CP133 - Consultation on enhancements to the Central Bank Client Asset Requirements, as contained in the Central Bank Investment Firms Regulations

Overview

Description

The consultation seeks stakeholders' views on proposed enhancements to the Central Bank Client Asset Requirements (the **CAR**). This includes broadening the scope and application of the CAR to credit institutions, targeted enhancements to include investment firms and credit institutions holding client assets in the context of conducting wholesale activities as well as other amendments applicable to all investment firms currently in scope of the CAR.

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Consultation Paper Document

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Banc Ceannais na hÉireann
Central Bank of Ireland
Eurosystem

Consultation Paper 133

Consultation on enhancements to the Central Bank Client Asset Requirements, as contained in the Central Bank Investment Firms Regulations

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Table of Contents

Background

1. The protection of client assets is a key priority for the Central Bank of Ireland (the **Central Bank**). Deficiencies in client asset systems and controls within investment firms and credit institutions can have serious consequences for clients, and may result in the misuse, misappropriation or loss of client assets or delays in returning client assets in the event of an investment firm's failure. Deficiencies in client asset operational arrangements may also result in reputational damage to the Irish financial market.

2. The Central Bank's client asset regulatory regime is based on seven core client asset Principles, namely:

    a. Segregation;

    b. Designation and Registration;

    c. Reconciliation;

    d. Daily Calculation;

    e. Client Disclosure and Consent;

    f. Risk Management; and

    g. Client Asset Examination.

3. The purpose of the Central Bank's client asset regime is to safeguard client assets by ensuring investment firms adhere to these general Principles and prescriptive requirements. The objectives of the client asset regime are to:

    a. Maintain public confidence in the client asset regime;

    b. Minimise the risk of loss or misuse of client assets by investment firms; and

    c. In the event of the insolvency of an investment firm, enable the efficient and cost effective return of those client assets to clients.

4. The Central Bank's client asset regulatory and supervisory regime has evolved in recent years, due to, *inter alia*:

    a. Legislative developments, such as the transposition of the MiFID I and MiFID II into Irish law;

b. Reviews of the regulatory regime for the safeguarding of client assets conducted by the Central Bank;[1] and

c. Findings and learnings identified through the Central Bank's direct supervision of client asset holding entities.

5. The significance that the Central Bank places on client asset protection is demonstrated by the existence of a dedicated team, the Client Asset Specialist Team (**CAST**), which was established in 2012. CAST has cross-sectoral ownership within the Central Bank for client asset and investor money risk.

6. The European Union (Markets in Financial Instruments) Regulations 2017 (the **MiFID Regulations**), as well as other measures adopted pursuant to MiFID II, including European Commission Delegated Regulations, impose requirements on investment firms and credit institutions in relation to safeguarding client assets.

7. The Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Investment Firms) Regulations 2017 (the **Investment Firms Regulations**) build on the MiFID Regulations, taking into account the specific risks to investor protection and market integrity which are of particular importance given the structure of the Irish market.

8. At present, the Client Asset Requirements (the **CAR**), as set out in Part 6 of the Investment Firms Regulations, apply to MiFID investment firms, investment business firms, and, in certain circumstances, UCITS management companies and alternative investment fund managers (collectively, **investment firms**). The scope and application of the CAR does not currently extend to credit institutions.

9. The Central Bank has undertaken an assessment of the current Irish client asset landscape. This assessment has considered the population of Irish authorised credit institutions holding client assets in connection with the provision of MiFID investment business to their clients, recent authorisation activity (including Brexit related applications), as well as an increase in the value of client assets held, as reported by investment firms currently subject to the CAR. In considering enhancements to the current client asset regime, the Central Bank has also taken into consideration supervisory experience gained in recent years through its engagements with investment firms and credit institutions in respect of their client asset arrangements.

[1] For example, the Review of the Regulatory Regime for the Safeguarding of Client Assets, report published in March 2012 (James Bagge and Andrea Pack), available on the Central Bank website here.

10. Based on this assessment, the Central Bank is proposing a suite of enhancements to the CAR to ensure that client assets held by investment firms and credit institutions, authorised by the Central Bank, are appropriately safeguarded.

High level proposals

11. The key aspects of the proposed enhancements to the CAR include:

    a. Extending the scope and application of the CAR to include credit institutions undertaking MiFID investment business;

    b. Introducing new requirements regarding client disclosure and consent, including enhancements applicable to investment firms that have obtained client consent to the use of client financial instruments and investment firms providing prime brokerage services;

    c. Introducing new CAR guidance to clarify the Central Bank's expectations as to how client funds should be segregated;

    d. Introducing new requirements, and placing some existing CAR guidance on a legislative footing, in relation to the performance of reconciliations and the treatment of client asset discrepancies and reconciliation differences, and shortfalls and excesses; and

    e. Introducing new requirements and CAR guidance on the contents of the Client Asset Management Plan (the **CAMP**).

    These proposals reflect that the protection of client assets continues to be a key priority for the Central Bank, and the Central Bank's expectation that investment firms and credit institutions afford it sufficient importance within their risk management systems and control frameworks.

12. The purpose of this Consultation Paper is to seek views from stakeholders on the proposals contained herein and, in particular, on key material enhancements to the CAR. The proposals may be subject to further change depending on the feedback received from stakeholders. When the consultation process is complete, the Central Bank intends to publish a feedback statement and the third edition of the Investment Firms Regulations.[2]

[2] The reporting requirements set out in Regulation 8 and in the Schedule to the Investment Firms Regulations may be subject to further change as a result of the transposition of the Investment Firms Directive into Irish law. Therefore, the Schedule of Reporting Requirements has not been included in the draft third edition of the Investment Firms Regulations, as contained in Schedule A to this Consultation Paper.

13. The CAR guidance can be accessed on the Central Bank website.[3] The CAR guidance will be updated in due course to reflect the final amendments to the revised CAR.

14. The Central Bank is proposing a 12 month transitional period following the publication of the revised CAR, as contained in the third edition of the Investment Firms Regulations, for both investment firms and credit institutions undertaking MiFID investment business to comply with the revised CAR.

Format of this Consultation Paper

15. This Consultation Paper is structured as follows:

    a. Section I sets out proposals to extend the scope and application of the CAR to credit institutions undertaking MiFID investment business;

    b. Section II contains details of proposed enhancements to the CAR, including those designed to capture business lines associated with wholesale market activities;

    c. Section III sets out future considerations in respect of the Central Bank's client asset regime; and

    d. Section IV sets out proposed amendments to the Investment Firms Regulations, other than those related to the CAR.

16. The draft version of the third edition of the Investment Firms Regulations, reflecting the proposed enhancements set out in this Consultation Paper, is contained in Schedule A to the Consultation Paper.

Consultation responses

17. The Central Bank invites stakeholders to provide views on the proposed enhancements to the Investment Firms Regulations, in particular those relating to the CAR. While the Central Bank is consulting on the full set of proposed enhancements to the Investment Firms Regulations, in particular stakeholder responses are welcomed to the questions set out in Sections I, II, III and IV of this Consultation Paper.

18. Please make your submissions electronically by email to INVFIRMSpolicy@centralbank.ie. Responses should be submitted no later than 10 March 2021.

[3] See Guidance on Client Asset Regulations for Investment Firms, dated March 2015, available on the Central Bank website here.

19. It is the policy of the Central Bank to publish all responses to its consultations. As all responses will be made available on the Central Bank website, commercially confidential information should not be included in consultation responses. The Central Bank will send an email acknowledgement to all responses sent by email. If you do not receive an acknowledgement of an emailed response, please contact the Central Bank on +353 1 224 6000 to correct the situation.

Markets Policy Division (in conjunction with CAST)
Central Bank of Ireland
3 December 2020

Section I: Extension of the scope and application of the CAR

The central objective of the proposals to enhance the CAR is to ensure that a robust regime for safeguarding client assets is applied across Irish regulated entities and a consistent level of protection is afforded to clients. While credit institutions holding client assets are subject to the MiFID II safeguarding of client asset rules, currently, the scope of the CAR does not extend to credit institutions holding client assets in the context of undertaking MiFID investment business. The Central Bank is proposing that credit institutions should be brought within the scope and application of the CAR, to strengthen client asset protection and reduce the risk of client exposure, particularly in an insolvency scenario. The scale of client assets held by Irish credit institutions, as well as the nature and complexity of their MiFID investment business, highlights the need to ensure the highest level of protection is afforded to clients.

Application of the CAR to credit institutions

20. The scale of client asset holdings reported by credit institutions, together with the complexity of activities being undertaken, illustrates the need to ensure a high level of protection for clients where their assets are held by credit institutions, in the context of providing MiFID investment business.

21. The Central Bank is seeking to ensure a level playing field for the regulation and supervision of all Irish regulated entities holding client assets. The Central Bank is of the view that extending the scope and application of the CAR to credit institutions undertaking MiFID investment business is an important step in seeking to achieve this objective. The proposal also aligns the scope and application of the CAR with the MiFID II safeguarding of client asset rules.

22. In order to extend the scope and application of the CAR to credit institutions, the Central Bank is proposing to amend the definition of “investment firm” as contained in Regulation

47(1)[4] of the CAR, to include credit institutions authorised by the Central Bank pursuant to section 9 of the Central Bank Act of 1971 as a credit institution.

23. This will result in credit institutions, holding client assets in the course of undertaking MiFID investment business on behalf of clients, being brought in scope of all the requirements contained in the CAR, as well as the CAR guidance, in the same way as investment firms. Credit institutions will be required to comply with the CAR, in addition to the MiFID II safeguarding of client asset rules to which they are already subject. Respondents to this Consultation Paper that may become subject to the CAR (i.e. credit institutions undertaking MiFID investment business), should familiarise themselves with the current edition of the CAR (as contained in the Investment Firms Regulations), as well as the proposed enhancements contained in this Consultation Paper.

24. The Central Bank is proposing to provide a 12 month transitional period from the date of publication of the third edition of the Investment Firms Regulations for credit institutions undertaking MiFID investment business to comply with the CAR.

25. **For the purpose of this Consultation Paper, unless stated otherwise, all further references to "investment firm(s)" in Sections I, II and III are intended to include credit institution(s), which are proposed to be brought in scope of the CAR**.

Question 1: Do you agree with the proposal to extend the scope and application of the CAR to credit institutions undertaking MiFID investment business? If not, please explain why.
Question 2: Are there any elements of the CAR (existing provisions or proposed enhancements) that should not apply to credit institutions? Please provide a clear rationale as to why credit institutions should not be required to comply with a particular existing or enhanced provision, and/or set out an alternative provision that may be more appropriate.
Question 3: Are there any unintended consequences that might arise as a result of extending the scope and application of the CAR to credit institutions?
Question 4: Do you agree with the Central Bank's proposal to provide a 12 month transitional period, from the date of publication of the third edition of the Investment Firms Regulations, for credit institutions to comply with the CAR? If not, please explain why.

