



STATUTORY INSTRUMENTS.

**S.I. No. 604 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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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 Business, Enterprise and Innovation in accordance with section 49(1) of the Act, hereby makes the following regulations:

PART 1

PRELIMINARY AND GENERAL

*Citation and commencement*

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

(2) These Regulations shall come into operation on 3 January 2018.

*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. No. 257 of 2013);

“AIFM Regulations” means the European Union (Alternative Investment Fund Managers) Regulations 2013 (S.I. No. 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;

*Notice of the making of this Statutory Instrument was published in  
“Iris Oifigiúil” of 2nd January, 2018.*

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

- (a) 31 March;
- (b) 30 June;
- (c) 30 September;
- (d) 31 December;

“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>;

“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” means client funds and client financial instruments;

“client asset examination” has the meaning assigned to it in Regulation 65;

“Client Assets Key Information Document” has the meaning assigned to it in Regulation 60(2);

“client asset management plan” means the plan created pursuant to Regulation 64(1) for the purpose of safeguarding client assets;

“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);

“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;

<sup>1</sup>OJ No. L 176, 27.06.2013, p. 1

“eligible custodian” means—

- (a) a person whose authorisation from the Bank, or an authority in any other jurisdiction that performs a function similar to the functions performed by the Bank, includes the safekeeping and administration of financial instruments on behalf of clients, including custodianship and related services such as cash management or collateral management, or
- (b) a credit institution;

“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 Instruments Facilities Agreement” has the meaning assigned to it in Regulation 53(2);

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

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

“Funds Facilities Agreement” has the meaning assigned to it in Regulation 53(1);

“fund service provider” means a person who is:

- (a) authorised pursuant to section 10 of the Investment Intermediaries Act 1995 to carry out:
  - (i) the administration of collective investment schemes or fund accounting services or acting as a transfer agent or registration agent for such schemes, or
  - (ii) custodial operations involving the safekeeping and administration of investment instruments,
- (b) authorised pursuant to the UCITS Regulations as a management company,
- (c) authorised pursuant to the AIFM Regulations as an alternative investment fund manager,
- (d) referred to in the Unit Trusts Act 1990 as a management company,

- (e) referred to in Part 24 of the Companies Act 2014 as a management company,
- (f) referred to in the Investment Limited Partnerships Act 1994 as a General Partner,
- (g) referred to in the Investment Funds Companies and Miscellaneous Provisions Act 2005 as a management company,
- (h) a credit institution who acts as a depositary for investment funds or who provides fund administration services to such funds;

“fund service provider’s own money” means any money that is owned by the fund service provider;

“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 MiFID Regulations, 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;

“Head of Client Asset Oversight” has the meaning assigned to it in paragraph 6 of Schedule 3 to the MiFID Regulations;

“Head of Investor Money Oversight” has the meaning assigned to it in Regulation 78(1);

“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 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 MiFID Regulations;

“investment service 2” means the investment service referred to in subparagraph (2) in Part 1 of Schedule 1 to the MiFID Regulations;

“investment service 3” means the investment service referred to in subparagraph (3) in Part 1 of Schedule 1 to the MiFID Regulations;

“investment service 4” means the investment service referred to in subparagraph (4) in Part 1 of Schedule 1 to the MiFID Regulations;

“investment service 5” means the investment service referred to in subparagraph (5) in Part 1 of Schedule 1 to the MiFID Regulations;

“investment service 6” means the investment service referred to in subparagraph (6) in Part 1 of Schedule 1 to the MiFID Regulations;

“investor money” means any money, to which an investor is beneficially entitled, received from or on behalf of an investor or held by the fund service provider on behalf of an investor and includes (without limitation)—

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

- “investor money examination” has the meaning assigned to it in Regulation 80(1);
- “investor money facilities agreement” has the meaning assigned to it in Regulation 74(1);
- “investor money management plan” means the plan created pursuant to Regulation 79(1) for the purpose of safeguarding investor money;
- “investor money requirement” means the total amount of investor money that a fund service provider should hold on behalf of investors;
- “investor money resource” means the total amount of investor money deposited in a fund service provider’s collection accounts;
- “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 5, respectively, of the MiFID Regulations;
- “MiFID Regulations” means the European Union (Markets in Financial Instruments) Regulations 2017 (S.I. No. 375 of 2017);
- “NAV” means net asset value;
- “nominee company” means a body corporate whose business consists solely of acting as a nominee holder of investment instruments or other property;
- “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);

“UCITS Regulations” means the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (S.I. No. 352 of 2011);

“25 April Commission Delegated Regulation” means Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

(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, in Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU or the MiFID Regulations.

*Scope and application*

3. Save where the context provides otherwise—

- (a) MiFID investment firms are subject to the requirements in Parts 2 and 6,
- (b) investment business firms who are not fund administrators are subject to the requirements in Parts 2, 3 and 6,
- (c) fund administrators are subject to the requirements in Parts 2 to 5 and 7,
- (d) management companies authorised pursuant to the UCITS Regulations are subject to the requirements in Parts 6 and 7,
- (e) alternative investment fund managers authorised pursuant to the AIFM Regulations are subject to the requirements in Parts 6 and 7,
- (f) fund service providers are subject to the requirements in Part 7, and
- (g) market operators are subject to the requirements in Part 8.

## 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 office or subsidiary in the State, or
- (c) introducing material changes to the investment firm's operating model.

(2) In addition to those obligations imposed on investment firms under the MiFID Regulations, 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) Without prejudice to any obligations arising under the MiFID Regulations and 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 depositary, 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 senior staff member 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) as 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) Subject to paragraph 3, a fund administrator shall calculate its own funds by applying the requirements set out in Regulations 31 to 41.

(3) The amount of own funds referred to in paragraph (1)(a) or the first €125,000 of the amount referred to in paragraph (1)(b) shall comprise only of one or more of those items referred to in Regulation 32(1)(a)-(d).

*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 (2)(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 (2)(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).

## PART 6

## CLIENT ASSET REQUIREMENTS

*Interpretation*

47. (1) In this Part—

“assurance report” has the meaning assigned to it in paragraph 7 of Schedule 3 to the MiFID Regulations;

“authorised person” means a relevant person who has the authority to commit the investment firm to a binding agreement;

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

“client financial instruments” means financial instruments as defined in Regulation 3(1) of the MiFID Regulations or investment instruments as defined in

section 2(1) of the Investment Intermediaries Act 1995, which is held by an investment firm on behalf of a client and includes, without limitation, any—

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

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

- (a) client funds held by or with a nominee, and
- (b) in the case of money that is comprised partly of client funds and partly of other money, that part of the money that is client funds, but does not include money that an investment firm—
  - (i) receives from or on behalf of the client, or
  - (ii) owes to or retains on behalf of the client

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

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

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

“collateral” means, with respect to a client—

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

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

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

“investment agreement” means a written agreement entered into by an investment firm and a client in which the responsibilities of the investment firm and the client are set down;

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

- (a) the MiFID Regulations as an investment firm, or
- (b) Section 10 of the Investment Intermediaries Act 1995 as an investment business firm, or
- (c) the UCITS Regulations as a management company which is authorised to conduct activities pursuant to Regulation 16(2) of the UCITS Regulations and in respect of those activities only, or
- (d) the AIFM Regulations as an alternative investment fund manager which is authorised to conduct services pursuant to Regulation 7(4) of the AIFM Regulations and in respect of those services only;

but shall not include the following:

- (i) a restricted activity investment product intermediary within the meaning of section 2(1) of the Investment Intermediaries Act 1995;
- (ii) 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 1995;
  - (III) a person so authorised but only to carry out custodial operations involving the safekeeping and administration of investment instruments;
  - (IV) a person so authorised but only to carry out the administration of collective investment schemes or fund accounting services or acting as a transfer agent or registration agent for such schemes; or
- (iii) a certified person within the meaning of section 55 of the Investment Intermediaries Act 1995;

“investment firm’s own assets” means any assets held by an investment firm other than client assets;

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

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

“other money” means any money which is not client funds;

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

“safe custody account” means a third party client asset account in which physical client financial instruments are lodged for safe-keeping;

“terms of business” means the document which sets out the general terms under which the investment firm provides services to its clients and the respective duties and responsibilities of the investment firm and its clients in relation to such services;

“third party” means—

(a) in relation to client funds—

(i) any of the entities listed in paragraph 3(1) of Schedule 3 to the MiFID Regulations,

(b) in relation to client financial instruments—

(i) entities that meet the requirements in paragraph 2 of Schedule 3 to the MiFID Regulations,

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

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

(b) includes in its title an appropriate description to distinguish client assets in the third party client asset account from the investment firm’s own assets;

(c) may include a pooled account.

