cancellation of distributions does not constitute an event of default of the fund administrator and the cancellation of distributions imposes no restrictions on the fund administrator in particular with regard to the payment of distributions on other classes of capital instruments.

*Additional Tier 1 — deductions*

35. A fund administrator shall deduct the following from Additional Tier 1 items:

- (a) any holdings by the fund administrator of its own Additional Tier 1 instruments including own Additional Tier 1 instruments that a fund administrator is under an actual or contingent obligation to purchase by virtue of an existing contractual obligation;
- (b) any holdings by the fund administrator of the Additional Tier 1 instruments of financial sector entities where those entities have a reciprocal cross holding with the fund administrator that the Bank considers to have been designed to artificially inflate the own funds of the fund administrator;
- (c) the amount of items required to be deducted from Tier 2 items pursuant to Regulation 38 that exceed the Tier 2 capital of the fund administrator;
- (d) any tax charge relating to Additional Tier 1 items foreseeable at the moment of its calculation, except where the fund administrator suitably adjusts the amount of Additional Tier 1 items insofar as such tax charges reduce the amount up to which those items may be used to cover risks or losses.

*Tier 2 — items*

36. (1) Tier 2 items consist of the following:

- (a) capital instruments and subordinated loans where the conditions laid down in paragraph (2) are met;

- (b) the share premium accounts related to instruments referred to in subparagraph (a).

(2) Capital instruments and subordinated loans shall only qualify as Tier 2 instruments with the prior written permission of the Bank and where all of the following conditions are met:

- (a) the capital instruments are issued directly by the fund administrator or the subordinated loans are raised directly by the fund administrator, as applicable, are fully paid up and their purchase is not funded directly or indirectly by the fund administrator;
- (b) the claim on the principal amount of the capital instruments under the provisions governing the capital instruments or the claim of the principal amount of the subordinated loans under the provisions governing the subordinated loans, as applicable, is wholly subordinated to the claims of all non-subordinated creditors;
- (c) the capital instruments or subordinated loans, as applicable, are neither secured, nor subject to a guarantee that enhances the seniority of the claim by any group entity or entity with which the fund administrator has a close link;
- (d) the capital instruments or subordinated loans, as applicable, are not subject to any arrangement that otherwise enhances the seniority of the claim under the capital instruments or subordinated loans respectively;
- (e) the capital instruments or subordinated loans, as applicable, have an original maturity of at least 5 years;
- (f) the provisions governing the capital instruments or subordinated loans, as applicable, do not include any incentive for their principal amount to be redeemed or repaid by the fund administrator prior to their maturity;
- (g) where the capital instruments or subordinated loans, as applicable, include one or more call options or early repayment options, the options are exercisable at the sole discretion of the fund administrator;
- (h) the provisions governing the capital instruments or subordinated loans, as applicable, do not indicate that the capital instruments or subordinated loans, as applicable, would or might be called, redeemed, repurchased or repaid early, as applicable by the fund administrator and the fund administrator does not otherwise provide such an indication, except in the following cases:
  - (i) the insolvency or liquidation of the fund administrator;

- (ii) discretionary repurchases or other discretionary means of reducing the amount of Tier 2 capital in accordance with Regulation 40;
- (i) the provisions governing the capital instruments or subordinated loans, as applicable, do not give the holder the right to accelerate the future scheduled payment of interest or principal, other than in the insolvency or liquidation of the fund administrator;
- (j) the level of interest or dividend payments, as applicable, due on the capital instruments or subordinated loans, as applicable, will not be amended on the basis of the credit standing of the fund administrator or its parent undertaking.

*Tier 2 — maturity of instruments*

37. The extent to which Tier 2 instruments qualify as Tier 2 items during the final 5 years of maturity of the instruments is calculated by multiplying the result derived from the calculation in subparagraph (a) by the amount referred to in subparagraph (b) as follows:

- (a) the nominal amount of the instruments or subordinated loans on the first day of the final 5 year period of their contractual maturity divided by the number of calendar days in that 5 year period;
- (b) the number of remaining calendar days of contractual maturity of the instruments or subordinated loans.

*Tier 2 — deductions*

38. The following shall be deducted from Tier 2 items:

- (a) any holdings by the fund administrator of its own Tier 2 instruments including own Tier 2 instruments that a fund administrator is under an actual or contingent obligation to purchase by virtue of an existing contractual obligation;
- (b) any holdings by the fund administrator of the Tier 2 instruments of financial sector entities where those entities have a reciprocal cross holding with the fund administrator that the Bank considers to have been designed to artificially inflate the own funds of the fund administrator.