[4] All references to specific Regulations in this Consultation Paper refer to those Regulations as set out in the second edition of the Investment Firms Regulations (i.e. the current edition), and not to those Regulations set out in the draft third edition of the Investment Firms Regulations, as contained in Schedule A to this Consultation Paper.

Use of the MiFID '*banking exemption*'

26. Under Paragraph 3(1) of Schedule 3 to the MiFID Regulations, investment firms are required, on receiving client funds, to promptly place those funds into one or more accounts opened with:

    a. A Central Bank;

    b. A credit institution authorised in accordance with the CRD;

    c. A bank authorised in a third country; or

    d. A qualifying money market fund.

27. This requirement does not apply to a credit institution authorised in accordance with the CRD in relation to deposits within the meaning of the CRD, held by that institution.[5] This is sometimes referred as the '*banking exemption*'.

28. The Central Bank is of the view that clients of credit institutions should have clarity as to how they can expect their money to be held, and the associated protections (under the relevant regulatory/legislative regime) that will be afforded to them when credit institutions undertake MiFID investment business on their behalf. Therefore, additional disclosure requirements may be warranted under the CAR.

29. The Central Bank is proposing to require that, where a credit institution holds money on behalf of a client in the context of MiFID investment business as a deposit in accordance with Paragraph 3(2) of Schedule 3 to the MiFID Regulations (i.e. under the '*banking exemption*'), the credit institution must, prior to undertaking MiFID investment business on behalf of a client, disclose in the terms of business:

    a. That the money is held and protected by the credit institution as a deposit, and not as client funds; and

    b. The circumstances (in respect of the MiFID investment business), if any, in which the credit institution will cease to hold money as a deposit, and will instead hold that money as client funds.

Question 5: Do you agree with the proposal to introduce additional disclosure requirements in the CAR for credit institutions undertaking MiFID investment business on behalf of clients, in order to provide clarity to clients as to how their money will be held and protected? If not, please explain why.

[5] See Paragraph 3(2) of Schedule 3 to the MiFID Regulations.

Question 6: Please provide details of any circumstances under which a credit institution may cease to hold money on behalf of clients as deposits (i.e. avail of the *'banking exemption'*) and would instead hold that money as client funds.

Other implications of extending the scope and application of the CAR to credit institutions

30. The Central Bank has identified other implications of extending the scope and application of the CAR to credit institutions. These include:

    a. Firstly, under the 2020 Industry Funding Regulations, investment firms that hold client assets, and are therefore subject to the CAR, are required to pay a supplementary levy to the Central Bank to fund the costs attributable to the performance of the Central Bank's function under the CAR. The Central Bank has been advised by the Investor Compensation Company DAC that, as currently required by the Funding Arrangements document for the period 1 August 2019 to 31 July 2022, once credit institutions are brought in scope of the CAR, those credit institutions that hold client assets will be required to pay a supplemental levy to the investor compensation scheme;[6] and

    b. Secondly, extending the scope and application of the CAR to credit institutions will entail increased accountability for the designated individual within the credit institution with responsibility for client asset oversight. Paragraph 6(1) of Schedule 3 to the MiFID Regulations already requires the appointment of a 'Single Officer' with specific responsibility for matters relating to the compliance by investment firms with their obligations regarding the safeguarding of client assets. Under the CAR, this role is a Pre-Approval Controlled Function (PCF-45), referred to as the Head of Client Asset Oversight (**HCAO**). The HCAO has specific duties as set out in Regulation 63 of the CAR. The extension of the PCF-45 role to credit institutions holding client assets may require consequential amendments to other Central Bank legislation relating to PCF provisions.

Question 7: In your view, are there other implications of extending the scope and application of the CAR to credit institutions that the Central Bank should consider?
Question 8: Do you agree with the Central Bank extending the application of the existing PCF-45 role (HCAO) to credit institutions holding client assets? If not, please explain why.

[6] For further information, please see link to the website of the Investor Compensation Company DAC here.

Section II: Enhancements to the CAR, including proposals relating to wholesale activities

The Central Bank's objective is to ensure that a robust regime for safeguarding client assets is applied across Irish regulated entities so that a consistent and high level of protection is afforded to clients. The Irish client asset landscape has experienced significant developments in recent years, triggered by, *inter alia*, regulatory advancements (such as MiFID II) and authorisation activity (mainly due to Brexit). New and evolving business lines, models and entity types holding client assets are emerging. In light of these developments, it was determined that a review of the current client asset regime was required from a policy and supervisory perspective. The review identified that the CAR required revision to broaden its scope and application to enhance and strengthen the existing client asset regime to achieve the Central Bank's aforementioned overarching objective. The Central Bank's proposed enhancements to the CAR, and in some cases the CAR guidance,[7] are set out below and are aligned, where possible, to the existing client asset Principles.

Principle of Client Disclosure and Consent

31. Developments in the Irish client asset landscape in recent years has resulted in an increase in client asset holdings being reported to the Central Bank by Irish regulated entities, including new and evolving market entrants. A significant increase in client asset holdings relating to wholesale activities, particularly in credit institutions, has emerged.

32. In light of this, the Central Bank has considered the approach to client disclosure and consent in the context of more complex business activities, for example in circumstances

[7] Further review and enhancements to the CAR guidance will be necessitated to ensure that it adequately reflects the final amendments to the revised CAR.

where a client gives an investment firm certain rights over its assets. This includes, for example, where an investment firm enters into arrangements for securities financing transactions or otherwise uses client financial instruments for their own account or the account of any client of the investment firm.

33. The Central Bank has considered whether the CAR could be enhanced to ensure that the information disclosed by investment firms to clients relative to client asset holdings is appropriate, particularly in the context of emerging business models. A number of areas where enhanced provisions to the Principle of Client Disclosure and Consent could be introduced have been identified. These enhancements relate to client agreements, client disclosure, client consent and client reporting. In this context, the Central Bank has considered the following provisions of the CAR:

    a. Regulation 55 which sets out requirements applicable to collateral margined transactions;

    b. Regulation 56 which relates to investment firms entering into arrangements for securities financing transactions;

    c. Regulation 59 which sets out the information that investment firms are required to disclose to clients, including in respect of collateral margined transactions, in the terms of business prior to first receiving the client assets; and

    d. Regulation 62 which requires investment firms to obtain the prior written consent of a client in the following circumstances, as applicable:

        i. Before it 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.

34. In reviewing these existing provisions, the Central Bank identified a number of areas where enhancements could be made to the CAR. The Central Bank is of the view that enhancements could be made in respect of the following:

    a. Investment firms' use of client financial instruments: The Central Bank is proposing to introduce new provisions to require investment firms to evidence that prior express consent has been received from a client, allowing the investment firm to enter into

arrangements for securities financing or otherwise use that client's financial instruments;

b. Title Transfer Collateral Arrangements (**TTCAs**): The Central Bank is proposing to introduce new provisions regarding the establishment and termination of TTCAs; and

c. Investment firms providing prime brokerage services: The Central Bank is proposing to introduce new provisions requiring regular reporting by investment firms providing prime brokerage services to clients, to ensure that clients have access to up-to-date and accurate information concerning any assets the investment firm holds on their behalf. This is important given the frequent movement of assets into and out of third party client asset accounts associated with prime brokerage services.

35. The requirements (both existing and proposed enhancements) underlying the Principle of Client Disclosure and Consent set out the minimum in terms of the information that investment firms should disclose to clients. Investment firms are reminded that the extent of disclosures will depend on the nature of an investment firm's business model and services provided to clients or potential clients.

Use of client financial instruments

36. Regulation 23(1)(k)–(m) of the MiFID Regulations sets out general client asset organisational requirements, including that investment firms should make adequate arrangements to prevent the use of client assets for the investment firm's own account save in certain circumstances.

37. In respect of client financial instruments only, there is an exception to this general requirement, whereby investment firms may enter into arrangements for securities financing transactions or otherwise use a client's financial instruments for their own account or the account of any other person or client of the investment firm. This is provided that the following conditions are met:

a. The investment firm obtains the client's prior express consent to the use of the financial instruments on specified terms as clearly evidenced in writing and affirmatively executed by signature or equivalent;

b. The use of that client's financial instruments is restricted to the specified terms to which the client consents;[8] and

[8] See Paragraph 4(1) and 4(2) of Schedule 3 to the MiFID Regulations.

c. The investment firm ensures that appropriate collateral is provided to the client in respect of the financial instruments which have been used and the investment firm monitors the continued appropriateness of the collateral.[9]

38. The Central Bank is proposing to require investment firms to maintain a copy of all relevant material in order to evidence that express consent has been obtained from a client prior to the investment firm entering into arrangements for securities financing or otherwise using the client's financial instruments. The material and/or associated records should be maintained for a period of 6 years in accordance with the current record-keeping requirements in the CAR.

39. The Central Bank is seeking to enhance investor protection by ensuring that such arrangements between investment firms and clients are appropriately consented to, and adequately documented and recorded by investment firms.

40. The Central Bank may consider further requirements or CAR guidance in this area, particularly where investment firms enter into such arrangements with retail clients. This may include enhanced CAR guidance on the contents of the client assets key information document (**CAKID**), noting the importance of this document for retail clients.[10] In this regard, investment firms are reminded of the requirement set out in Regulation 31(1) of the MiFID Regulations. The Central Bank expects investment firms to be able to clearly demonstrate how they are acting in the best interests of the client before entering into any such arrangements.

41. Investment firms entering into securities financing transactions or otherwise using a client's financial instrument must strive for the highest possible standards in relation to safeguarding client assets, in order to ensure risks to investor protection are effectively mitigated. [11] The Central Bank will continue to insist on robust client asset systems and controls to ensure investment firms' compliance with the relevant MiFID requirements. In particular, the Central Bank expects investment firms to establish and maintain robust procedures and controls in order to comply with paragraph 4(5) of Schedule 3 to the MiFID Regulations. These procedures should ensure that the borrower of client financial instruments provides appropriate collateral. Investment firms must monitor the continued appropriateness of such collateral and take the necessary steps to maintain the balance with

[9] See Paragraph 4(5) of Schedule 3 to the MiFID Regulations.
[10] See Regulation 60 of the CAR and existing CAR guidance on the CAKID.
[11] See Paragraph 4 of Schedule 3 to the MiFID Regulations.

the corresponding value of client financial instruments.[12] If deemed necessary, the Central Bank will provide enhanced CAR guidance to reflect its expectations in this regard.

Question 9: Do you agree with the Central Bank's proposal to require investment firms to maintain, for a period of 6 years, a copy of all relevant material in order to evidence that express consent has been obtained from a client prior to the investment firm entering into arrangements for securities financing transactions, or otherwise using the client's financial instruments? If not, please explain why.