## Chapter 1

### *General Requirements*

#### *Segregation*

48. (1) In this Regulation “instruction” includes—

(a) a written confirmation or recorded telephone confirmation by which a client has instructed the investment firm to transfer its client assets, or

(b) a written agreement by which a client has instructed the investment firm to manage its client assets on a discretionary basis.

(2) An investment firm shall take all steps as may be necessary to ensure that any client asset is held by it in trust for the benefit of the client on behalf of whom such client asset is being held.

(3) An investment firm shall not place in a third party client asset account any asset other than a client asset except in accordance with Regulations 49(6), 49(7) or Regulation 58(3).

(4) Except in accordance with a legally enforceable agreement, an investment firm shall not use the assets of a client for any purpose other than for the sole account of that client.

(5) Without prejudice to Regulations 48(3), 49(6) and 49(7), an investment firm is not required to pay into a third party client asset account such client assets that it receives on behalf of a client where to do so would result in the investment firm breaching any law or order of any court of competent jurisdiction.

(6) Where, in accordance with an instruction from a client, a client asset is transferred to a third party, the investment firm shall ensure that such transfer is overseen and approved, prior to or at the time of transfer, by a relevant person other than the relevant person who is conducting the transfer.

*Holding and depositing client funds*

49. (1) All money received from, or on behalf of, a client shall be held as client funds in accordance with this Part unless such money relates exclusively to an activity of the investment firm which is not a regulated financial service.

(2) For the purposes of this Part, an investment firm is deemed to hold client funds where—

(a) the funds have been deposited on behalf of a client of the investment firm to a third party client asset account with a third party or a relevant party in the name of the investment firm or of a nominee, and

(b) the investment firm has the capacity to effect transactions on that third party client asset account.

(3) Client funds received from, or on behalf of, a client shall be deposited into a third party client asset account without delay, and in any event not later than one working day after the receipt of such client funds.

(4) Where an investment firm deposits client funds with a qualifying money market fund, the units in that qualifying money market fund shall be held in accordance with the requirements for holding and depositing client financial instruments.

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

(6) Where an investment firm receives from, or on behalf of, a client, money that is comprised of a mixture of client funds and other money, the investment

firm shall first pay all of the client funds and other money into a third party client asset account and thereafter shall, without delay, transfer out of, or withdraw, from the third party client asset account the other money.

(7) If an investment firm receives or identifies at any stage that it is holding money where—

- (a) it is not clear if that money is client funds, or
- (b) there is insufficient documentation to identify the client who owns such money,

the investment firm shall, first pay the money into a third party client asset account and within 5 working days of the initial receipt of such money, or identifying that it is holding money where subparagraphs (a) or (b) apply, either identify the client concerned or return the money.

(8) Where client funds are deposited with a third party the investment firm shall review the arrangements for the holding of client funds with that third party—

- (a) as against the criteria set out in paragraphs 3(3) and 3(4) of Schedule 3 to the MiFID Regulations,
- (b) if there is any material change to the relationship with the third party which affects the manner by which clients funds are held, and
- (c) in any event, at least on an annual basis.

(9) An investment firm shall not hold client assets without the prior written approval of the Bank.

*Holding and depositing client financial instruments*

50. (1) All financial instruments received from, or on behalf of, a client shall be held as client financial instruments in accordance with this Part.

(2) For the purposes of this Part, an investment firm is deemed to hold client financial instruments where the investment firm—

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

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

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

(4) An investment firm shall hold documents of title to client financial instruments—

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

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

(6) Client financial instruments shall not be deposited by an investment firm with a third party otherwise than in a third party client asset account maintained by the investment firm at that third party.

(7) Where client financial instruments are deposited with a third party, the investment firm shall review the arrangements for the holding of the client financial instruments with that third party—

- (a) as against the criteria set out in paragraph 2 of Schedule 3 to the MiFID Regulations,
- (b) if there is any material change to the relationship with the third party which affects the manner by which client instruments are held, and
- (c) in any event, at least on an annual basis.

*Registration of client financial instruments*

51. (1) In this Regulation “eligible nominee” means—

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

(2) An investment firm shall arrange for the registration of client financial instruments in the name of the client save where the client has given prior written consent for the registration of the client's financial instruments in the name of an eligible nominee.

*Designation*

52. (1) In advance of opening a third party client asset account, an investment firm shall—

- (a) designate in its own financial records each third party client asset account as a 'client asset account' or use some such other abbreviation in the account name that makes it readily identifiable as an account containing client assets,
- (b) ensure that the third party will designate in the financial records of the third party, the name of a third party client asset account held with it in a manner which makes it clear that the client assets are not assets of the investment firm.

*Funds facilities agreement and financial instruments facilities agreement*

53. (1) In advance of opening a third party client asset account, an investment firm shall enter into an agreement with the third party (in this Part to be known as a "Funds Facilities Agreement") and the terms of such Funds Facilities Agreement shall be that—

- (a) the investment firm and the third party acknowledge that the client funds in the third party client asset account are held by the investment firm in trust for the relevant clients,
- (b) the third party shall maintain a record of the client funds in the third party client asset account separate from the investment firm's own funds and the funds of the third party,
- (c) the third party will designate the name of the third party client asset account in its records in such a way as to make it clear that the client funds do not belong to the investment firm,
- (d) the third party is not entitled to combine the third party client asset account with any other account and the third party is not entitled to exercise any right of set-off or counterclaim against client funds in that third party client asset account in respect of any sum owed to it by any person, including any other account of the investment firm,
- (e) the third party will provide the investment firm with a statement or other form of confirmation as often as is required to enable the investment firm comply with Regulations 57(1) to 57(2) and such statement shall specify all client funds deposited with the third party for the investment firm, and

- (f) the third party will not make withdrawals from the third party client asset account other than by instruction received from an authorised person of the investment firm.

(2) In advance of opening a third party client asset account, an investment firm shall enter into an agreement with the third party (in this Part to be known as a “Financial Instruments Facilities Agreement”) and the terms of such Financial Instruments Facilities Agreement shall be that—

- (a) the investment firm and the third party acknowledge that client financial instruments in the third party client asset account are held by the investment firm in trust for the relevant clients,
- (b) the third party shall hold and record client financial instruments separate from the investment firm’s own financial instruments and financial instruments of the third party,
- (c) the third party will designate the name of the third party client asset account in its records in such a way as to make it clear that the client financial instruments do not belong to the investment firm,
- (d) the third party is not entitled to combine the third party client asset account with any other account or to exercise any right of set-off or counterclaim against client financial instruments in that third party client asset account in respect of any sum owed to it by any person, except—
  - (i) to the extent of any charges relating to the administration or safe-keeping of that client’s financial instruments, or
  - (ii) where that client of the investment firm has failed to settle a transaction by its due settlement date,
- (e) the third party will specify what the arrangements will be for registering client financial instruments if they will not be registered in the client’s name,
- (f) the third party will not make withdrawals from the third party client asset account other than by instruction from an authorised person of the investment firm,
- (g) the third party may only claim a lien or security interest over a client’s financial instruments—
  - (i) to the extent of any charges relating to the administration or safe-keeping of that client’s financial instruments, or
  - (ii) where that client has failed to settle a transaction by its due settlement date, and

- (h) the third party will provide the investment firm with a statement or other form of confirmation as often as is required to enable the investment firm to comply with Regulation 57(3) and such statement shall specify all client financial instruments held and a description and the amount of all client financial instruments held in the third party client asset accounts.

*Verification and third party confirmations*

54. (1) Prior to, or within one working day of the initial deposit of client assets in a third party client asset account, an investment firm shall verify that the client assets are held in an account which is designated as a third party client asset account and if the third party does not, in its external financial records make a designation in accordance with Regulation 52, the investment firm shall withdraw the client assets without delay, and in any event within 3 working days of the carrying out of the verification assessment.