*Qualification*

39. The following shall apply where, in the case of a Common Equity Tier 1, Additional Tier 1 or Tier 2 instrument, the conditions laid down in Regulation 32(3), 34(2) or 36(2) as applicable, cease to be met:

- (a) that instrument shall immediately cease to qualify as a Common Equity Tier 1, Additional Tier 1 or Tier 2 item, as applicable;
- (b) the share premium accounts that relate to that instrument shall immediately cease to qualify as a Common Equity Tier 1, Additional Tier 1 or Tier 2 item, as applicable.

*Permissions required*

40. (1) A fund administrator shall obtain the written prior permission of the Bank before doing either or both of the following:

- (a) reduce, redeem or repurchase Common Equity Tier 1 instruments issued by the fund administrator;
- (b) effect the call, redemption, repayment or repurchase of Additional Tier 1 or Tier 2 instruments prior to the date of their contractual maturity.

(2) The permission referred to paragraph (1) shall only be granted for the fund administrator to reduce, repurchase, call or redeem Common Equity Tier 1, Additional Tier 1 or Tier 2 instruments where either of the following conditions are met:

- (a) earlier than or at the same time as the action referred to in paragraph (1), the fund administrator replaces the instruments referred to in paragraph (1) with instruments of an equal or higher quality tier at terms that are sustainable for the income capacity of the fund administrator;
- (b) the fund administrator has demonstrated to the satisfaction of the Bank that the own funds of the fund administrator would, following the action referred to in paragraph (1), exceed the capital requirements of the fund administrator by a margin that the Bank may consider necessary on the basis of the fund administrator's capital, risk and income projections.

*Own funds transitional measures*

41. (1) Capital instruments that were in existence on 31 December 2015 and formed a part of the fund administrator's regulatory capital as at that date but that do not meet the criteria set out in Regulation 32(3) shall be treated in the following manner:

- (a) subject to subparagraph (b), the capital instruments may be included as Common Equity Tier 1 items during the period 1 April 2017 to 31 March 2020 as follows:
  - (i) during the period 1 April 2017 to 31 March 2018, 100 per cent of the value included in the fund administrator's regulatory capital as at 31 December 2015 may be included in Common Equity Tier 1 items;
  - (ii) during the period 1 April 2018 to 31 March 2019, two thirds of the value included in the fund administrator's regulatory capital as at 31 December 2015 may be included in Common Equity Tier 1 items;
  - (iii) during the period 1 April 2019 to 31 March 2020, one third of the value included in the fund administrator's regulatory capital as

at 31 December 2015 may be included in Common Equity Tier 1 items;

- (b) with reference to subparagraph (a), if there are any reductions, repurchases, calls or redemptions of the capital instruments in the period between 31 December 2015 and the applicable date, with the result that the value of the capital instruments remaining after such reductions, repurchases, calls or redemptions is less than the limit set out in subparagraphs (b)(i), (ii) or (iii) as applicable, then the amount that may be included in Common Equity Tier 1 items is capped at the value of the capital instruments remaining after such reductions, repurchases, calls or redemptions.

(2) The prudential filters and deductions referred to in Regulations 33(1), 33(2)(b) to (j), 35 and 38 shall be phased in over the period 1 April 2017 to 31 March 2020 as follows:

- (a) during the period 1 April 2017 to 31 March 2018, zero per cent of the applicable filter or deduction shall be applied;
- (b) during the 1 April 2018 to 31 March 2019, one third of the applicable filter or deduction shall be applied;
- (c) during the 1 April 2019 to 31 March 2020, two thirds of the applicable filter or deduction shall be applied.

*Own funds breaches or potential breaches*

42. (1) A fund administrator shall, at all times, be in a position to demonstrate compliance with its own funds requirement.

(2) A fund administrator shall immediately notify the Bank if any of the following situations arise:

- (a) the fund administrator breaches its own funds requirement;
- (b) a change in the fund administrator's financial position means that it is likely that the fund administrator will breach its own funds requirement in the future;
- (c) the amount by which the fund administrator's own funds exceeds its own funds requirement reduces by 20 per cent.