Title transfer collateral arrangements (TTCAs)

42. A TTCA describes an arrangement by which a client (professional or eligible counterparty)[13] transfers full ownership of its assets (funds or financial instruments) to an investment firm for the purpose of securing or covering present or future, actual, prospective, or contingent obligations of the client.[14] This effectively means that an investment firm is not required to treat those assets subject to a TTCA as client assets in accordance with the CAR and MiFID II.

43. In considering new provisions regarding TTCAs in the CAR, the Central Bank reviewed the requirements set out in Regulation 23(1)(k)–(m) of the MiFID Regulations and Paragraph 5 of Schedule 3 to the MiFID Regulations. While these provisions contain factors that an investment firm should take into account to ensure any use of TTCAs is appropriate, they do not specify how the terms of a TTCA should be agreed with the client or how the termination of a TTCA should be managed by an investment firm.

TTCAs subject to a written agreement

44. In so far as a TTCA relates to client assets, the Central Bank is proposing to require that any TTCA be the subject of, or form part of, a written agreement. Such written agreement must be made on a durable medium between the investment firm and the client. The intention behind this proposal is to reduce the potential for disputes, regarding the status of assets subject, or previously subject, to a TTCA, particularly in the event of an insolvency of an investment firm. For example, in the absence of a written agreement documenting the use by an investment firm of a TTCA, the ownership and status of assets may be unclear to an insolvency practitioner. This may create ambiguity as to whether certain assets are in the

[12] See Paragraph 4(5) of Schedule 3 to the MiFID Regulations.
[13] Regulation 23(1)(m) of the MiFID Regulations provides that investment firms shall not conclude TTCAs with retail clients for the purpose of securing or covering present or future, actual or contingent or prospective obligations of clients.
[14] See Recital 6 of the MiFID II Delegated Directive.

ownership of the investment firm or a client at the point of insolvency, and create potential delays in the return of client assets.

45. The written agreement in respect of any TTCA should include information on the following:

    a. The terms of the arrangement relating to the transfer of full ownership of the client's assets to the investment firm;

    b. Any terms under which the ownership of the assets is to transfer from the investment firm back to the client; and

    c. Any terms relating to the termination of a particular arrangement which forms part of the overall TTCA agreement.

46. The Central Bank is of the view that an investment firm should maintain a copy of a written agreement in respect of a TTCA for a period of 6 years. This agreement may form part of the overall client agreement between the investment firm and the client.

47. The Central Bank may consider further CAR guidance in relation to the terms that should be included in a written agreement in respect of a TTCA. For example, to clarify the Central Bank's expectations with regard to disclosing to clients the circumstances under which their assets will not be subject to the TTCA or where the operation of the TTCA is contingent on some other condition, resulting in the client's assets being protected under the CAR.

48. These proposals seek to provide additional investor protection to clients by ensuring that the arragements between investment firms and clients are clearly documented in writing. The proposals seek to avoid any ambiguity as to the ownership of client assets and avoid potential delays in the return of client assets, particularly in an insolvency scenario.

Question 10: Do you agree with the Central Bank's proposal to require that TTCAs be the subject of, or form part of, a written agreement between an investment firm and a client? If not, please explain why.

Question 11: Do you agree with the proposed information that should be included in the written agreement in respect of TTCAs? If not, please explain why.

Question 12: Do you agree with the proposal that the written agreement containing the TTCA provisions be maintained by investment firms for a period of 6 years? If not, please explain why.

Termination of a TTCA

49. The Central Bank understands that a risk to client asset protection may arise during the period between the client's notification to the investment firm of its intention to terminate

a TTCA and the actual termination of the TTCA and subsequent movement of associated assets back into client asset protection with the investment firm, or the assets being transferred elsewhere, e.g. to another entity or to the client. To mitigate this risk, investment firms should ensure that there is documentation in place from the outset of the relationship with the client, demonstrating the parties' agreement to the terms for the termination of the TTCA. This should include references to the circumstances in which the ownership of assets may transfer from the investment firm to the client.

50. The Central Bank is proposing to introduce requirements relating to the termination of TTCAs. The intention of these proposals is to reduce the potential for disputes regarding the status of assets subject, or previously subject, to a TTCA, particularly in the event of an insolvency of an investment firm.

51. The proposals relate to the following:

    a. Record-keeping requirements;

    b. Client notifications; and

    c. The treatment of assets.

52. With regard to record-keeping requirements, the Central Bank is proposing to require investment firms to maintain written records of client communications regarding the termination of a TTCA for a period of 6 years, starting from the date the communication was received by the investment firm from the client. These written records should include the date the communication was received by the investment firm.

53. With regard to client notifications, the Central Bank is proposing to require investment firms to notify the client in writing of the termination of a TTCA where:

    a. The investment firm agrees to the termination following a client request; or

    b. The investment firm wishes to terminate the TTCA.

    The written notification should state when the termination is to take effect and how the relevant assets will be treated by the investment firm thereafter (e.g. as client assets, in accordance with the CAR). If the investment firm does not agree to terminate the TTCA following a client request, it should notify the client of its disagreement in writing.[15]

[15] Investment firms should consider MiFID II requirements with regard to unauthorised use of client financial instruments and the requirement to ensure that the use of the client's financial instrument is restricted to the specified terms to which the client consents when it determines that it will not agree to terminate a TTCA.

54. With regard to the treatment of assets following the termination of a TTCA where those assets return to the investment firms client asset environment, the Central Bank is proposing to require that investment firms treat those assets, that were formerly subject to the TTCA, as client assets from the start of the next business day following the date of termination when a TTCA is terminated. This proposed requirement applies unless otherwise permitted by the CAR and notified to the client.

55. The Central Bank may consider introducing CAR guidance regarding client notification upon the termination of a TTCA. Such CAR guidance may be necessary to clarify that, where an investment firm notifies a client that the termination is to take effect, the notification should take into account, *inter alia*:

    a. Any relevant terms relating to such termination that have been agreed with the client;

    b. The period considered reasonable to return the relevant asset(s) to the ownership of the client; and

    c. In the case of client financial instruments, that registration details are to be updated where necessary.

56. The overall purpose of these proposals is to provide enhanced investor protection to clients and reduce the potential for disputes regarding the status of assets subject, or previously subject, to a TTCA, particularly in the event of an insolvency.

Question 13: Do you agree with the Central Bank's proposals relating to record-keeping requirements following a client's request for the termination of a TTCA? If not, please explain why.
Question 14: Do you agree with the Central Bank's proposals relating to a written notification by an investment firm to clients following the termination of a TTCA? If not, please explain why.

Investment firms providing prime brokerage services

57. The CAR does not currently contain any express requirements in the context of investment firms providing prime brokerage services. It is the Central Bank's understanding that investment firms providing prime brokerage services may, with the client's consent, take ownership of a client's assets in the course of providing such services. For example, to manage any collateral movements with a counterparty to a transaction on behalf of a client. Where an investment firm takes ownership of an asset, that asset is no longer subject to client asset protection. Given the nature of prime brokerage services and the extent of transactions, an asset may pass in and out of client asset protection on a frequent basis. The Central Bank is therefore of the view that investment firms that hold client assets in the

context of providing prime brokerage services should be required to provide regular reporting to clients.

58. The Central Bank is proposing to require investment firms providing prime brokerage services to provide clients with access to up-to-date information in order to allow clients to manage their exposures, particularly when a client has given prior express consent to the use of their assets.

59. Therefore, it is proposed that investment firms holding client assets while providing prime brokerage services will be required to make available to clients, a statement, which may include, where relevant:

    a. The total value of client financial instruments and the total amount of client funds held by the investment firm on behalf of a client;

    b. The location of client financial instruments held by the investment firm on behalf of a client, including financial instruments deposited with a third party; and

    c. A list of all the third parties where client funds held by the investment firm on behalf of a client are deposited.

60. It is proposed that the information provided in the statement should be updated by the investment firm on a daily basis.

61. The introduction of the prime brokerage statement of client assets seeks to provide a standardised approach to more frequent reporting to clients. This builds on the MiFID II requirements that client asset statements be sent to clients on at least a quarterly basis, as set out in Article 63 of the MiFID II Delegated Regulation.

62. Where an investment firm providing prime brokerage services already provides to clients the statement which it is required to provide to a depositary under Article 91 of the AIFMD Delegated Regulation, that statement would satisfy the Central Bank's requirement to provide the prime brokerage statement of client assets.

63. In addition, the Central Bank is proposing to require investment firms providing prime brokerage services to include an annex to the relevant client agreement. The prime brokerage client asset annex should summarise the key provisions relating to the investment firm's prime brokerage business and how it may impact the assets held by the investment firm on behalf of the client.

64. It is proposed that the information to be included in the prime brokerage client asset annex may include, where relevant:

a. The contractual limit, if any, on the client financial instruments which an investment firm is permitted to use;

b. All related contractual definitions upon which that limit is based;

c. A list of numbered references to the provisions within the prime brokerage agreement which permit the investment firm to use client financial instruments; and

d. A statement of key risks to client financial instruments where they are used by the investment firm, in particular those risks that may arise in the event of an insolvency of the investment firm.

65. The prime brokerage client asset annex seeks to summarise the key prime brokerage provisions contained in the agreement between the investment firm and the client, as they relate to client assets, together with the associated risks of those provisions. The information should be set out in a clear, accurate and succinct way, to enable the client to make informed decisions. Investment firms should provide the client with an updated prime brokerage client asset annex if the terms of the prime brokerage agreement are amended.

66. To support the introduction of these proposed enhancements to the CAR, the Central Bank is proposing to introduce the following defined terms to the CAR:

    a. Prime brokerage agreement; and

    b. Prime brokerage services.

67. The Central Bank intends to provide additional CAR guidance to investment firms on the contents of both the prime brokerage statement of client assets and the prime brokerage client asset annex.

68. These proposals are central to the objective of the current review of the CAR, which is to enhance and strengthen the client asset regime and to "future proof" to capture new and evolving business activities and entity types, with a focus on wholesale activities.

Question 15: Do you agree with the Central Bank's proposal to require investment firms that provide prime brokerage services to make available to clients a daily statement covering client asset holdings in the context of prime brokerage business? If not, please explain why.

Question 16: Do you agree with the Central Bank's proposal to require investment firms that provide prime brokerage services to include an annex to a relevant client agreement, summarising the key terms of the prime brokerage business that relate to client assets? If not, please explain why.

Transfer of business

69. The Irish investment firm landscape has undergone significant restructuring and consolidation in recent years, partly due to take-overs and group-restructuring within the asset management sector. The Central Bank has identified enhancements that could be introduced to streamline this process, with a view to benefitting all stakeholders, including clients. The Central Bank is proposing to make enhancements to the CAR and CAR guidance to clarify its expectations (at a minimum) with regard to notifying the Central Bank of a planned transfer of business, client disclosure and consent, and the treatment of client assets in the context of a transfer of business to another entity.