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

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

(3) Where a third party client asset account is closed, an investment firm shall, without delay, obtain confirmation in writing, from the third party that the third party client asset account had a nil balance on the date it was closed.

*Collateral margined transactions*

55. (1) With respect to collateral margined transactions, an investment firm, in advance of depositing collateral with, or pledging, charging or granting a security arrangement over the collateral to, a relevant party or eligible custodian, shall—

- (a) notify the credit institution, relevant party or eligible custodian that the investment firm—
  - (i) is under an obligation to keep the collateral separate from the investment firm's collateral, and
  - (ii) that the relevant party or eligible custodian must not claim any lien or right of retention or sale over the collateral except to cover the obligations to the relevant party or eligible custodian which gave rise to that deposit, pledge, charge or security arrangement, or any charges relating to the administration or safekeeping of the collateral,

(b) instruct the relevant party or eligible custodian that—

- (i) the value of the collateral passed by the investment firm on behalf of clients must be credited to the investment firm's third party client asset account with the relevant party or eligible custodian,
  - (ii) where collateral has been passed and the initial margin has been liquidated to satisfy margin requirements, any balance of the sale proceeds that is not a margin requirement must be paid into a third party client asset account without delay, and
  - (iii) where collateral is passed to an exchange or clearing house, any balance of the sale proceeds that is not a margin requirement must be dealt with in accordance with the rules of the relevant exchange or clearing house,
- (c) ensure that a client's fully paid (non-collateral) financial instruments and a client's margin financial instruments will be held in separate third party client asset accounts with the relevant party or eligible custodian and that no right of set-off will apply to either of these accounts.

(2) An investment firm shall not use one client's collateral as security for the obligations of another client or another person, unless legally enforceable agreements to do so are in place.

*Securities financing transactions*

56. (1) An investment firm shall not enter into arrangements for securities financing transactions in respect of client financial instruments held by the investment firm on behalf of a client, or otherwise use such client financial instruments for its own account or the account of another client of the investment firm, unless the following condition is met:

- (a) the investment firm has received written confirmation from the client, of either the counterparty credit ratings acceptable to the client or that the client does not wish to specify such rating.

*Reconciliation*

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

(2) In relation to third party client asset accounts which hold fixed term deposits, an investment firm shall reconcile, at least monthly, the balance of all client funds deposited, as recorded by the investment firm with the balance of all client funds held, as recorded by the third party as set out in a statement or other form of confirmation from the third party and such a reconciliation shall be carried out within 3 working days of the date to which the reconciliation relates.

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

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

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

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

(7) An investment firm shall—

- (a) ensure that the reconciliations required pursuant to Regulations 57(1), 57(2) and 57(3) are performed using client asset records that are accurate and the reconciliation itself is performed accurately,
- (b) investigate within one working day the cause of any reconciliation difference in the reconciliation required pursuant to Regulations 57(1), 57(2) and 57(3),
- (c) identify the cause of any reconciliation difference identified in Regulation 57(7)(b) within 5 working days, and
- (d) resolve any reconciliation difference identified in Regulation 57(7)(b) as soon as practicable.

*Daily calculation*

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

(2) For the purposes of Regulation 58(1), an investment firm shall use values in its own accounting records which may have been reconciled with statements from a third party rather than values contained in statements received from a third party.

(3) In the event of a shortfall of client funds, an investment firm shall deposit into a third party client asset account, without delay and in any event within one working day from the date to which the calculation relates, such money

from the investment firm's own assets as is necessary to ensure that the client funds resource is equal to the client funds requirement.

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

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

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

## Chapter 2

### *Client Disclosure*

#### *Information to be provided to clients in the terms of business*

59. (1) Prior to first receiving client assets an investment firm shall disclose to clients or potential clients in the terms of business—

- (a) its arrangements relating to the receipt of client assets,
- (b) if applicable, a statement detailing its exchange rate policy,
- (c) whether interest is payable in respect of client funds and the terms on which such interest is payable,
- (d) where applicable, its arrangements relating to—
  - (i) the registration of client financial instruments and collateral, if these are not to be registered in the client's name,
  - (ii) claiming and receiving dividends, interest payments and other rights accruing to the client,
  - (iii) the exercise of conversion, subscription and redemption rights,
  - (iv) dealing with take-overs and capital re-organisations,
  - (v) the exercise of voting rights,
- (e) where client assets are to be held in a pooled account, the nature of a pooled account and the risks of client assets being held in a pooled account,

- (f) the trading name, registered address and website address of any third party with whom the client assets are to be deposited,
- (g) if client assets are to be deposited with a third party outside of the State—
  - (i) that in the event of a default of a third party outside of the State, those client assets may be treated differently from the position which would apply if the client assets were deposited with a third party in the State, and
  - (ii) any additional risks that may arise where client assets are deposited with a third party outside of the State,
- (h) in the case of collateral margined transactions, where an investment firm is to deposit collateral with, pledge, charge or grant a security arrangement over the collateral to a relevant party or eligible custodian—
  - (i) that the collateral will not be registered in the client's name if this is the case,
  - (ii) of the procedure which will apply in the event of the client's default, where the proceeds of sale of the collateral exceed the amount owed by the client to the investment firm,
  - (iii) of the circumstances in which the investment firm shall use a client's financial instruments in this manner.

*Client assets key information document*

60. (1) Prior to a retail client signing an investment agreement to open an account with an investment firm, an investment firm shall provide the retail client with a Client Assets Key Information Document, which shall be—

- (a) written in a language and a style that is clear, succinct and comprehensible,
  - (b) a separate and stand-alone document to any other document,
  - (c) accurate and relevant, and
  - (d) provided in a durable medium.
- (2) The Client Assets Key Information Document shall provide—
- (a) an explanation of the key features of the regulatory regime that applies to the safeguarding of client assets,
  - (b) an explanation of what constitutes client assets under that regime,
  - (c) the circumstances in which that regime applies and does not apply,

- (d) an explanation of the circumstances in which the investment firm will hold client assets itself, deposit client assets with a third party and deposit client assets with a third party outside the State,
  - (e) the arrangements applying to the holding of client assets and the relevant risks associated with these arrangements.
- (3) An investment firm shall—
- (a) review, at least annually, the content of the Client Assets Key Information Document, which has been provided to all retail clients, and
  - (b) ensure that the information contained therein is accurate and relevant having regard to Regulation 60(2).
- (4) An investment firm shall inform all retail clients in good time of any material changes to the Client Assets Key Information Document in a durable medium, and in any event within one month of such changes having been issued.

*Statement of client financial instruments or client funds*

61. (1) The statement of client financial instruments or client funds referred to in Article 63 of the 25 April Commission Delegated Regulation shall, in addition to the information to be provided under Article 63(2) of that Regulation, include the following information:

- (a) the amounts of cash balances (which may be shown on a separate statement) held by the investment firm as of the statement date;
- (b) identification of those client financial instruments registered in the client's name which are held in custody by, or on behalf of, the investment firm separately from those registered in any other name; and
- (c) the market value of any collateral held as at the date of the statement.

Chapter 3

*Client Consent*

*Client consent requirements*

62. (1) An investment firm shall obtain the prior written consent of a client in the following circumstances, as applicable:

- (a) where granting to another person a lien, security interest and/or right of set-off over client assets;
- (b) with respect to the arrangements for the giving and receiving of instructions by, or on behalf of, the client and any limitations to that authority, in respect of the provision of safe-keeping services which it provides;
- (c) where client assets are deposited with a third party outside the State;

- (d) where a client instructs an investment firm to deposit client assets with a specific third party that does not meet the investment firm's internal risk assessment;
- (e) when client assets are to be held in a pooled account with a third party;
- (f) where interest earned on client funds in a third party client asset account is to be retained by the investment firm;
- (g) where client financial instruments are to be deposited with a third party in a third country that does not regulate the holding and safe-keeping of client financial instruments; and
- (h) in the case of collateral margined transactions—
  - (i) before an investment firm deposits collateral with, pledges, charges or grants a security arrangement over the collateral to a relevant party or eligible custodian,
  - (ii) where it proposes to use collateral in the form of client assets as security for the investment firm's own obligations, or
  - (iii) where it proposes to return to the client collateral other than the original collateral or original type of collateral.