(3) In relation to paragraphs (2)(a) and (b), the fund administrator shall, at the same time as notifying the Bank, take any necessary steps to rectify its own funds position.

*Fund administrator eligible assets*

43. (1) A fund administrator shall have, at all times, an amount of eligible assets at least equal to its own funds requirement, with eligible assets satisfying the criteria in paragraph (2) and the amount of eligible assets calculated in accordance with paragraph (3).

(2) In order for assets to be classified as eligible assets they shall meet the following criteria:

- (a) be easily accessible and free from any liens or charges and maintained outside the fund administrator's group;
- (b) be held in an account that is separate to the account or accounts used by the fund administrator for the day to day running of its business.

(3) eligible assets are calculated by subtracting the following items from total assets:

- (a) fixed assets;
- (b) intangible assets;
- (c) cash or cash equivalents held with group entities;
- (d) debtors;
- (e) bad debt provisions;
- (f) prepayments;
- (g) gross intercompany assets;
- (h) loans;
- (i) investment funds which are not daily dealing;
- (j) investment funds promoted by other group entities or to which other group entities provide services;
- (k) accounts used by the administrator for the day to day running of the business;
- (l) any other assets which are not easily accessible not included in subparagraphs (a) to (k).

(4) The items referred to in paragraphs (3)(a) to (h) have the same meaning as under the applicable accounting framework.

*Risk analysis and capital adequacy assessment process*

44. (1) A fund administrator shall have in place, and document in writing, sound, effective and comprehensive strategies, processes and systems to—

- (a) assess and maintain on an on-going basis the amounts, types and distribution of own funds that are adequate to cover the nature and level of the risks to which it is or might be exposed, and
- (b) enable it to identify and manage the sources of risk referred to in subparagraph (a) including the major sources of risk in each of the

following categories where they are relevant to the fund administrator:

- (i) credit and counterparty risk;
- (ii) concentration risk;
- (iii) market risk;
- (iv) operational risk;
- (v) liquidity risk;
- (vi) strategy or business model risk;
- (vii) group risk;
- (viii) environmental risk;
- (ix) governance risk.

(2) A fund administrator shall have in place, for each of the major sources of risk listed in paragraph (1)(b), written policies and procedures to identify, measure and manage that source of risk.

(3) With reference to the liquidity risk referred to in paragraph(1)(b)(v), the strategies, processes and systems of the fund administrator shall measure and monitor liquidity risk over an appropriate set of time horizons so as to ensure that the fund administrator maintains adequate levels of liquidity buffers or other equivalent liquidity management arrangements.

(4) The set of time horizons referred to in paragraph (3), shall include intraday, 30 day, 90 day, 180 day and 360 day periods.

(5) With reference to paragraph (1), a fund administrator shall consider both on and off-balance sheet exposures and contingent liabilities.

(6) The strategies, processes and systems referred to in paragraph (1) shall be approved by the board of directors of the fund administrator (or equivalent in the case of a partnership or other unincorporated body of persons) and shall be subject to regular internal review to ensure that they remain comprehensive and proportionate to the nature, scale and complexity of the activities of the fund administrator.

(7) A fund administrator shall carry out, and document in writing, the internal review referred to in paragraph (6), on at least an annual basis and the results of the review shall be approved by the board of directors of the fund administrator (or equivalent in the case of a partnership or other unincorporated body of persons).

*Own funds plan*

45. (1) A fund administrator shall have in place, and document in writing, an own funds plan that includes profit and loss and balance sheet projections for a forward looking period of not less than 3 years.

(2) A fund administrator shall ensure that the own funds plan referred to in paragraph (1)—

- (a) takes account of the results of the assessments required under Regulation 44,
- (b) is updated, on at least an annual basis, and
- (c) is approved by the board of directors of the fund administrator (or equivalent in the case of a partnership or other unincorporated body of persons).

*Wind down plan*

46. (1) A fund administrator shall have in place, and document in writing, a wind down plan that sets out how the fund administrator would wind down in an orderly fashion in the event of failure.

(2) The plan referred to in paragraph (1) shall-

- (a) include estimates of the own funds and liquidity required for the fund administrator to wind down in an orderly fashion within a defined time period,
- (b) be updated at least on an annual basis, and
- (c) be approved by the board of directors of the fund administrator (or equivalent in the case of a partnership or other unincorporated body of persons).