Transfer of business – notification and client disclosure requirements

70. The Central Bank is proposing to introduce a new requirement, whereby an investment firm shall notify the Central Bank of its intention to effect a material transfer of client assets to or from another entity, as part of a transfer of business, where the client assets relate to the business being transferred. Such notification should be provided at least three months in advance of the transfer of client assets taking place.

71. In addition, the Central Bank is proposing to amend Regulation 59(1)(d)(iv) of the CAR, to include a reference to an investment firms' arrangements relating to transfer of business. This proposal would require an investment firm to disclose to clients or potential clients, in the terms of business, the investment firm's arrangements relating to a transfer of business involving client assets.

72. These proposals seek to ensure that the Central Bank has notice of a transfer of client assets in advance of any associated changes to an investment firm's client asset holdings being identified or reported, for example through the Monthly Client Asset Report (the **MCAR**). The proposed enhancements to the terms of business seek to provide greater clarity to clients or potential clients as to how their assets will be treated in the event of a transfer of business.

Question 17: Do you agree with the Central Bank's proposal to require an investment firm to notify the Central Bank of its intention to effect a material transfer of client assets at least three months in advance of the transfer taking place? If not, please explain why.

Question 18: Do you agree with the Central Bank's proposal to include a reference to transfer of business in Regulation 59(1)(d)(iv) of the CAR, thereby requiring investment firms to include information in respect of transfer of business arrangements, in so far as they relate to client assets, in the terms of business? If not, please explain why.

Transfer of business – client disclosure and consent guidance

73. The Central Bank is proposing to introduce a new section on transfer of business in the CAR guidance. This section will set out the Central Bank's expectations for an investment firm that intends to effect a transfer of client assets to another entity as part of a transfer of business where the client assets relate to the business being transferred.

74. The new section on transfer of business in the CAR guidance may include the following:

    a. An investment firm should include client asset transfer provisions in new client agreements;

    b. An investment firm should obtain client consent in advance of effecting any transfer of client assets;

    c. An investment firm should notify clients in advance of the transfer of business taking place. Such a notification may include *inter alia* the following information:

        i. The expected date of the transfer;

        ii. Whether the client assets will be held by the receiving entity, in accordance with the Irish client asset regime, and if not, the regime under which the assets being transferred will be held by the receiving entity;

        iii. Whether the client assets will be held in pooled accounts;

        iv. Whether the client funds will be protected under an applicable compensation scheme; and

        v. A statement to the effect that a client may request to have their assets returned to them without delay rather than being transferred to another entity;

    d. An investment firm that intends to effect a transfer of client assets to another entity should nominate an individual (preferably the HCAO) to act as the point of contact with the Central Bank for the duration of the business transfer; and

e. An investment firm should maintain a record of the steps taken to contact clients in order to obtain consent to the transfer of client assets to another entity as part of a transfer of business.

Question 19: Do you agree with the Central Bank's proposals to enhance the CAR guidance in order to support investment firms in respect of the orderly transfer of client assets? If not, please explain why.

Question 20: Are there other aspects of the transfer of business process, as relating to client assets that require clarification? If so, please provide details.

Transfer of business – uncontactable client guidance

75. Following feedback received from investment firms who have undergone a transfer of business process, the Central Bank understands that CAR guidance may be warranted to determine whether a client is uncontactable (and therefore unable to provide consent) in the context of a transfer of business.

76. In light of this, the Central Bank is considering prescribing a list of reasonable steps in the CAR guidance that investment firms may take with respect to uncontactable clients in order to adhere to the Central Bank's client asset regime.

Question 21: Do you agree that CAR guidance could support investment firms in managing the approach to uncontactable clients during a transfer of business? If not, please explain why.

Principle of Segregation

77. The CAR Principle of Segregation is the cornerstone of the Irish client asset regime, and central to all other Principles in ensuring the safeguarding and protection of client assets. The Principle contains three key elements, namely:

    a. An investment firm's assets should be held separately to client assets;

    b. Accounting segregation should be in place for these assets; and

    c. Segregation should occur between clients.

78. The objective of the Principle of Segregation is to facilitate, in the event of the insolvency of an investment firm, the swift and full return of client assets, which limits any detriment to clients. It also allows an investment firm to continuously and consistently identify assets that are held on behalf of individual clients.

79. Critical to assessing whether the Principle has been applied successfully in practice is the extent to which, in an insolvency event or other critical business interruption event, client assets are segregated from assets of the investment firm.

80. An investment firm is required to create a distinct set of records specifically recording client positions (separate from any investment firm assets), and establish separate bank accounts and custody arrangements for which client assets are deposited. These requirements seek to ensure that assets held by an investment firm on behalf of clients are securely segregated and safeguarded.

81. The Central Bank has reviewed the requirements in Regulations 48-50 of the CAR in order to assess whether any enhancements could be made to reinforce the timely segregation of client assets from the investment firm's assets.

82. The Central Bank is proposing to clarify in CAR guidance its expectation as to how client funds should be segregated in accordance with Regulation 49(3) of the CAR. In this regard, the Central Bank expects that client funds be deposited directly into a third party client asset account.

83. The Central Bank views immediate segregation as a key safeguard in the protection of client funds, particularly in the event of an insolvency or other critical business interruption. The immediate segregation of client funds seeks to mitigate the risk that client funds will not be identified as such in the event that an investment firm fails during the period between the receipt of the client funds and the segregation of those client funds into the third party client asset account.

84. Investment firms should develop, implement and maintain systems and controls which are suitably designed to ensure that client funds are deposited directly into a third party client asset account, in accordance with the CAR.

Question 22: Do you agree with the Central Bank's proposal to clarify in the CAR guidance the expectation that client funds should be deposited directly into a third party client asset account? If not, please explain why.

Principle of Reconciliation

85. The Principle of Reconciliation is captured under Regulation 57 of the CAR. In accordance with Regulation 57(1)-(3), an investment firm is required to conduct regular reconciliations between its internal records and those external records of a third party with whom client assets are deposited. In addition, under Regulation 57(4) an investment firm is required to

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 its clients.

86. Regulations 57(5) and (6) of the CAR prescribe how the reconciliations should be carried out and reviewed. Regulation 57(7) of the CAR sets out the approach to be taken in respect of a reconciliation difference, in terms of investigation, identification of cause and resolution. The purpose of the reconciliation process is to ensure the completeness and accuracy of an investment firm's internal client asset records against those of a third party where the client assets are deposited.

87. The Central Bank has identified proposed enhancements to the reconciliation requirements in Regulation 57 of the CAR. The overarching objective of these proposed enhancements is to ensure that investment firms maintain complete and accurate records, thereby ensuring that the correct amount of client assets are being held and safeguarded by investment firms on behalf of their clients.

88. Under these proposed enhancements to the CAR, the Central Bank is seeking to clarify and strengthen the performance by investment firms of the following processes:

    a. The 'internal' reconciliation of client financial instruments (**new requirement**);

    b. The 'external' reconciliation of client financial instruments not deposited with a third party (**new requirement, currently in the CAR guidance**);

    c. The reconciliation of physical client financial instruments (**new requirement, currently in the CAR guidance);**

    d. The treatment of client financial instrument shortfalls and excesses (**new requirement**); and

    e. Record-keeping requirements in respect of client asset reconciliations (**new requirement**).

    For completeness, it is also intended to clarify the performance of the daily calculation, as currently set out in Regulation 58 of the CAR. The Principle of Daily Calculation is covered separately in this Consultation Paper.

89. Details of the proposed enhancements referenced in paragraph 87 are set out below.

'Internal' reconciliation of client financial instruments

90. The Central Bank is proposing to expressly require investment firms to perform an 'internal' reconciliation of client financial instrument records and accounts on at least a monthly basis.

This will be in addition to the existing requirement under Regulation 57(3) of the CAR to reconcile internal records against those of a third party with whom client financial instruments have been deposited. Under this proposed enhancement, an investment firm will be required to conduct a check between two sets of internal records; its internal client ledger, which determines the aggregate of client financial instrument entitlements, and the investment firm's internal custodian ledger,[16] which determines the aggregate record of client financial instruments deposited in third party client asset accounts.

91. The current CAR provisions for a daily calculation of client funds is in effect an internal check of an investment firm's aggregate client specific records (internal client ledgers) against its records of client funds deposited in third party client asset accounts (internal bank ledgers). The Central Bank is of the view that introducing a similar control for client financial instruments will align the requirements for both forms of client assets, thereby ensuring consistency in approach and the highest level of client asset protection.

92. The objective of this proposed enhancement is to augment investor protection and mitigate the risk of loss/misallocation of client financial instruments. The internal reconciliation of client financial instruments seeks to ensure that investment firms maintain accurate and up-to-date internal records of their obligations to clients so that client financial instruments can be swiftly returned to the correct client, particularly in the event of an investment firm's insolvency.

93. Similar to the requirements contained in Regulation 57(5) and (6) of the CAR, investment firms performing the 'internal' reconciliation of client financial instruments will be required to ensure that the process is carried out by a relevant person who is independent of the production and maintenance of the records used for the purpose of performing the 'internal' reconciliation. The 'internal' reconciliation should be reviewed by a relevant person who is independent of the production and maintenance of the records used for the purposes of carrying out the check.

94. In a similar manner to adjustments that may be made to internal client and bank ledgers used in the performance of the daily calculation for client funds, an investment firm's internal client and custodian ledgers may require adjustments to be made to reflect any reconciliation differences or discrepancies identified through the performance of the 'external' reconciliation of client financial instruments referred to in Regulation 57(3) of the CAR. For example, where a reconciliation difference is identified through the performance of the 'external' reconciliation referred to in Regulation 57(3), the relevant internal ledger should be appropriately adjusted to reflect the reconciliation difference. As part of the

[16] This ledger should also include any physical client financial instruments held by the investment firm (e.g. in a vault).

'internal' reconciliation of client financial instruments, the updated internal ledger (e.g. the custodian ledger) should be checked against the internal client ledger to identify any shortfalls or excesses of client financial instruments. Shortfalls or excesses identified through the performance of the 'internal' reconciliation of client financial instruments should be addressed in accordance with the proposals set out in paragraphs 111 – 114 of this Consultation Paper.

Question 23: Do you agree with the Central Bank's proposal to require investment firms to perform an 'internal' client financial instrument reconciliation? If not, please explain why. Responses should include details of any barriers an investment firm may face in performing this process. Details of any suggested alternative processes that could address the risk of loss/misallocation of client financial instruments and meet the objective of the proposed enhancement should also be included.

Question 24: Do you agree with the proposed frequency (i.e. monthly) for performing the 'internal' client financial instrument reconciliation? In responding, please refer to instrument types, e.g. those that could be checked more or less frequently than on a monthly basis, and set out the applicable rationale.

'External' reconciliation of client financial instruments not deposited with a third party

95. Under Regulation 57(3) of the CAR, investment firms are required to reconcile on at least a monthly basis, the balance of client financial instruments held, as recorded by the investment firm in its internal records, with the balance of all client financial instruments deposited with a third party (e.g. custodian), as recorded by a statement or other form of external confirmation. While investment firms must perform this reconciliation for client financial instruments deposited with a third party, the CAR does not expressly require investment firms to perform an 'external' reconciliation where the client financial instruments are not deposited with a third party.