## Chapter 4

### *Risk Management and Assurance*

#### *Risk management*

63. (1) An investment firm shall ensure that the Head of Client Asset Oversight shall have the necessary resources, including staff that are adequately trained with sufficient skill and expertise, to carry out the responsibilities listed in Regulation 63(2) having regard to the nature, scale and complexity of the business of the investment firm.

(2) The Head of Client Asset Oversight shall perform relevant duties including but not limited to the following:

- (a) ensuring that every Funds Facilities Agreement and Financial Instruments Facilities Agreement referred to in Regulations 53(1) and 53(2) is obtained and maintained in accordance with Regulation 67(2);
- (b) reviewing, at least on an annual basis, the provisions of every Funds Facilities Agreement and Financial Instruments Facilities Agreement to ensure compliance with the requirements of this Part, in particular Regulations 53(1) and 53(2) (as the case may be);
- (c) ensuring that any other agreement entered into between the investment firm and a third party does not contradict or supersede the requirements of this Part, in particular Regulations 53(1) and 53(2),

or the terms of the Fund Facilities Agreement or the Financial Instruments Facilities Agreement;

- (d) providing approval, in writing, of the reviews referred to in Regulations 49(8) and 50(7);
- (e) ensuring that the client asset management plan referred to in Regulation 64(1) is produced, maintained, reviewed and updated as the information upon which the client asset management plan is based, changes;
- (f) ensuring that any potential or actual breaches of this Part are reported in writing to the board of the investment firm in the case of a company or to each of the partners in the case of a partnership;
- (g) ensuring that the Bank is notified, in accordance with Regulation 68, of any breaches of this Part without delay;
- (h) approving any returns in relation to client assets that are required by this Part to be submitted to the Bank;
- (i) reporting in writing to the board of the investment firm in the case of a company or to each of the partners in the case of a partnership in respect of any issues raised by the internal and external auditors in relation to client assets;
- (j) ensuring that the relevant persons performing reconciliations referred to in Regulations 57(1) to 57(3) and the daily calculations referred to in Regulation 58(1) are adequately trained and have sufficient skill and expertise to perform those functions;
- (k) undertaking an assessment of risks to client assets arising from the investment firm's business model;
- (l) ensuring that the client asset examination referred to in Regulation 65 is completed and the assurance report is submitted to the Bank through the Online Reporting System and in accordance with the timeframes set out in Regulation 68;
- (m) ensuring that an appropriate person is available to provide cover to make submissions to the Bank, in periods where the Head of Client Asset Oversight is absent from the investment firm.

*Client asset management plan*

64. (1) An investment firm shall have a client asset management plan in order to safeguard client assets.

(2) The client asset management plan shall be reviewed and updated—

- (a) if there is any change to the investment firm's business model which affects the manner by which client assets are held, and

(b) in any event, at least on an annual basis,

to ensure that the information contained therein is accurate.

(3) The board of an investment firm shall approve the client asset management plan—

(a) when material changes are made,

(b) when it is reviewed and updated in accordance with Regulation 64(2), and

(c) in any event, at least on an annual basis.

(4) The client asset management plan shall, at least, record, the following:

(a) details of an investment firm's business model, operational structures and governance arrangements;

(b) the range and type of client assets held by an investment firm;

(c) the range of investment services carried out by an investment firm;

(d) the risks to the safeguarding of client assets including those specific to the particular business model of an investment firm;

(e) the processes and controls to mitigate the risks referred to in subparagraph (d);

(f) information to facilitate the distribution of client assets, particularly in the event of an investment firm's insolvency;

(g) the process that an investment firm follows with respect to the handling of money that is comprised of a mixture of client funds and other money to ensure compliance with Regulation 49(6);

(h) the process that an investment firm will follow to identify the client in the circumstances covered by Regulation 49(7);

(i) the process that an investment firm will follow to carry out the reviews referred to in Regulations 49(8) and 50(7);

(j) the procedures referred to in Regulation 50(5);

(k) where, in accordance with Regulation 66, an investment firm outsources to another party, the performance of the reconciliation or the daily calculation, the manner in which an investment firm will exercise oversight over the outsourced activity;

(l) the process that an investment firm will follow to ensure that client funds or client financial instruments are not deposited into an investment firm's own bank account or custody account;

- (m) the process and timeframes that an investment firm will follow if, in error, client funds or client financial instruments are deposited by a client into an investment firm's own bank account or custody account;
- (n) the basis and criteria that will be used by an investment firm to determine materiality in order to safeguard client assets, including for the purposes of Regulation 68(1)(c) and (d);
- (o) such other matters as may be determined by the Bank from time to time.

*Client asset examination*

65. (1) An investment firm shall arrange for an external auditor to prepare a report as part of, or in addition to, the report required under paragraph 7 of Schedule 3 to the MiFID Regulations (in this Part referred to as an "assurance report") in relation to that investment firm's safeguarding of client assets at least on an annual basis.

(2) An investment firm shall ensure that the external auditor appointed for the purposes of paragraph (1)—

- (a) has the necessary resources and skills relating to the business of the investment firm,
- (b) receives the investment firm's full cooperation in a timely manner in relation to conducting the client asset examination and the preparation of the assurance report,
- (c) in addition to the requirements of paragraph 7 of Schedule 3 to the MiFID Regulations, reports as to whether, throughout the period to which the client asset examination relates—
  - (i) the investment firm has maintained processes and systems adequate to meet the requirements of this Part,
  - (ii) the investment firm was compliant with this Part as at the period end date,
  - (iii) any matter has come to the attention of the external auditor to suggest that the investment firm has acted in a manner which is not consistent with that documented within the client asset management plan which has been in operation, and
  - (iv) any changes made to the client asset management plan have been drafted in sufficient detail to meet the requirements of this Part, capturing the risks faced by the investment firm in holding client assets, given the nature and complexity of the business of the investment firm.

(3) The board of the investment firm shall assess the findings of the assurance report.

(4) The investment firm shall ensure that any remedial actions necessary arising from the assurance report are set out in writing, submitted to the Bank in accordance with Regulation 68 and the timeframes referred to in Regulation 68, and that such remedial actions are carried out without delay.

(5) If an investment firm which is permitted to hold client assets, claims not to have held client assets throughout the period to which the client asset examination relates, the investment firm shall—

- (a) arrange that an external auditor performs such procedures as the external auditor deems appropriate to enable the external auditor to determine whether anything has come to its attention that causes the external auditor to believe that the investment firm held client assets during that period, and
- (b) ensure that the external auditor provides the assurance report to the investment firm in a timely manner and in any event, in good time to enable the investment firm to comply with its reporting obligations under Regulation 68.

## Chapter 5

### *Outsourcing, Record-Keeping and Reporting Requirements*

#### *Outsourcing requirements*

66. (1) If an investment firm outsources to another party, the performance of the reconciliation referred to in Regulation 57 or the daily calculation referred to in Regulation 58, the investment firm shall take reasonable steps to ensure that the other party has appropriate processes, systems and controls in place to ensure continuity in the effective performance of the outsourced activity.

#### *Record-keeping — general requirements*

67. (1) An investment firm shall—

- (a) keep an accurate record of each transaction on a client asset account in such a manner and form that:
    - (i) the client for or in respect of whom the transaction was conducted is identified, and
    - (ii) the transaction is accounted for by the investment firm separate from all other transactions of the investment firm;
  - (b) keep the records required under paragraph (a) separate from records relating to transactions which are not related to the third party client asset account.
- (2) An investment firm shall maintain the following, in a readily accessible form, for a period of at least 6 years:
- (a) a record of the verification referred to in Regulation 54(1);

- (b) every Funds Facilities Agreement and Financial Instruments Facilities Agreement between the investment firm and a third party;
- (c) a record of the date upon which—
  - (i) the reconciliation referred to in Regulation 57(5) was prepared, and
  - (ii) the daily calculation, referred to in Regulation 58(5) was prepared;
- (d) a record to evidence the review process referred to in Regulations 57(6) and 58(6);
- (e) evidence of the review referred to in Regulation 63(2)(b);
- (f) a record of each reconciliation required by Regulation 57 including—
  - (i) the information upon which the reconciliation is based,
  - (ii) the relevant person who carried out such reconciliation, and
  - (iii) the relevant person who reviewed such reconciliation;
- (g) a record of each daily calculation required by Regulation 58 including—
  - (i) the information upon which the daily calculation is based,
  - (ii) the relevant person who carried out such daily calculation, and
  - (iii) the relevant person who reviewed such daily calculation;
- (h) a record of the client asset management plan review referred to in Regulation 64(2);
- (i) all records required to demonstrate compliance with this Part.