**SCHEDULE**  
**REPORTING REQUIREMENTS**

*Regulation 8*

Part 1

<b>Fund Administrators</b>		
<b>Data Item (1)</b>	<b>Reporting Frequency (2)</b>	<b>Reporting Deadline (3)</b>
Annual Audited Accounts (Upload)	Annual	4 months after firm reporting year end
Annual Accounts (Data Entry)	Annual	4 months after firm reporting year end
Related Party Annual Accounts Upload (if required)	Annual	4 months after firm reporting year end
Management/Interim Accounts (Upload)	Annual	2 months after firm reporting half-year end
Management/Interim Accounts (Data Entry)	Annual	2 months after firm reporting half-year end
Annual Ownership Confirmation Upload	Annual	1 month after calendar year end
Annual PCF Confirmation	Annual	2 months after calendar year end
Minimum Capital Requirement	Bi-Annual	1. Submitted with Audited Accounts 4 months after firm reporting year end 2. Submitted with Interim Accounts 2 month after firm interim accounts reporting period
Bank Statements	Bi-Annual	1. Submitted with Audited Accounts 4 months after firm reporting year end 2. Submitted with Interim Accounts 2 month after firm interim accounts reporting period
Non-Irish Authorised Funds Return	Quarterly	20 working days after calendar quarter end
Quarterly Management Accounts (if required)	Quarterly	20 working days after calendar quarter end
Quarterly Minimum Capital Requirement (if required)	Quarterly	20 working days after calendar quarter end
Monthly Management Accounts (if required)	Monthly	20 working days after calendar month end
Monthly Minimum Capital Requirement (if required)	Monthly	20 working days after calendar month end
Outsourcing Return	Annual	20 working days after calendar year end

## Part 2

<b>IIA non-retail investment business firms</b>		
<b>Data Item (1)</b>	<b>Reporting Frequency (2)</b>	<b>Reporting Deadline (3)</b>
Annual Audited Accounts (Upload)	Annual	6 months after firm reporting year end
Annual Accounts (Data Entry)	Annual	6 months after firm reporting year end
Related Party Annual Accounts Upload (if required)	Annual	6 months after firm reporting year end
Annual Ownership Confirmation	Annual	6 months after firm reporting year end
Annual PCF Confirmation	Annual	2 months after calendar year end
Management/Interim Accounts (Data Entry)	Annual	20 working days after firm reporting year end
ICCL Report	Annual	20 working days after calendar year end
Asset Concentration Disclosure	Annual	20 working days after calendar year end
Capital Adequacy Statement	Bi-Annual	20 working days after firm reporting year end and 20 working days after firm reporting half year end
Monthly Metrics Report	Monthly	20 working days after calendar month end
<b>If subject to the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) Client Asset Regulations 2015</b>		
Monthly Client Asset Report	Monthly	20 working days after calendar month end

## Part 3

<b>MiFID investment firms subject to the CRD Regulations and authorised for Investment Service 3 or Investment Service 6 and not applying Article 96(1) of the Capital Requirement Regulation</b>		
<b>Data Item (1)</b>	<b>Reporting Frequency (2)</b>	<b>Reporting Deadline (3)</b>
Annual Audited Accounts (Upload)	Annual	6 months after firm reporting year end
Annual Accounts (Data Entry)	Annual	6 months after firm reporting year end
Related Party Annual Accounts Upload (if required)	Annual	6 months after firm reporting year end
Annual Ownership Confirmation	Annual	6 months after firm reporting year end
Pillar 3 Disclosure Data	Annual	6 months after firm reporting year end
Annual Conduct of Business	Annual	3 months after calendar year end
Annual PCF Confirmation	Annual	2 months after calendar year end
ICCL Report	Annual	20 working days after calendar year end
ICAAP Questionnaire (if required)	Annual	Initial reporting deadline is 20 working days after calendar quarter in which ICAAP is reviewed by the firm. All subsequent reporting deadlines shall be the anniversary of the initial reporting date.
Management/Interim Accounts (Data Entry)	Quarterly	20 working days after calendar quarter end
Management Accounts Budget vs Actual (if required)	Quarterly	20 working days after calendar quarter end
Monthly Metrics Report	Monthly	20 working days after calendar month end
<b>If Authorised for MiFID Investment Service 4</b>		
Assets Under Management	Quarterly	20 working days after calendar quarter end
<b>If subject to the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) Client Asset Regulations 2015</b>		
Monthly Client Asset Report	Monthly	20 working days after calendar month end
<b>If subject to consolidated supervision</b>		
Consolidated Annual Accounts (Data Entry)	Annual	6 months after firm reporting year end
Consolidated Management/Interim A/Cs (Data Entry)	Bi-Annual	20 working days after firm reporting year end and 20 working days after firm reporting half year end