96. In considering proposed enhancements to Regulation 57(3) of the CAR, the Central Bank reviewed CAR guidance G5 (1)(b), which states (*emphasis added*):

"In order to carry out the reconciliations an investment firm should, where applicable, reconcile: an investment firm's client asset safe custody records of client dematerialised financial instruments with statements or similar documents obtained from the relevant third party. In the case of dematerialised financial instruments not held through an eligible custodian, statements should be obtained from the person who maintains the record of legal entitlement."

97. The Central Bank is proposing to introduce a new requirement in Regulation 57 of the CAR to specify that, in respect of those client financial instruments which have not been deposited with a third party,[17] investment firms are required to reconcile, on at least a monthly basis, internal records and accounts with those of the parties responsible for maintaining the record of legal entitlement to those client financial instruments. This would effectively place CAR guidance G5 (1)(b) on a legislative footing.

98. The Central Bank is of the view that placing CAR guidance G5 (1)(b) on a legislative footing will support and enhance the maintenance of accurate client asset records and accounts. In addition, this proposed enhancement constitutes an additional protection to ensure that client financial instruments are not misappropriated.

Question 25: Do you agree with amending Regulation 57 to require investment firms to conduct an 'external' reconciliation of client financial instruments not deposited with a third party, using statements obtained from those entities responsible for maintaining the record of legal entitlement to those client financial instruments? If not, please explain why.
Question 26: Do you envisage any barriers to conducting this reconciliation on at least a monthly basis? If so, please explain these barriers.

Physical client financial instruments reconciliation

99. Under Regulation 57(3) of the CAR, an investment firm is required to reconcile, on at least a monthly basis, the balance of client financial instruments held, as recorded by the investment firm in its internal records, with the balance of all client financial instruments deposited with a third party (e.g. custodian), as recorded by a statement or other form of external confirmation. While this requirement currently extends to physical client financial instruments (such as share certificates), the Central Bank acknowledges that not all physical client financial instruments will be deposited with third parties. In many cases, physical client financial instruments will be held onsite by investment firms in vaults or other secure locations. Therefore, the Central Bank is of the view that there is scope to enhance the CAR to appropriately capture physical client financial instruments held on onsite by investment firms.

100. In considering proposed enhancements, the Central Bank notes the current CAR guidance G5 (1)(d) which states:

"An investment firm should count at least monthly all client financial instruments physically held by it, or any nominee of the investment firm, and reconcile the results of this count to its record of

[17] For example, where the investment firm holds the client financial instruments itself.

the client financial instruments held in its physical possession. This reconciliation should be carried out within ten working days of the date to which the reconciliation relates."

101. The Central Bank is proposing to place an updated version of CAR guidance G5 (1)(d) on a legislative footing, by including a new provision in Regulation 57 of the CAR to expressly require investment firms to conduct a reconciliation of physical client financial instruments on at least a monthly basis.

102. Investment firms holding physical client financial instruments will be required to perform both an 'internal' reconciliation of client financial instruments and a physical client financial instrument reconciliation.

103. The rationale for this enhancement is that the Central Bank expects investment firms that hold physical client financial instruments to carry out such a reconciliation, to mitigate the risk of loss of such assets.

Question 27: Do you agree with the Central Bank's proposal to enhance Regulation 57 to expressly require investment firms to conduct a reconciliation of physical client financial instruments?
Question 28: Do you agree that the reconciliation of physical client financial instruments should be conducted on at least a monthly basis? If not, please explain why.

The treatment of client financial instrument[18] reconciliation differences or discrepancies[19]

104. Reconciliation differences or discrepancies in client asset records/accounts identified through the performance of the 'external' reconciliation may, as a consequence of adjustments to internal client asset records, be reflected as a client financial instrument shortfall excess or discrepancy, identified through the subsequent performance of the 'internal' reconciliation of client financial instruments.

105. The investigation of client asset reconciliation differences or discrepancies, the identification of their cause, and their ultimate resolution is an essential component of a robust client asset environment. A failure by an investment firm to identify and resolve reconciliation differences or discrepancies in client asset records/accounts in an appropriate manner may result in client exposure, particularly in the event of an investment firm's insolvency.

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[18] This includes physical client financial instruments.
[19] Discrepancies is the term used to describe any error in the client asset records or accounts of the investment firm.

106. The reconciliation process under Regulation 57(3) of the CAR requires investment firms to reconcile the client financial instruments held, as recorded by the investment firm in its internal records against external records (i.e. statement(s) provided by the third party where the client financial instruments are deposited) on a monthly basis. This 'external' reconciliation should be performed within ten working days of the date to which the reconciliation relates.

107. At present, Regulation 57(7) of the CAR requires investment firms to investigate, identify the cause of, and resolve any reconciliation difference identified in the course of performing the client financial instrument reconciliation process. The cause of any reconciliation difference must be identified within five working days and the reconciliation difference must be resolved as soon as practicable.

108. The Central Bank is proposing that if additional processes are introduced relating to client financial instruments, as highlighted in paragraph 87, the same requirement to investigate, identify the cause of, and resolve any differences or discrepancies as set out in Regulation 57(7) will apply to such processes.

109. The Central Bank is of the view that the CAR would be strengthened by requiring an investment firm to investigate, identify the cause of and resolve any reconciliation difference or discrepancy regardless of its origin.

110. The rationale for these enhancements is to ensure that investment firms monitor their client financial instruments holdings and address any differences or discrepancies in a timely manner in order to mitigate the risk of loss of such assets, particularly in the event of an investment firm's insolvency.

111. Providing minimum expectations to investment firms on the management of reconciliation differences and discrepancies seeks to provide additional client protection, particularly in the event of insolvency of an investment firm.

Question 29: Do you agree with the Central Bank's proposal that investment firms should follow the process as set out in Regulation 57(7) of the CAR in order to address a reconciliation difference or discrepancy identified through any reconciliation process? If not, please explain why.

The treatment of client financial instrument shortfalls and excesses

112. The CAR does not currently specify how a client financial instrument shortfall or excess, identified through the performance of an 'internal' reconciliation of client financial instruments should be addressed.

113. Shortfalls and excesses of client financial instruments may be identified by investment firms through the performance of the 'internal' reconciliation of client financial instruments (proposed new requirement). These shortfalls may arise as a result of timing issues (i.e. differences in timing between an investment firm and a third party recognising the same transaction). Such timing differences should correct themselves over time, once the parties have recognised the transaction.

114. The Central Bank is proposing that, in the event that a shortfall does not correct itself within three working days from the date of the performance of the 'internal' reconciliation of client financial instruments, investment firms will be required to address the shortfall by depositing money, financial instruments[20] or a combination of both from the investment firm's own assets into the relevant third party client asset account. These assets should be segregated in a third party client asset account, supported by accurate books and records. The value of the assets deposited into the third party client asset account to address the shortfall should be assessed daily to ensure it sufficiently covers the value of the shortfall of the client financial instrument(s).

115. In respect of an excess identified through the performance of the 'internal' client financial instrument reconciliation, the Central Bank expects an investment firm to withdraw from the relevant third party client asset account, without delay and in any event within three working days from the date of the performance of the 'internal' client financial instrument reconciliation, such financial instruments as is necessary to address the excess.

Question 30: Do you agree with the Central Bank's proposal to require investment firms to place money, financial instruments or a combination of both from the investment firm's own assets into the relevant third party client asset account to address a client financial instrument shortfall identified through the performance of an 'internal' reconciliation of client financial instruments? If not, please explain why.

Question 31: Do you agree with the Central Bank's proposal to require investment firms to address shortfalls identified through the performance of an 'internal' reconciliation of client financial instruments where that shortfall has not resolved itself in three working days? If not, please explain why.

Question 32: Do you agree with the Central Bank's proposal to require investment firms to address excesses identified through the performance of an 'internal' reconciliation of client financial

[20] That is, financial instruments which investments firms may already have in their custody, or through the purchase of financial instruments to address the shortfall.

instruments, where that excess has not resolved itself in three working days? If not, please provide details of any barriers that an investment firm may face in removing the excess.

Record-keeping requirements

116. In addition to the proposals above, the Central Bank is proposing to enhance the CAR to require that an investment firm maintains a record of the actions it has taken to remediate a client asset reconciliation difference or discrepancy (and where applicable, address any associated shortfall or excess in client asset records) identified through the performance of a reconciliation process. This record should include:

a. A description of the reconciliation difference or discrepancy; and

b. Where applicable, a record of the balance of money, financial instruments or a combination of both from the investment firm's own assets, that the investment firm has deposited or withdrawn from the relevant third party client asset account to address any associated shortfall/excess.

Where applicable, the Central Bank proposes that investment firms update their records when the reconciliation difference or discrepancy is resolved.

Question 33: Do you agree with the Central Bank's proposal for investment firms to maintain a record of the actions it has taken in respect of the remediation of a reconciliation difference or discrepancy? If not, please explain why.

Principle of Daily Calculation

117. Regulation 58 of the CAR sets out the requirements regarding the performance of the daily calculation of client funds. These provisions require investment firms to ensure, each working day, that the client funds resource (i.e. the total amount of client funds held in third party client asset accounts) at the close of business on the previous working day is equal to the client funds requirement (i.e. the total amount of client funds that an investment firm owes to its clients). The process requires an investment firm to conduct a check between two sets of internal records; its client ledger which determines the aggregate of client fund entitlements and its internal bank ledger which determines the aggregate record of balances deposited in third party client asset accounts. The internal ledgers should be appropriately adjusted to reflect any reconciliation differences or discrepancies identified through the performance of the reconciliation of client funds as required under Regulation 57(1) and 57(2) of the CAR.

118. A client fund shortfall occurs when the aggregate balance of client funds that an investment firm is actually holding, as represented in its internal bank ledger (client funds resource), is less than the amount of client funds it should be holding, as represented in its internal client ledgers (client funds requirement). This results in the amount held being insufficient to satisfy the claims of clients, or not immediately available to satisfy such claims.

119. Regulation 58 of the CAR provides that client fund shortfalls, which are identified through the performance of the daily calculation, should be addressed through depositing investment firm money into the third party client asset account without delay, and in any event within one working day from the date to which the calculation relates.

120. A client fund excess occurs when the client funds resource is greater than the client funds requirement. Regulation 58 of the CAR provides that in the event of an excess of client funds, which is identified through the performance of the daily calculation, investment firms should 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 as is necessary to ensure that the client funds resource is equal to the client funds requirement.

121. While Regulation 57(7) of the CAR sets out the approach to be taken in respect of a reconciliation difference, in terms of investigation, identification of cause and resolution following the performance of the reconciliation process, the CAR does not expressly specify how client fund differences or discrepancies identified through the performance of the daily calculation should be remediated (other than how a shortfall or excess of client funds should be addressed).