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

*Reporting requirements*

68. (1) An investment firm shall notify the following to the Bank in accordance with this Part and through the Online Reporting System:

- (a) where the investment firm has failed to carry out the reconciliation referred to in Regulations 57(1), 57(2) and 57(3);
- (b) where the investment firm has failed to carry out the daily calculation referred to in Regulation 58(1);

- (c) any material reconciliation differences identified by an investment firm in accordance with the process referred to in Regulation 57(7);
  - (d) where applicable, the remedial actions referred to in Regulation 65(4) and the timeframe in which the investment firm carried out those remedial actions;
  - (e) any material lodgements or withdrawals by an investment firm from the client asset bank account, including lodgements or withdrawals made in accordance with Regulations 58(3) and 58(4);
  - (f) any breaches of or non-compliance with this Part.
- (2) The notifications referred to in paragraphs (1)(a) and (b) shall be submitted together with the reasons for such failures and within one working day of the date on which the reconciliation or daily calculation, as applicable, should have been performed.
- (3) The notifications referred to in paragraphs 1(c), (d) and (e) shall be submitted together with the reasons for such differences, transfers, breaches or non-compliance, as applicable, and immediately upon identification by an investment firm.
- (4) An investment firm shall—
- (a) submit the assurance report referred to in Regulation 65(2)(c) and 65(5)(b) and where applicable, the information referred to in Regulation 68(1)(d)—
    - (i) to the Bank through the Online Reporting System,
    - (ii) no later than 4 months after the period end to which the client asset examination relates.

## Chapter 6

### *Miscellaneous*

#### *Application of provisions*

69. The following provisions shall apply to firms authorised by the Bank pursuant to section 10 of the Investment Intermediaries Act 1995 that are investment business firms within the meaning of these Regulations:

- (a) Regulation 23(1)(l)-(m) of the MiFID Regulations;
- (b) Schedule 3 to the MiFID Regulations;
- (c) to the extent that these provisions relate to the provision of information to clients or reporting to clients on the safeguarding of client assets, Articles 46, 47, 49 and 63 of the 25 April Commission Delegated Regulation;

(d) Article 72(2) of the 25 April Commission Delegated Regulation.

## PART 7

### INVESTOR MONEY REQUIREMENTS

#### *Interpretation*

70. (1) In this Part—

“assurance report” has the meaning assigned to it in Regulation 80(1);

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

“nominee” means a body corporate acting on behalf of a fund service provider to hold investor money;

“investor” means any person—

- (a) from or on behalf of whom the fund service provider receives or holds money for the purposes of subscribing to an investment fund,
- (b) in respect of whom the fund service provider transfers money to an investment fund for the purposes of subscribing to or participating in that investment fund,
- (c) in respect of whom the fund service provider receives from an investment fund money for transmission to the person, whether in respect of redemption proceeds or otherwise;

“investment fund” means an undertaking within the meaning of Article 1(2) of Directive 2009/65/EC or an AIF collective investment undertaking within the meaning of Article 4(1)(a) of Directive 2011/61/EU;

“other money” means any money which is not investor money;

“third party” means—

- (a) a credit institution authorised in the EEA,
- (b) a credit institution authorised within a signatory state, other than a State of the EEA, to the Basel Capital Convergence Agreement of July 1988, or
- (c) a credit institution authorised in Jersey, Guernsey, the Isle of Man, Australia or New Zealand;

“third party collection account” means an account opened with a third party by a fund service provider to deposit investor money to deliver from an investor to an investment fund or from an investment fund to an investor and has the following features:

- (a) is in the name of the fund service provider or its nominee;
- (b) includes in its title the description, “collection account”, to distinguish investor money in the account from the fund service provider’s own firm money deposited elsewhere; and

may include an account where the money of multiple investors are held in one account.

## Chapter 1

### *General Requirements*

#### *General requirements and segregation*

71. (1) A fund service provider shall act honestly, fairly and professionally in accordance with the best interests of investors.

(2) A fund service provider shall keep investor money separate from other money and take all steps as may be necessary to ensure that investor money is held by it in trust for the benefit of the investor on behalf of whom such investor money is being held.

(3) A fund service provider shall not—

- (a) place in a third party collection account any money other than investor money except in accordance with Regulations 72(4), 72(5) and 77(3),
- (b) except in accordance with a legally enforceable agreement, use investor money for any purpose other than for the sole account of that investor,
- (c) use, or transfer investor money otherwise than in accordance with an instruction relating to that investor money received by the fund service provider from the investor for whom that investor money is held or as required by law or by order of any court of competent jurisdiction.

(4) Without prejudice to the generality of Regulation 71(3)(a) and Regulation 72(4), a fund service provider is not required to pay into a third party collection account such investor money that it receives on behalf of an investor where to do so would result in the fund service provider breaching any law or order of any court of competent jurisdiction.

(5) Where, in accordance with an instruction from the relevant investor, investor money is transferred to a third party, the fund service provider shall ensure that such transfer is overseen and approved by a member of staff other than the staff member who conducts the transfer.

(6) For the purposes of paragraph (5) “instruction” includes a written confirmation or recorded telephone confirmation by which an investor has instructed the fund service provider to transfer its investor money.

*Holding and depositing investor money*

72. (1) Investor money may only be held by a fund service provider in a third party collection account maintained by the fund service provider at a third party.

(2) For the purposes of this Part, a fund service provider is deemed to hold investor money where the investor money has—

- (a) been deposited into a third party collection account,
- (b) the fund service provider has the capacity to effect transactions on that third party collection account.

(3) Any investor money received shall be deposited into a third party collection account without delay and in any event not later than one working day after the receipt of such money.

(4) Where a fund service provider receives money that is comprised of a mixture of investor money and other money, the fund service provider shall first pay all of the investor money and other money into a third party collection account of that fund service provider and, thereafter shall, without delay, transfer out of or withdraw from the third party collection account the other money.

(5) If a fund service provider receives or identifies at any stage that it is holding money where—

- (a) it is not clear if that money is investor money, or
- (b) there is insufficient documentation to identify the investor who owns such money,

the fund service provider, shall first pay the money into a third party collection account and within 5 working days of the initial receipt of such money, or identifying that it is holding money where subparagraphs (a) or (b) apply, either identify the investor concerned or return the money.

(6) Investor money shall only be deposited with a third party where the fund service provider—

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

(7) Where investor money is deposited with a third party, the fund service provider shall review the arrangements for the depositing of investor money with that third party—

- (a) as against the criteria set out in Regulation 72(6),
  - (b) if there is any material change to the relationship with the third party which affects the manner by which the investor money is held, and
  - (c) in any event, at least on an annual basis.
- (8) A fund service provider shall not hold investor money without the prior written approval of the Bank.

*Designation*

73. (1) In advance of opening a third party collection account, a fund service provider shall—

- (a) designate in its own financial records, each third party collection account as a ‘collection account’ in the account name that makes it readily identifiable as an account containing investor money, and
- (b) ensure that the third party will designate in the financial records of the third party, the name of the third party collection account held with it in a manner which makes it clear that the investor money is not the money of the fund service provider.

*Investor money facilities agreement*

74. (1) In advance of opening a third party collection account with a third party, a fund service provider shall enter into an agreement with the third party (in this Part to be known as an “Investor Money Facilities Agreement”) and the terms of such Investor Money Facilities Agreement shall be that—

- (a) the fund service provider and the third party acknowledge that money in the third party collection account is held by the fund service provider in trust for the relevant investors;
- (b) the third party shall maintain a record of the money in the third party collection account separate from the fund service provider’s own money and the money of the third party;
- (c) the third party will designate the name of the third party collection account in its records as a “collection account” to make it clear that the investor money does not belong to the fund service provider;
- (d) the third party is not entitled to combine the third party collection account with any other account and the third party is not entitled to exercise any right of set-off or counterclaim against investor money in that third party collection account in respect of any sum owed to it by any person, including any other account of the fund service provider;
- (e) the third party will provide the fund service provider with a statement as often as is required to enable the fund service provider to comply

with Regulation 76(1) and such statement shall specify all investor money deposited with the third party for the fund service provider;

- (f) the third party will not make withdrawals from the third party collection account other than by instruction from an authorised person of the fund service provider.