## Part 4

<b>MiFID investment firms subject to the CRD Regulations and authorised for Investment Service 3 or Investment Service 6 and applying Article 96(1) of the Capital Requirement Regulation</b>		
<b>Data Item (1)</b>	<b>Reporting Frequency (2)</b>	<b>Reporting Deadline (3)</b>
Annual Audited Accounts (Upload)	Annual	6 months after firm reporting year end
Annual Accounts (Data Entry)	Annual	6 months after firm reporting year end
Related Party Annual Accounts Upload (if required)	Annual	6 months after firm reporting year end
Annual Ownership Confirmation	Annual	6 months after firm reporting year end
Pillar 3 Disclosure Data	Annual	6 months after firm reporting year end
Annual Conduct of Business	Annual	3 months after calendar year end
Annual PCF Confirmation	Annual	2 months after calendar year end
ICCL Report	Annual	20 working days after calendar year end
Asset Concentration Disclosure	Annual	20 working days after calendar year end
ICAAP Questionnaire (if required)	Annual	Initial reporting deadline is 20 working days after calendar quarter in which ICAAP is reviewed by the firm. All subsequent reporting deadlines shall be the anniversary of the initial reporting date.
Management/Interim Accounts (Data Entry)	Quarterly	20 working days after calendar quarter end
Management Accounts Budget vs Actual (if required)	Quarterly	20 working days after calendar quarter end
Monthly Metrics Report	Monthly	20 working days after calendar month end
<b>If authorised for MiFID Investment Service 4</b>		
Assets Under Management	Quarterly	20 working days after calendar quarter end
<b>If subject to the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) Client Asset Regulations 2015</b>		
Monthly Client Asset Report	Monthly	20 working days after calendar month end
<b>If subject to consolidated supervision</b>		
Consolidated Annual Accounts (Data Entry)	Annual	6 months after firm reporting year end
Consolidated Management/Interim A/Cs (Data Entry)	Bi-Annual	20 working days after firm reporting year end and 20 working days after firm reporting half year end

## Part 5

<b>MiFID investment firms subject to the CRD Regulations but not authorised for Investment Service 3 or Investment Service 6</b>		
<b>Data Item (1)</b>	<b>Reporting Frequency (2)</b>	<b>Reporting Deadline (3)</b>
Annual Audited Accounts (Upload)	Annual	6 months after firm reporting year end
Annual Accounts (Data Entry)	Annual	6 months after firm reporting year end
Related Party Annual Accounts Upload (if required)	Annual	6 months after firm reporting year end
Annual Ownership Confirmation	Annual	6 months after firm reporting year end
Pillar 3 Disclosure Data	Annual	6 months after firm reporting year end
Annual Conduct of Business	Annual	3 months after calendar year end
Annual PCF Confirmation	Annual	2 months after calendar year end
ICCL Report	Annual	20 working days after calendar year end
Asset Concentration Disclosure	Annual	20 working days after calendar year end
ICAAP Questionnaire (if required)	Annual	Initial reporting deadline is 20 working days after calendar quarter in which ICAAP is reviewed by the firm. All subsequent reporting deadlines shall be the anniversary of the initial reporting date.
Management/Interim Accounts (Data Entry)	Bi-Annual	20 working days after firm reporting year end and 20 working days after firm reporting half year end
Management Accounts Budget vs Actual (if required)	Bi-Annual	20 working days after firm reporting year end and 20 working days after firm reporting half year end
Monthly Metrics Report	Monthly	20 working days after calendar month end
<b>If authorised for MiFID Investment Service 4</b>		
Assets Under Management	Quarterly	20 working days after calendar quarter end
<b>If subject to Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) Client Asset Regulations 2015</b>		
Monthly Client Asset Report	Monthly	20 working days after calendar month end
<b>If subject to consolidated supervision</b>		
Consolidated Annual Accounts (Data Entry)	Annual	6 months after firm reporting year end