122. The Central Bank is proposing to align the process for the remediation of client fund differences or discrepancies, identified through the performance of the daily calculation, with the process for remediating reconciliation differences as set out in Regulation 57(7). This would require investment firms to investigate, within one working day, the cause of any difference or discrepancy, identify the cause of the difference or discrepancy within five working days and resolve the difference or discrepancy as soon as practicable. The objective of this proposal is to ensure that the internal records an investment firm uses in the performance of the daily calculation are accurate.

Question 34: Do you agree with the Central Bank's proposal to align process for the remediation of client fund differences or discrepancies identified through the performance of the daily calculation with the process for remediating reconciliation differences as set out in Regulation 57(7)? If not, please explain why. Details of any suggested alternative processes to ensure that the internal

records used in the performance of the daily calculation are accurate to (i.e. meet the objective of the proposed enhancement) should also be included.

Principle of Risk Management

123. The Central Bank expects investment firms holding client assets to have developed and embedded appropriate risk management processes and systems to ensure the identification and management of risks relevant to their business models that could impact their client asset holdings and arrangements. While the risk management arrangements for client assets are distinct (i.e. derived from the CAR and MiFID II), they may be incorporated as part of an investment firm's overall risk management and governance framework.

124. The CAR Principle of Risk Management requires investment firms to develop and maintain a Client Asset Management Plan (**CAMP**), which must be challenged and approved at least annually by the Board of the investment firm. The principle also outlines requirements relating to the role of Head of Client Asset Oversight (**HCAO**). In this regard, investment firms must appoint a HCAO to oversee the investment firm's arrangements for safeguarding client assets. In determining whether any enhancements should be made to the risk management provisions in the CAR, the Central Bank has focused its review on the CAMP requirements as set out in Regulation 64 of the CAR.

125. The content of a CAMP should be of sufficient detail to enable an independent reader to understand the business model, the resulting risks to safeguarding client assets and the mitigations in place. An independent reader would include the Central Bank as well as insolvency practitioners and those responsible for the resolution of failed institutions, given the importance of the CAMP in ensuring an orderly return or transfer of client assets in the event of an investment firm insolvency.[21]

126. The CAMP should be regarded by investment firms as a 'master' document in the context of documenting client asset arrangements, risks and mitigations. The content of a CAMP will vary depending on the nature, scale and complexity of an investment firm's business model. The CAMP should guide the reader to the location of key procedural documents, folders, etc., relating to an investment firm's client asset arrangements, and any supporting access details to ensure information pertaining to client assets is readily available.

127. The CAMP should be viewed as a 'living' document, which should be re-assessed on an on-going basis to ensure it remains current and reflective of an investment firm's

[21] In accordance with paragraph 1(8) of Schedule 3 to the MiFID Regulations.

evolving business model and emerging risks. In order to effectively embed the CAMP in an investment firm's overall risk management framework, it is necessary to have a comprehensive risk identification process incorporated into the CAMP which captures and evaluates emerging investment firm-specific risks. This is especially important in the current environment, as new risks relating to client assets emerge, for example due to the global COVID-19 pandemic, Brexit and the evolving client asset landscape.

128. In assessing whether enhancements should be made to the current CAMP requirements, the Central Bank took into account good practices and issues identified through direct client asset supervision and authorisation work. The Central Bank also considered learnings from the 2017 risk management thematic industry review.[22] In addition to noting good practices, the industry letter contained a number of important observations, in areas such as risk identification and mitigation, explanation of business models, and insolvency information. Some of these observations are reflected in the proposals to enhance the CAMP requirements and applicable CAR guidance below.

Additional requirements for inclusion in the CAMP

Client Asset Applicability Matrix

129. The Central Bank is proposing to require investment firms to develop and maintain a Client Asset Applicability Matrix in their CAMP. The purpose of the Client Asset Applicability Matrix is to ensure that an investment firm has carried out a robust assessment of where client assets arise across its business lines and services. The Client Asset Applicability Matrix should provide an independent reader with a succinct overview of where and how client assets arise within an investment firm, so that it is readily understood where client assets arise across the product offering within each business line.

130. The Client Asset Applicability Matrix should set out a clear rationale as to why a product or service is in or out of scope of the applicable client asset provisions. For example, the Central Bank would expect a Client Asset Applicability Matrix for investment firms entering into TTCAs with clients to indicate where full title transfer of client assets may arise, and provide this as a rationale for circumstances under which client assets may be outside of client asset protection.

131. In developing and maintaining the Client Asset Applicability Matrix, investment firms may need to conduct initial and ongoing assessments of their business lines and associated product offerings, including any new product offerings.

[22] See Central Bank industry letter on the "Implementation of Risk Management Requirements by Investment Firms subject to the Client Asset Regulations", dated 20 April 2017, available on the Central Bank website here.

132. The Central Bank expects investment firms to incorporate the Client Asset Applicability Matrix into their risk management processes. Therefore, it is not intended to set out in the CAR the precise information which should be included in the Client Asset Applicability Matrix. However, the Central Bank intends to provide CAR guidance on what investment firms should consider including. Examples may include:

a. A reference to all business lines within the investment firm; and

b. A list of the products and services offered by the investment firm, together with an indication of whether they are in or outside the scope of the client asset regime, supported by a clear rationale.

Question 35: Do you agree with the Central Bank's proposal to enhance the CAR to require investment firms to develop and maintain a Client Asset Applicability Matrix within the CAMP? If not, please explain why.

Outsourcing

133. Regulation 64(4)(k) of the CAR requires details to be included in the CAMP where an investment firm outsources the performance of the reconciliation or the daily calculation processes. Regulation 66 requires that where an investment firm outsources to another party, the performance of the reconciliation or daily calculation processes, 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. In addition to ensuring the information in Paragraph 1(9)(d) of Schedule 3 to the MiFID Regulations is made readily available, investment firms are required to provide details of the manner in which they will exercise oversight over the outsourced activities.

134. The Central Bank is proposing to enhance Regulation 64(4)(k) and Regulation 66 of the CAR to require investment firms to include details in the CAMP of where an investment firm outsources to another party any activity relating to the safeguarding of client assets, and the manner in which an investment firm will exercise oversight over the outsourced activity.

135. The Central Bank proposes to specify in CAR guidance that this information should include the name of the outsourced provider (group or external entities), its jurisdiction of incorporation, and a description of the client asset operational functions it undertakes for the investment firm.

Question 36: Do you agree with the Central Bank's proposal to enhance existing requirements to include a section in the CAMP that identifies all entities to which an investment firm outsources any activity relating to the safeguarding of client assets and details of how the investment firm proposes to exercise oversight of the activities? If not, please explain why.

Client asset breach and incident log

136. The Central Bank is of the view that information relating to client asset breaches and incidents, regardless of materiality, should be readily accessible by an independent third party, in particular the Central Bank and the investment firm's external auditor (as part of the Client Asset Examination).

137. The Central Bank is proposing to require investment firms to include in the CAMP, clear referencing to the location of the client asset breach and incident log, e.g. by hyperlink or other such pathway. The Central Bank intends to introduce CAR guidance to outline its expectations that investment firms maintain a client asset breach and incident log. The internal log should include details of all client asset related breaches and incidents, regardless of materiality.

138. The purpose of this proposal is to ensure that the CAMP sign posts where an independent reader may access a holistic view of all client asset breaches and incidents arising within an investment firm.

139. The Central Bank also intends to outline its expectations as regards the contents of the internal client asset breach and incident log in CAR guidance. For example, the log should refer to the relevant provision(s) in the CAR and/or the MiFID Regulations and MiFID II, an overview of the matter, the process for remediation, whether the matter has been reported to the Central Bank and the ongoing status of the matter.

Question 37: Do you agree with the Central Bank's proposal for investment firms to include a reference to the location of its internal client asset breach and incident log in the CAMP? If not, please explain why.

Additional information to be included in the CAMP

140. Paragraph 1(9) of Schedule 3 to the MiFID Regulations sets out the information that should be made readily available to the Central Bank, appointed insolvency practitioners and those responsible for the resolution of failed institutions. This includes information on:

a. Related internal accounts and records that readily identify the balances of funds and financial instruments held for each client; and

b. Agreements to establish ownership over assets.

141. The Central Bank is proposing to cross-refer to Paragraph 1(9) of Schedule 3 to the MiFID Regulations in Regulation 64 of the CAR.

142. The rationale for the proposal to cross-refer to Paragraph 1(9) of Schedule 3 to the MiFID Regulations is to ensure that investment firms have clarity on all of the information that is required to be included in the CAMP.

Question 38: Do you agree with the Central Bank's proposal to require investment firms to include the information set out in Paragraph 1(9) of Schedule 3 to the MiFID Regulations in the CAMP? If not, please explain why.

Additional proposed enhancements to the CAR guidance

143. The CAMP should be sufficiently detailed to enable an independent reader to understand an investment firm's business model in the context of client assets and the controls for safeguarding client assets.

144. In addition to the proposed enhancements to the CAMP as set out above, the Central Bank is considering other proposed enhancements to the CAR guidance on the Central Bank's expectations for the information to be contained in the CAMP.

Client Asset Risk Matrix

145. The Central Bank is proposing to issue CAR guidance setting out that investment firms should include a Client Asset Risk Matrix in the CAMP. This should include details of the risks to the safeguarding of client assets, including those specific to the particular business and the processes and controls to mitigate the risks, which are already required by Regulation 64(4)(d) and (e) of the CAR.

146. The factors to consider when developing and maintaining the Client Asset Risk Matrix within the CAMP should include the risks referred to in CAR guidance G8 (21), which include;

a. Counterparty risk including jurisdiction and associated legal risks;

b. Concentration risk;

c. Contagion risk;

d. Operational risk including risk of fraud; and

e. Emerging risks.

147. The Central Bank is of the view that a Client Asset Risk Matrix will assist an independent reader to more easily understand the risks and associated mitigations unique to an investment firms' client asset environment.

Client asset account flows

148. The Central Bank is proposing to set out in CAR guidance its expectation that investment firms should document in the CAMP the general flows of client assets in and out of third party client asset accounts.

149. The Central Bank is of the view that this information will assist an independent reader in understanding how assets come into, and are moved out of, an investment firm's client asset environment.

IT systems and controls

150. The Central Bank is proposing to set out in CAR guidance its expectation that investment firms should document in the CAMP all internal and external IT systems and controls which validate the data obtained from the IT systems that are used as part of their client asset arrangements. In addition, the CAMP should include an explanation of the various IT systems used by investment firms in respect of client asset processes, and how these systems interact with each other.

151. Including this information in the CAMP serves multiple purposes, in particular supporting an insolvency practitioner seeking to assess client asset holdings in the event of an investment firm's insolvency, but also to support Central Bank supervisors, auditors (internal and external) and the investment firm in ensuring that robust systems are in place.