*Verification and third party confirmations*

75. (1) Prior to, or within one working day of the initial deposit of investor money in a third party collection account, a fund service provider shall verify that the investor money is held in an account which is designated as a third party collection account and if the third party does not, in its external financial records, make a designation in accordance with Regulation 73(1)(b), the fund service provider shall withdraw the money without delay, and in any event within 3 working days of the carrying out of the verification assessment.

(2) Prior to, or within 3 working days of receipt of the initial deposit of investor money in a third party collection account, a fund service provider shall obtain, in writing, from the third party—

- (a) confirmation of the details of the third party collection account, including the account number, and
- (b) confirmation that the conditions applicable to the third party collection account are as documented in the Investor Money Facilities Agreement.

(3) Where a third party collection account is closed, a fund service provider shall, without delay, obtain confirmation in writing, from the third party that the third party collection account had a nil balance on the date it was closed.

*Reconciliation*

76. (1) In relation to third party collection accounts, a fund service provider shall reconcile daily, the balance of all investor money held, as recorded by the fund service provider, with the balance of all investor money deposited, as recorded by third parties as set out in a statement or other form of confirmation from the third party and such reconciliation shall be carried out by the end of the working day immediately following the working day to which the reconciliation relates.

(2) Each reconciliation shall be carried out by a person who is independent of the production and maintenance of the records used for the purpose of carrying out the reconciliation. Where a reconciliation is carried out by a reconciliation computer system that has been developed by the fund service provider for this specific purpose, the fund service provider shall be in a position to demonstrate the robustness of that system, and shall have contingency measures in place to ensure the reconciliation is completed in the event that the computer system fails.

(3) Each reconciliation shall be reviewed by a person who is independent of the person who carried out the reconciliation and of the person who produced

and maintained the records used for the purpose of carrying out the reconciliation. Where a reconciliation computer system performs the reconciliation, the output from that process shall be reviewed by at least one person and that person must be independent from the person who produced and maintained the records used for the purpose of carrying out the reconciliation and from any person who may have been involved in the computer based reconciliation process.

- (4) A fund service provider shall—
  - (a) investigate within one working day the cause of any reconciliation difference in the reconciliation required pursuant to Regulation 76(1),
  - (b) identify the cause of any such reconciliation difference identified in Regulation 76(4)(a) within 5 working days, and
  - (c) resolve any reconciliation difference identified in Regulation 76(4)(b) as soon as practicable.

*Daily calculation*

77. (1) A fund service provider shall, each working day, ensure that the investor money resource as at the close of business on the previous working day is equal to the investor money requirement.

(2) For the purposes of Regulation 77(1), a fund service provider shall use values in its own accounting records which may have been reconciled with statements received from a third party, rather than values contained in statements received from a third party.

(3) In the event of a shortfall of investor money in a third party collection account, a fund service provider shall deposit into a third party collection account, without delay and in any event within one working day from the date to which the calculation relates, such money from the fund service provider's own firm money as is necessary to ensure that the investor money resource is equal to the investor money requirement.

(4) In the event of an excess of investor money in a third party collection account, a fund service provider shall withdraw from a third party collection account, without delay and in any event within one working day from the date to which the calculation relates, such money as is necessary to ensure that the investor money resource is equal to the investor money requirement.

(5) Without prejudice to Regulations 77(3) and 77(4), in the event of a shortfall or an excess in a foreign currency third party collection account, a fund service provider shall issue an instruction to the third party, without delay and in any event within one working day, to—

- (a) deposit into a third party collection account such money from the fund service provider's own firm money as is necessary to ensure that the investor money resource is equal to the investor money requirement, or

- (b) withdraw such money from a third party collection account to ensure that the investor money resource is equal to the investor money requirement,

and shall have and adhere to procedures to ensure that the third party acts on such an instruction without delay.

(6) The daily calculation shall be carried out by a person who is independent of the production and maintenance of the records used for the purpose of carrying out the daily calculation. Where a daily calculation is carried out by a daily calculation computer system that has been developed by the fund service provider for this specific purpose, the fund service provider shall be in a position to demonstrate the robustness of that system, and it must have contingency measures in place to ensure that the daily calculation is completed in the event that the computer system fails.

(7) The daily calculation shall be reviewed by a person who is independent of the person who carried out the daily calculation and of the person who produced and maintained the records used for the purpose of carrying out the calculation. Where a daily calculation computer system performs the daily calculation, the output from that process shall be reviewed by at least one person and that person must be independent from the person who produced and maintained the records used for the purpose of carrying out the daily calculation and from any person who may have been involved in the computer based daily calculation process.

## Chapter 2

### *Risk Management*

#### *Risk management*

78. (1) A fund service provider shall have an individual with an investor money oversight role in order to ensure the safeguarding of investor money (in this Part referred to as the Head of Investor Money Oversight) and shall ensure that the Head of Investor Money Oversight shall have the necessary resources, including staff that are adequately trained with sufficient skill and expertise to carry out the responsibilities listed in Regulation 78(2) having regard to the nature, scale and complexity of the business of the fund service provider.

(2) The Head of Investor Money Oversight shall perform relevant duties including but not limited to the following:

- (a) ensuring that every Investor Money Facilities Agreement referred to in Regulation 74(1) is obtained and maintained;
- (b) reviewing, at least on an annual basis, the provisions of every Investor Money Facilities Agreement to ensure compliance with the requirements of this Part, in particular, Regulation 74(1);
- (c) ensuring that any other agreement entered into between the fund service provider and a third party does not contradict or supersede

the requirements of this Part, in particular Regulation 74(1), or the terms of the Investor Money Facilities Agreement;

- (d) providing approval in writing of the review referred to in Regulation 72(7);
- (e) ensuring that the investor money management plan referred to in Regulation 79(1) is produced, maintained, reviewed and updated as the information, upon which the investor money management plan is based, changes;
- (f) ensuring that any potential or actual breaches of this Part are reported in writing to the board of the fund service provider in the case of a company or to each of the partners in the case of a partnership;
- (g) ensuring that the Bank is notified, in accordance with Regulation 83, of any breaches of this Part without delay;
- (h) approving any returns in relation to investor money that are required by this Part to be submitted to the Bank;
- (i) reporting in writing to the board of the fund service provider in the case of a company or to each of the partners in the case of a partnership in respect of any issues raised by the internal and external auditors in relation to investor money;
- (j) ensuring that the persons performing the daily calculations as referred to in Regulation 77(1) and the reconciliations as required under Regulation 76(1) are adequately trained and have sufficient skill and expertise to perform those functions;
- (k) undertaking an assessment of risks to investor money arising from the fund service provider's business model;
- (l) ensuring that the Investor Money Examination, as referred to in Regulation 80(1), is completed and the assurance report is submitted to the Bank through the Online Reporting System within the agreed timeframe;
- (m) ensuring that an appropriate person is available to provide cover to make submissions to the Bank, in periods where the Head of Investor Money Oversight is absent from the fund service provider.

*Investor money management plan*

79. (1) A fund service provider shall have an investor money management plan in order to safeguard investor money.

(2) An investor money management plan shall be reviewed and updated—

- (a) if there is any change to the fund service provider's business model which affects the manner by which investor money is held, and

(b) in any event, at least on an annual basis,

to ensure that the information contained therein is accurate.

(3) The board of a fund service provider shall approve the investor money management plan—

(a) when material changes are made,

(b) when it is reviewed and updated in accordance with Regulation 79(2), and

(c) in any event, at least on an annual basis.