<b>MiFID investment firms subject to the CRD Regulations but not authorised for Investment Service 3 or Investment Service 6</b>		
<b>Data Item (1)</b>	<b>Reporting Frequency (2)</b>	<b>Reporting Deadline (3)</b>
Consolidated Management/Interim A/Cs (Data Entry)	Bi-Annual	20 working days after firm reporting year end and 20 working days after firm reporting half year end

## Part 6

<b>MiFID investment firms not subject to the CRD Regulations but authorised for Investment Service 2 or Investment Service 4 (CRD IV Exempt FOR Firm)</b>		
<b>Data Item (1)</b>	<b>Reporting Frequency (2)</b>	<b>Reporting Deadline (3)</b>
Annual Audited Accounts (Upload)	Annual	6 months after firm reporting year end
Annual Accounts (Data Entry)	Annual	6 months after firm reporting year end
Related Party Annual Accounts Upload (if required)	Annual	6 months after firm reporting year end
Annual Ownership Confirmation	Annual	6 months after firm reporting year end
Annual Conduct of Business	Annual	3 months after calendar year end
Annual PCF Confirmation	Annual	2 months after calendar year end
ICCL Report	Annual	20 working days after calendar year end
Asset Concentration Disclosure	Annual	20 working days after calendar year end
ICAAP Questionnaire (if required)	Annual	Initial reporting deadline is 20 working days after calendar quarter in which ICAAP is reviewed by the firm. All subsequent reporting deadlines shall be the anniversary of the initial reporting date.
Management/Interim Accounts (Data Entry)	Bi-Annual	20 working days after firm reporting year end and 20 working days after firm reporting half year end
Management Accounts Budget vs Actual (if required)	Bi-Annual	20 working days after firm reporting year end and 20 working days after firm reporting half year end
CRD III COREP Individual	Quarterly	42 days after calendar quarter end
Monthly Metrics Report	Monthly	20 working days after calendar month end
<b>If authorised for MiFID Investment Service 4</b>		
Assets Under Management	Quarterly	20 working days after calendar quarter end
<b>If subject to consolidated supervision</b>		
Consolidated Annual Accounts (Data Entry)	Annual	6 months after firm reporting year end
Consolidated Management/Interim A/Cs (Data Entry)	Bi-Annual	20 working days after firm reporting year end and 20 working days after firm reporting half year end
CRD III COREP Consolidated	Bi-Annual	42 days after calendar year end and 42 days after calendar half year end

## Part 7

<b>MiFID investment firms not subject to the CRD Regulations and authorised only for Investment Service 1 and/or Investment Service 5 (CRD IV Exempt Firm)</b>		
<b>Data Item (1)</b>	<b>Reporting Frequency (2)</b>	<b>Reporting Deadline (3)</b>
Annual Audited Accounts (Upload)	Annual	6 months after firm reporting year end
Annual Accounts (Data Entry)	Annual	6 months after firm reporting year end
Related Party Annual Accounts Upload(if required)	Annual	6 months after firm reporting year end
Annual Ownership Confirmation	Annual	6 months after firm reporting year end
Annual Conduct of Business	Annual	3 months after calendar year end
Annual PCF Confirmation	Annual	2 months after calendar year end
Asset Concentration Disclosure	Annual	20 working days after calendar year end
ICCL Report	Annual	20 working days after calendar year end
Management/Interim Accounts (Data Entry)	Annual	20 working days after firm reporting year end
Management Accounts Budget vs Actual (if required)	Annual	20 working days after firm reporting year end
Capital Adequacy Statement	Bi-Annual	20 working days after firm reporting year end and 20 working days after firm reporting half year end
Monthly Metrics Report	Monthly	20 working days after calendar month end

Signed for and on behalf of the CENTRAL BANK OF IRELAND,  
28 February 2017.

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 out requirements for certain investment firms supervised by the Central Bank of Ireland.

BAILE ÁTHA CLIATH  
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nó trí aon díoltóir leabhar.

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DUBLIN  
PUBLISHED BY THE STATIONERY OFFICE  
To be purchased from  
GOVERNMENT PUBLICATIONS,  
52 ST. STEPHEN'S GREEN, DUBLIN 2.  
(Tel: 01 - 6476834 or 1890 213434; Fax: 01 - 6476843)  
or through any bookseller.

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€10.16



Wt. (B32630). 285. 3/17. Essentra. Gr 30-15.