Access to critical systems

152. The Central Bank is proposing to set out in CAR guidance its expectation that an investment firm should outline in the CAMP, the arrangements that it has in place to ensure that critical systems relating to the safeguarding of client assets remain accessible and operational, particularly in the event of an investment firm's insolvency. This may form part of the investment firm's business continuity planning. This is also important in the current environment, as investment firms have been implementing business continuity planning in the context of the global COVID-19 pandemic.

153. Where an investment firm is reliant on the continued operation of certain systems for the provision of component documents of the CAMP, it should have arrangements in place to ensure that these systems will remain operational and accessible, even in an insolvency scenario. System access will be critical to ensure that relevant records can be accessed at all times.

Operational and governance structure

154. The Central Bank is proposing to clarify in the CAR guidance its expectations with regard to Regulation 64(4)(a) of the CAR. In particular, the Central Bank expects that an investment firm should provide details of the operational structure which supports the investment firm's client asset arrangements, including key committees and support functions, in the CAMP.

155. The provision of this information seeks to assist an independent reader, in particular an insolvency practitioner in the event of an insolvency, in identifying the relevant party/department to contact in relation to specific issues.

Books and records

156. The Central Bank is proposing to clarify in the CAR guidance its expectation that investment firms should provide information on the location of the books and records that investment firms hold pursuant to the requirements in CAR, including those records held by third parties on behalf of investment firms, in the CAMP.

157. In an insolvency scenario, it will be important that independent parties, such as an insolvency practitioner knows the location of, and has access to, relevant books and records without delay to facilitate the distribution of assets to clients.

Compensation schemes

158. The Central Bank is proposing to enhance the CAR guidance to clarify that investment firms should provide details of any applicable investor compensation or deposit guarantee schemes in jurisdictions where an investment firm has deposited client assets with third parties, in the CAMP.[23]

Reconciliation and daily calculation processes

159. As highlighted above, the Central Bank is proposing to enhance the requirements around the client asset reconciliation and daily calculation processes and the treatment of differences and discrepancies.

160. The Central Bank is of the view that it is important that investment firms document how client asset reconciliation and daily calculation processes are performed in the CAMP, so that an independent third party can readily understand how the these processes are being carried out.

[23] Investment firms will note that Article 47 of the MiFID II Delegated Regulation requires that this information is provided by investment firms to clients/potential clients.

161. The Central Bank is proposing to enhance the CAR guidance to clarify that investment firms should include an overview of how the reconciliation and daily calculation processes are being performed and include a hyperlink (or other such pathway) in the CAMP to the underlying procedural document(s) in respect of the reconciliation and daily calculation processes.

162. The expectation is that these underlying documents would refer to the frequency that these processes are performed, and the approach to investigating, identifying the cause and remediating client asset differences or discrepancies identified through the performance of these processes.

Question 39: Do you agree with the proposed enhancements to the CAR guidance as set out above as they pertain to:
a. Client Asset Risk Matrix;
b. Client asset account flows;
c. IT systems and controls;
d. Access to critical systems;
e. Operational and governance structure;
f. Books and records;
g. Compensation schemes; and
h. Reconciliation and daily calculation processes?
If not, please explain why.
Question 40: In your opinion, is there any additional information which should be included in the CAMP?

Structural amendments to the CAMP

163. The Central Bank is proposing to outline in the CAR guidance a suggested structure for the contents of the CAMP. The Central Bank considers that the contents of the CAMP may be structured under the following key headings:

a. Business model and risk assessment (including Client Asset Applicability Matrix and Client Asset Risk Matrix);

b. Operational structures;

c. Governance and outsourcing arrangements;

d. Processes, procedures and records;

e. Information to facilitate the distribution of client assets (insolvency plan); and

f. Additional information pertinent to the investment firm.

164. The Central Bank is of the view that providing CAR guidance on a suggested structure for the CAMP may assist investment firms in developing and maintaining the CAMP and may lead to greater uniformity of approach to CAMPs.

165. Further enhancements to the CAMP requirements in Regulation 64 may also be effected in the revised CAR to reflect the proposed structure of the CAMP headings referenced in paragraph 162.

Question 41: Do you agree with the Central Bank's proposed approach for the CAR guidance on the structure of the CAMP? If not, please explain why.

Transitional arrangements and enhancements to the Monthly Client Asset Report

Transitional periods

166. As referenced in Section I of this Consultation Paper, the Central Bank is proposing that credit institutions be granted a 12 month transitional period following the publication of the third edition of the Investment Firms Regulations to comply with the revised CAR.

167. The Central Bank is also proposing that investment firms be granted a 12 month transitional period following the publication of the third edition of the Investment Firms Regulations to comply with the revised CAR.

168. The Central Bank expects that investment firms and credit institutions will use this transitional period to prepare to be fully compliant with the revised CAR, to be contained in the third edition of Investment Firms Regulations at the end of the 12 month period.

Question 42: Do you agree with the Central Bank's proposal to grant a 12 month transitional period following the publication of the third edition of the Investment Firms Regulations for investment firms to comply with the revised CAR? If not, please explain why.

Enhancements to the Monthly Client Asset Report

169. The MCAR is a return that investment firms, subject to the CAR, are required to complete and submit to the Central Bank via the Online Reporting System.[24] The MCAR is an important supervisory tool for CAST.

170. The Central Bank has undertaken a review of the current MCAR template to identify areas where proposed enhancements could be made to strengthen the MCAR as a supervisory tool and to reflect the proposed enhancements to the CAR.

171. In addition to making the proposed enhancements to the MCAR template, the Central Bank will review and update the "Monthly Client Assets Report – Guidance Note for Irish Investment Firms" (the **MCAR guidance**).[25]

Proposed enhancements to the MCAR

172. The Central Bank is proposing to make enhancements to the MCAR template which will require an investment firm to report additional information, including:[26]

a. The total number of MiFID Eligible Counterparty clients and the corresponding value of client assets held on behalf of those clients as at reporting period end;

b. The jurisdiction of retail clients, associated number of clients and value of client assets held on behalf of those clients as at reporting period end;

c. The investment firm's EEA branches that hold client assets, the associated number of clients and the value of client assets held as at reporting period end;

d. The value of client assets held on behalf of uncontactable/gone away clients as at reporting period end;

e. The total number of client asset breaches and/or incidents that occurred during the reporting period, and the number of material client asset breaches and/or incidents reported to the Central Bank during the reporting period;

f. The highest, lowest and average value of client financial instruments held during the reporting period;

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[24] The requirement to complete and submit the MCAR to the Central Bank is contained in Regulation 8 and in the Schedule to the Investment Firms Regulations. The Investment Firms Regulations will be reviewed and amended, if necessary, to clarify the intention that credit institutions, once brought in scope of the CAR, will be required to submit the MCAR.
[25] The current version of the MCAR guidance is available on the Central Bank website here.
[26] In addition to the enhancements described in paragraph 171, the Central Bank may make amendments/enhancements to the existing fields of the MCAR.

g. In respect of client financial instruments held by an investment firm:

   i. The full list of third parties[27] where client financial instruments were deposited and the values of client financial instruments deposited with each third party as at reporting period end;

   ii. Additional information in respect of the third parties where client financial instruments are deposited, including the jurisdiction and any group affiliation;

   iii. Additional information in respect of the client financial instruments deposited with each third party such as the form of registration and the types of client financial instrument (e.g. dematerialised/physical); and

   iv. The value of client financial instruments held internally by an investment firm as at reporting period end and the types of client financial instrument (e.g. physical/dematerialised);

h. In respect of client funds deposited with third parties:[28]

   i. The full list of third parties where client funds are deposited and the balance of client funds deposited with each third party as at reporting period end; and

   ii. Additional information in respect of the third parties where client funds are deposited, including indicating the type of third party, jurisdiction and any group affiliation;

i. A breakdown of client assets held by business line/activity as at reporting period end; and

j. The name of the external auditor that prepares the assurance report as part of an investment firm's Client Asset Examination.

Question 43: Do you foresee any challenges in reporting the information referenced in the paragraph 171, on a monthly basis? If so, please explain why.

[27] In accordance with the definition for "third party" in relation to client financial instruments, as contained in Regulation 47 of the Investment Firms Regulations.
[28] In accordance with the definition for "third party" in relation to client funds, as contained in Regulation 47 of the Investment Firms Regulations (i.e. any of the entities listed in paragraph 3(1) of Schedule 3 to the MiFID Regulations).

Section III: Future considerations in respect of the Central Bank's client asset regime

Today's evolving market landscape presents both challenges and opportunities for investment firms, including those that hold client assets. There has been recognition at European level[29] of the need for regulated entities and regulators to adjust to evolving situations in financial markets and the EU's economic landscape. The Central Bank is seeking to ensure that the client asset regulatory and supervisory regime continues to evolve to take into account new developments in the Irish client asset landscape. Such developments may include, for example, new business models, increases (or decreases) in client asset holdings by Irish regulated entities, economic changes and technological improvements. The Central Bank's objective is to ensure the highest level of investor protection is afforded to clients. In seeking to achieve this objective, the Central Bank may, in the future, consider whether other areas of the client asset regulatory and supervisory regime, in addition to the areas covered by this Consultation Paper may warrant further analysis and/or enhancement.

173. As the population of regulated entities and complexity of activities evolve in the Irish market, the Central Bank will be mindful of whether additional enhancements to the Central Bank's client asset regulatory and supervisory regime are warranted. The Central Bank will continue to challenge investment firms to ensure that robust systems and controls are in place to safeguard client assets at all times. Areas of future consideration by the Central Bank in respect of the client asset regime may include the CAR provisions regarding the Client Asset Examination (the **CAE**), assurance report, and associated guidance**.** The assurance report is an important supervisory tool for the Central Bank, and the Central Bank may seek to enhance the effectiveness of the CAE process. This may include, for example, an expansion of the depth and breadth of information being examined and reported on.

[29] See the European Commission's Public Consultation on the review of the MiFID II/MiFIR regulatory framework here.

174. As Central Bank Regulations are to be viewed as 'living' documents, the Central Bank will continue to keep the client asset regime under regular review to assess whether further policy work is warranted. The Central Bank's objective is to ensure that the highest level of client asset protection is upheld, particularly in the context of changing market practices, structures and technologies.

Question 44: Have you identified areas of the client asset regime that warrant consideration, in particular in light of new or evolving business practices, financial innovation or advancements in technology?

Section IV: Other amendments to the Investment Firms Regulations

MiFID II, which came into force on 3 January 2018, and is transposed in Ireland by the MiFID Regulations, provides a framework to strengthen investor protection and improve the functioning of financial markets across Europe. Its objective is to improve financial market competitiveness by creating a single market for investment services and activities and ensure a high degree of harmonised protection for investors in financial instruments.

In 2017, the Central Bank consulted[30] on amendments to the Investment Firms Regulations arising as a result of MiFID II. The Central Bank is proposing to make some further amendments to the Investment Firms Regulations to clarify its expectations with regard to specific notification and reporting requirements required under MiFID II.