(4) The investor money management plan shall record the following:

(a) details of a fund service provider's business model, operational structures and governance arrangements;

(b) the range of fund services carried out by a fund service provider;

(c) risks to the safeguarding of investor money including those specific to the particular business model of a fund service provider;

(d) processes and controls to mitigate the risks referred to in subparagraph (c);

(e) information to facilitate the distribution of investor money, particularly in the event of a fund service provider's insolvency;

(f) the procedures that a fund service provider follows with respect to the handling of money that is comprised of a mixture of investor money and other money to ensure compliance with Regulation 72(4);

(g) the steps that a fund service provider will follow to identify the investor in the circumstances covered by Regulation 72(5);

(h) the procedures that a fund service provider will follow to carry out the review referred to in Regulation 72(7);

(i) where in accordance with Regulation 81, a fund service provider outsources to a another party, the performance of the reconciliation or the daily calculation, the manner in which the fund service provider will exercise oversight over the outsourced activity;

(j) the procedures that a fund service provider will follow to ensure that investor money is not deposited into a fund service provider's own account;

(k) the procedures and timeframes that a fund service provider will follow if, in error, investor money is deposited by an investor into a fund service provider's own account;

- (l) the basis and criteria that will be used by a fund service provider to determine materiality for the purposes of Regulation 83(1)(c) and (d);
- (m) such other matters as may be determined by the Bank from time to time.

*Investor money examination*

80. (1) A fund service provider shall arrange for an external auditor to prepare a report (in this Part referred to as an “assurance report”) in relation to that fund service provider’s safeguarding of investor money at least on an annual basis.

(2) The fund service provider shall ensure that the external auditor appointed for the purposes of paragraph (1)—

- (a) has the necessary resources and skills relating to the business of the fund service provider,
- (b) receives the fund service provider’s full cooperation in a timely manner in relating to conducting the investor money examination,
- (c) provides an assurance report as to whether, throughout the period to which the investor money examination relates—
  - (i) the fund service provider has maintained processes and systems adequate to meet the requirements of this Part,
  - (ii) the fund service provider was compliant with this Part as at the period end date,
  - (iii) any matter has come to the attention of the external auditor to suggest that the fund service provider has acted in a manner which is not consistent with that documented within the investor money management plan which has been in operation, and
  - (iv) any changes made to the investor money management plan have been drafted in sufficient detail to meet the requirements of this Part, capturing the risk faced by the fund service provider in holding investor money, given the nature and complexity of the business of the fund service provider.

(3) The board of the fund service provider shall assess the findings of the assurance report.

(4) The fund service provider shall ensure that any remedial actions necessary arising from the assurance report are set out in writing, submitted to the Bank in accordance with Regulation 83(1)(e) and the timeframes referred to in Regulation 83, and that such remedial actions are carried out without delay.

(5) If a fund service provider which is permitted to hold investor money claims not to have held investor money throughout the period to which the investor money examination relates, the fund service provider shall—

- (a) arrange that an external auditor performs such procedures as the external auditor deems appropriate to enable the external auditor to determine whether anything has come to its attention that causes the external auditor to believe that the fund service provider held investor money during that period,
- (b) ensure that the external auditor provides the assurance report to the fund service provider in a timely manner and in any event, in good time to enable the fund service provider to comply with its reporting obligations under Regulation 83.

### Chapter 3

#### *Outsourcing, Record-keeping and Reporting Requirements*

##### *Outsourcing requirements*

81. (1) If a fund service provider outsources to another party, the performance of the reconciliation referred to in Regulation 76 or the daily calculation referred to in Regulation 77, the fund service provider shall take reasonable steps to ensure that the other party has appropriate processes, systems and controls in place to ensure continuity in the effective performance of this outsourced activity.

##### *Record keeping — general requirements*

82. (1) A fund service provider shall keep the records required under Regulation 82(2)(i) separate from records relating to transactions which are not related to the third party collection account.

(2) A fund service provider shall maintain the following in a readily assessable form, for a period of at least 6 years:

- (a) a record of the verification referred to in Regulation 75(1);
- (b) every Investor Money Facilities Agreement between the fund service provider and a third party;
- (c) a record of the date upon which—
  - (i) the reconciliation referred to in Regulation 76(2) was prepared, and
  - (ii) the daily calculation, referred to in Regulation 77(6) was prepared;
- (d) a record to evidence the review process referred to in Regulations 76(3) and 77(7);
- (e) evidence of the review referred to in Regulation 78(2)(b);

- (f) a record of each reconciliation required by Regulation 76(1) including—
  - (i) the information upon which the reconciliation is based,
  - (ii) the person or reconciliation computer system that carried out such reconciliation, and
  - (iii) the person who reviewed such reconciliation;
- (g) a record of each daily calculation required by Regulation 77(6) including—
  - (i) the information upon which the daily calculation is based,
  - (ii) the person or daily calculation computer system that carried out such daily calculation, and
  - (iii) the person who reviewed the daily calculation;
- (h) a record of the investor money management plan review referred to in Regulation 79(2);
- (i) an accurate record of each transaction on a third party collection account in such a manner and form that—
  - (i) the investor for, or in respect of, whom the transaction was conducted is identified,
  - (ii) the transaction is accounted for by the fund service provider separate from all the other transactions of the fund service provider,
- (j) all records required to demonstrate compliance with this Part.

(3) Where, under or in relation to this Part, another party holds a record on behalf of a fund service provider electronically, the fund service provider shall ensure that it can produce such records without delay.

*Reporting requirements*

83. (1) A fund service provider shall notify the following to the Bank in accordance with this Part and through the Online Reporting System:

- (a) where the fund service provider has failed to carry out the reconciliation referred to in Regulation 76(1);
- (b) where the fund service provider has failed to carry out the daily calculation referred to in Regulation 77(6);
- (c) any material reconciliation differences identified by a fund service provider in accordance with the process referred to in Regulation 76(4);

- (d) when the level of money the fund service provider deposits or withdraws from the third party collection account is material;
  - (e) where applicable, the remedial actions referred to in Regulation 80(4) and the timeframe in which the fund service provider carried out those remedial actions;
  - (f) any breaches or non-compliance with this Part.
- (2) The notifications referred to in paragraphs (1)(a), (b) and (c) shall—
- (a) be submitted together with the reasons for such failures, and
  - (b) in the case of the notifications referred to in paragraphs (1)(a) and (b)—
    - (i) within one working day of the date on which the reconciliation or daily calculation, as applicable, should have been performed.
- (3) A fund service provider shall—
- (a) submit to the Bank the assurance report referred to in Regulation 80(1) and where applicable, the information referred to in Regulation 83(1)(e)—
    - (i) to the Bank through the Online Reporting System,
    - (ii) no later than 4 months after the period end to which the investor money examination relates.
- (4) The notifications referred to in paragraphs (1)(c), and (d) shall be submitted together with the reasons for such differences or non-compliance as applicable and immediately upon identification by a fund service provider.

## Part 8

### MARKET OPERATORS

#### *Interpretation*

84. In this Part—

“market operator” means a market operator of a regulated market authorised under Regulation 56(1)(a) of the MiFID Regulations;

“Common Equity Tier 1 capital” has the meaning set out in Regulation 31(3), substituting ‘fund administrator’ for ‘market operator’ where necessary;

“basic capital requirement” means the amount arising from the calculation under Regulation 86;

“systemic capital add-on” means the amount referred to under Regulation 88;

“Market Operator Risk and Capital Adequacy Assessment Process (MORCAAP) amount” means the amount specified under Regulation 87.

*General capital requirement framework*

85. A market operator shall have, at all times, Common Equity Tier 1 capital at least equal to the sum of the basic capital requirement and the systemic capital add-on.

*Basic capital requirement*

86. (1) A market operator shall calculate its basic capital requirement as the higher of 6 months operating expenses, as specified in paragraph (2) or (3), or the MORCAAP amount.

(2) For the purpose of calculating the basic capital requirement, a market operator shall use the 6 months operating expenses included in the two most recent sets of quarterly financial statements returns submitted to the Bank adjusted for the following:

- (a) subject to the prior written approval of the Bank, the deduction of material non-recurring expenditure incurred in the previous 6 months, and
- (b) the addition of material exceptional expenses forecast for the next 6 months.

(3) For the purpose of calculating the basic capital requirement, a market operator, in the 3 years from the date of authorisation, shall use the basic capital requirement as specified in paragraph (1) and (2) and—

- (a) 12 months operating expenses,
- (b) 12 months capital expenditure, and
- (c) such capital add-on as may be specified by the Bank to address applicable risks.

(4) In relation to paragraph (3), where the market operator cannot meet the conditions specified in paragraph 2, it may substitute projected operating expenses subject to agreement from the Bank.

*MORCAAP amount*

87. A market operator shall calculate the MORCAAP amount as the sum of the amounts referred to in subparagraphs (a) to (c):

- (a) the market operator’s internal assessment of the capital required to cover its business risks and associated mitigations in stressed market conditions;
- (b) the amount of capital estimated by the market operator as required to support an orderly wind down of its business; and

- (c) capital add-ons specified in writing by the Bank to the market operator in order to address identified deficiencies in the assessments referred to in subparagraphs (a) and (b).

*Systemic capital add-on*

88. The systemic capital add-on is set by the Bank as a percentage of the basic capital requirement, ranging between 10% and 30%, with the percentage applicable to each market operator specified in writing by the Bank to that market operator on an individual basis.

*MORCAAP — Internal assessment of capital required in stressed market conditions*

89. (1) For the purpose of Regulation 87(a), a market operator shall have in place sound, effective and comprehensive strategies, processes and systems to assess and maintain on an on-going basis the amount and distribution of capital that it considers adequate to cover the nature and level of the risks to which it is or might be exposed in stressed market conditions.

(2) For the purpose of Regulation 87(a), a market operator shall prepare a recovery plan that adheres to the following principles:

- (a) the recovery plan shall set out actions that would be taken to facilitate the continuation of the business or to secure the business or part of the business in a situation where a market operator is experiencing financial instability;
- (b) the recovery plan shall not assume that financial support will be available from the State.

(3) A market operator shall submit its recovery plan to the Bank and, where the Bank so directs, a market operator shall demonstrate that the plan can be implemented.

(4) Where the Bank assesses that there are material deficiencies in an market operator's recovery plan, or material impediments to its implementation, it shall notify the market operator of its assessment in writing and direct the market operator to submit not later than 2 months of the date of such notice a revised plan demonstrating how those deficiencies or impediments are addressed.

(5) Before directing a market operator to resubmit a recovery plan under paragraph (4), the Bank shall give the institution the opportunity to state its opinion on that requirement.

*MORCAAP — Capital required for orderly wind down*

90. (1) For the purpose of Regulation 87(b), a market operator shall draw up a plan setting out how the market operator would wind down in an orderly fashion within a defined time period in the event of failure and shall estimate the amount of capital required to support such an orderly wind down of its business.

(2) In drawing up the wind down plan referred to in paragraph (1), the market operator should consider at least one reverse stress test scenario.

*MORCAAP — Board approval*

91. (1) The board of the market operator shall approve the following:

- (a) the strategies, processes and systems referred to under Regulation 89(1);
- (b) the recovery plan referred to under Regulation 89(2); and
- (c) the wind-down plan referred to under Regulation 90(1).

(2) The items referred to under points (a), (b) and (c) of paragraph (1) shall be subject to regular internal review by the market operator, at a minimum on a quarterly basis, to ensure that they remain up to date and comprehensive and proportionate to the nature, scale and complexity of the activities of the market operator. The board of the market operator shall approve the conclusions arising from such internal reviews.

*MORCAAP — Capital add-ons*

92. (1) If the quantity of capital allocated by the market operator under the MORCAAP to cover business risks and estimated wind-down costs is found to be deficient by the Bank, the Bank may impose one or more specific capital add-ons. Such capital add-ons will be imposed where the Bank deems that there is an omission of an identified risk or cost, an inadequate calculation of the total exposure of a risk or cost or an overestimate of the effect of mitigations in reducing a risk exposure.

(2) Any capital add-on imposed by the Bank under paragraph (1) shall be communicated to the market operator in writing and shall form part of the overall MORCAAP amount defined under Regulation 87 until such time as the Bank specifies otherwise.

*MORCAAP — Documentation and submission to the Bank*

93. (1) A market operator shall document the items referred to under points (a), (b) and (c) of Regulation 91(1) and shall consolidate such documentation into one MORCAAP document which is approved by the board of the market operator in accordance with Regulation 91.

(2) A market operator is responsible for keeping the MORCAAP document up to date at all times. The document must be available for immediate inspection by the Bank.

*Capital requirement framework report*

94. (1) A market operator shall submit, on a quarterly basis, a completed Capital Requirement Framework Report via the Bank's Online Reporting System on such template or templates as specified by the Bank from time to time.

(2) A market operator shall submit the Capital Requirement Framework Report referred to in paragraph (1) for quarters ending 31 March, 30 June, 30 September and 31 December each year within 20 business days of the quarter end date.

(3) A market operator shall submit the Capital Requirement Framework Report referred to in paragraph (1) within 5 business days of a material change arising in the MORCAAP. For this purpose a material change is identified as a 10% movement in the overall MORCAAP amount, a 20% change in the capital attributed to an individual risk, subject to a minimum quantitative movement of €100,000, or the introduction of a new risk which accounts for greater than 5% of the overall MORCAAP amount.

*General liquidity requirement*

95. A market operator shall have at all times, unless otherwise permitted by the Bank in writing, liquid financial assets at least equal to the sum of the basic capital requirement and the systemic capital add-on.

*Liquid financial assets*

96. Liquid financial assets shall meet the following criteria:

- (a) Liquid financial assets shall be free from any encumbrance. An asset shall be deemed to be unencumbered when a market operator is not subject to any legal, contractual, regulatory or other restriction preventing it from liquidating, transferring, selling, assigning or, generally, disposing of such asset within a 30-day period. This 30-day period may be extended, with the prior written permission of the Bank, in relation to deposits with credit institutions where a duration risk haircut is applied.
- (b) Liquid financial assets shall not be held or issued by the market operator itself, its parent undertaking, its subsidiary or another subsidiary of its parent undertaking or by a special purpose entity with which the market operator has close links.
- (c) Liquid financial assets may only comprise:
  - (i) cash and cash equivalents; and
  - (ii) securities, deposits and accrued interest subject to such haircuts as the Bank may specify from time to time in writing to a market operator on an individual basis.

## Part 9

### REVOCATIONS AND SAVER

*Revocations*

97. The following Regulations are revoked:

- (a) the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Investment Firms) Regulations 2017 [S.I. No. 60 of 2017];
- (b) 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]; and

- (c) the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) Client Asset Regulations 2015 [S.I. No. 104 of 2015].

*Saver*

98. The revocation of any enactment, or part of enactment, by these Regulations—

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

SCHEDULE  
REPORTING REQUIREMENTS

*Regulation 8*

Part 1

<b>Fund Administrators</b>		
Data Item (1)	Reporting Frequency (2)	Reporting Deadline (3)
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
Management/ Annual Accounts (Upload)	Annual	1 month after firm reporting year end
Management/ Annual Accounts (Data Entry)	Annual	1 month after firm reporting year end
Annual Ownership Confirmation Upload	Annual	1 month after calendar year end
Annual PCF Confirmation	Annual	2 months after calendar year end
Own Funds 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 Own Funds 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 Own Funds 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>		
Data Item (1)	Reporting Frequency (2)	Reporting Deadline (3)
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 Part 6 of the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Investment Firms) Regulations 2017</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>		
Data Item (1)	Reporting Frequency (2)	Reporting Deadline (3)
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 Part 6 of the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Investment Firms) Regulations 2017</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>		
Data Item (1)	Reporting Frequency (2)	Reporting Deadline (3)
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 Part 6 of the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Investment Firms) Regulations 2017</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>		
Data Item (1)	Reporting Frequency (2)	Reporting Deadline (3)
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 Part 6 of the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Investment Firms) Regulations 2017</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 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>		
Data Item (1)	Reporting Frequency (2)	Reporting Deadline (3)
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>		
Data Item (1)	Reporting Frequency (2)	Reporting Deadline (3)
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  
21 December 2017.

DERVILLE ROWLAND,  
Director General Financial Conduct.

EXPLANATORY NOTE

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

These Regulations set out the requirements for certain investment firms, fund service providers and market operators authorised by the Central Bank of Ireland.

BAILE ÁTHA CLIATH  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR  
Le ceannach díreach ó  
FOILSEACHÁIN RIALTAIS,  
52 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2  
(Teil: 01 - 6476834 nó 1890 213434; Fax: 01 - 6476843)  
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