Notification requirements for systematic internalisers

175. Regulation 3(1) of the MiFID Regulations defines a systematic internaliser as:

"an investment firm which, on an organised, frequent systematic and substantial basis, deals on own account when executing client orders outside a regulated market, an MTF or an OTF without operating a multilateral system".

176. Regulation 3(3) and 3(4) of the MiFID Regulations further specify:

a. How the frequent and systematic basis referred to in the definition should be measured;

b. How the substantial basis referred to in the definition should be measured; and

c. That the definition of systematic internaliser will only apply when the pre-set limits for a frequent and systematic basis and for a substantial basis are both crossed or

[30] See Consultation on Second Edition of the Central Bank Investment Firms Regulations including changes related to MiFID II (CP 111), available on the Central Bank website here.

where an investment firm chooses to opt-in under the systematic internaliser regime.

177. Article 15(1) of MiFIR, requires that investment firms who that meet the definition of systematic internaliser notify their competent authority. Such notification will be transmitted to ESMA.

178. The Central Bank is proposing to clarify its expectations with regard to the notification requirement set out in Article 15(1) of MiFIR by inserting a new requirement into the Investment Firms Regulations. This will require a MiFID investment firm subject to reporting requirements under the Investment Firms Regulations, and meeting the definition of systematic internaliser as defined in the MiFID Regulations, to notify the Central Bank of its systematic internaliser status in such manner, in such form and with such accompanying information as may be specified on the website of the Central Bank from time to time.

179. The Central Bank intends to specify further in guidance the format of the applicable notification.

Question 45: Do you agree with the Central Bank's proposal to specify the requirement set out in Article 15(1) of MiFIR in the Investment Firms Regulations and in guidance? If not, please explain why.

Position limit reporting

180. Regulations 81 and 82 of the MiFID Regulations set out position limits and position management controls in relation to commodity derivatives and reporting.

181. Regulation 82(1)(b) of the MiFID Regulations requires an investment firm or a market operator operating a trading venue which trades commodity derivatives or emission allowances or derivatives of emission allowances to provide the Central Bank with a complete breakdown of the positions held by persons, including the members or participants and their clients, on that trading venue, on a daily basis.

182. The Central Bank is proposing to clarify its expectations with regard to the reporting requirement set out in Regulation 82(1)(b). It is proposed to require a MiFID investment firm subject to reporting requirements under the Investment Firms Regulations or a market operator operating a trading venue which trades commodity derivatives or emission allowances or derivatives thereof, to submit a position report to the Central Bank, in such manner, in such form and with such accompanying information as may be specified on the website of the Central Bank from time to time.

183. The Central Bank intends to specify further in guidance the format of the applicable report.

Question 46: Do you agree with the Central Bank's proposal to specify the requirement set out in Regulation 82(1)(b) of the MiFID Regulations in the Investment Firms Regulations and in guidance? If not, please explain why.

Glossary

Term	Meaning
"AIFMD Delegated Regulation"	Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision.
"the Central Bank"	The Central Bank of Ireland.
"the CAR"	The Client Asset Requirements as contained in Part 6 of the Central Bank Investment Firms Regulations.
"the CAR guidance"	The Central Bank Guidance on Client Asset Regulations for Investment Firms (March 2015).
"CAST"	The Central Bank's Client Asset Specialist Team.
"Client"	Any person to whom an investment firm provides MiFID investment business.
"Client assets"	Client funds and client financial instruments.
"Client asset discrepancies"	Any error in an investment firms records or accounts.
"Client asset examination" or "CAE"	The process undertaken by an investment firms' external auditor pursuant to Regulation 65 of the CAR.
"Client assets key information document" or "CAKID"	The document provided to retail clients pursuant to Regulation 60 of the CAR.
"Client asset management plan" or "CAMP"	The plan developed pursuant to Regulation 64(1) of the CAR for the purpose of safeguarding client assets.
"Client asset reconciliation differences"	Means differences identified through the performance of the 'external' reconciliation.
"Client financial instruments"	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. a claim relating to, or a right in or in respect of a financial instrument.
"Client funds"	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"	The total amount of client funds that an investment firm owes to its clients.
"Client funds resource"	The total amount of client funds held in an investment firm's third party client asset accounts.
"Client fund shortfall"	A client fund shortfall occurs when the aggregate balance of client funds that an investment firm is *actually* holding, as represented in its internal cash book/bank ledger (client funds resource), is less than the amount of client funds it *should be* holding, as represented in its internal client ledgers (client funds requirement).
"Client fund excess"	A client fund excess occurs when the aggregate balance of client funds that an investment firm is *actually* holding, as represented in its internal cash book/bank ledger (client funds resource), is greater than the amount of client funds it *should be* holding, as represented in its internal client ledgers (client funds requirement).
"Client financial instrument shortfall"	A client financial instrument shortfall arises when the quantity and type of client financial instruments held by a firm is less than that which it should be holding on behalf of clients. This may be identified through the performance of an internal reconciliation of client financial instruments.
"Client financial instrument excess"	A client financial instrument shortfall arises when the quantity and type of client financial instruments held by a firm exceeds that which it should be holding on behalf of clients. This may be identified through the performance of an internal reconciliation of client financial instruments.
"Collateral margined transaction"	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.
"the Consultation Paper"	Central Bank Consultation on enhancements to the Central Bank Client Asset Requirements, as contained in the Central Bank Investment Firms Regulations.
"the CRD"	Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit

	institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.
"Daily calculation"	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. This requirement is set out in Regulation 58 of the Investment Firms Regulations.
"Eligible custodian"	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 a credit institution.
"ESMA"	European Securities and Markets Authority.
"Head of Client Asset Oversight" or "HCAO"	An individual appointed pursuant to Regulation 63 of the CAR.
"Industry Funding Regulations"	Central Bank Act 1942 (Section 32D) Regulations 2020 (S.I. No. 345 of 2020).
"Investment firm"	A person authorised by the Central 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: - 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; - 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; - a person so authorised but only to carry out custodial operations involving the safekeeping and administration of investment instruments; - 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 Firms Directive"	Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU.
"Investment Firms Regulations"	The Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Investment Firms) Regulations 2017 (S.I. No. 604 of 2017). This is the second edition of the Investment Firms Regulations.
"Investor Money"	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.
"MiFID I"	Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC.
"MiFID II"	The MiFID II legislative package which includes 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, MiFIR and all applicable Level 2 and Level 3 measures.
"MiFID II Delegated Directive"	Commission Delegated Directive (EU) 2017/593 of 7 April 2016 supplementing Directive 2014/65/EU of the European Parliament

	and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits.
"MiFID II Delegated Regulation"	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.
"MiFID II safeguarding of client asset rules"	The MiFID II rules on the safeguarding of client financial instruments and funds, as contained in Regulation 23 of the MiFID Regulations, Schedule 3 to the MiFID Regulations, as well as MiFID II.
"MiFID investment business"	Any investment service or activity as set out in Schedule 1, Part 1 of the MiFID Regulations.
"the MiFID Regulations"	The European Union (Markets in Financial Instruments) Regulations 2017 (S.I. No. 375 of 2017).
"MiFID Banking Exemption"	The exemption as set out paragraph 3(2) of Schedule 3 to the MiFID Regulations.
"MiFIR"	Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012.
"Monthly client asset report" or "MCAR"	A monthly return that firms holding client assets are required to complete and submit to the Central Bank via the Online Reporting System, 20 working days after each calendar month-end.
"MCAR guidance"	The "Monthly Client Assets Report – Guidance Note for Irish Investment Firms".
"Nominee"	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.
"Pooled account"	A third party client asset account in which the client assets of more than one client are held. This may also be referred to as an "omnibus account".
"Prime brokerage agreement"	A written agreement between an investment firm and a client for prime brokerage services.
"Prime brokerage services"	A package of services provided under a prime brokerage agreement which gives an investment firm a right to use client financial instruments for its own account and which comprises each of the following: a. safekeeping and administration of client financial instruments; b. clearing services; and c. financing, the provision of which includes one or more of the following: i. capital introduction; ii. margin financing; iii. stock lending;

	iv. stock borrowing; and v. entering into repurchase or reverse repurchase transactions; and which, in addition, may comprise consolidated reporting and other operational support.
"Third party"	In relation to client funds— - any of the entities listed in paragraph 3(1) of Schedule 3 to the MiFID Regulations. In relation to client financial instruments— - entities that meet the requirements in paragraph 2 of Schedule 3 to the MiFID Regulations.
"Third party client asset account"	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.

Schedule A

Draft third edition of the Investment Firms Regulations

STATUTORY INSTRUMENTS.

S.I. No. [~~604~~] of 20~~17~~21

CENTRAL BANK (SUPERVISION AND ENFORCEMENT) ACT 2013
(SECTION 48(1)) (INVESTMENT FIRMS) REGULATIONS 2021~~0~~
~~2017~~

S.I. No. [~~604~~] of 2021~~17~~

CENTRAL BANK (SUPERVISION AND ENFORCEMENT) ACT 2013
(SECTION 48(1)) (INVESTMENT FIRMS) REGULATIONS 2021~~017~~

CONTENTS

Regulation

Reporting Requirements

S.I. No. [~~604~~] of 2021~~17~~

CENTRAL BANK (SUPERVISION AND ENFORCEMENT) ACT 2013
(SECTION 48(1)) (INVESTMENT FIRMS) REGULATIONS 2021~~017~~

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 2021~~02017~~.

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

Interpretation

2. (1) In these Regulations—

"Act of 1971" means the Central Bank Act 1971 (No. 24 of 1971);

"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;

"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[31];

"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 695;

"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 684(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;

"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

[31] OJ No. L 176, 27.06.2013, p. 1

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 8578(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 in Part 1 of Schedule 1 to the MiFID Regulations;

"investment service 2" means the investment service referred to in subparagraph in Part 1 of Schedule 1 to the MiFID Regulations;

"investment service 3" means the investment service referred to in subparagraph in Part 1 of Schedule 1 to the MiFID Regulations;

"investment service 4" means the investment service referred to in subparagraph in Part 1 of Schedule 1 to the MiFID Regulations;

"investment service 5" means the investment service referred to in subparagraph in Part 1 of Schedule 1 to the MiFID Regulations;

"investment service 6" means the investment service referred to in subparagraph 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 8~~7~~0(1);

"investor money facilities agreement" has the meaning assigned to it in Regulation 81~~7~~4(1);

"investor money management plan" means the plan created pursuant to Regulation 86~~7~~9(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 out-sourcing 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;

"systematic internaliser" has the meaning assigned to it in Regulations 3(1) and (4) of the MiFID Regulations;

"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.

"19 December Commission Delegated Regulation" means Commission Delegated Regulation (EU) 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositories, leverage, transparency and supervision.

(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) credit institutions authorised pursuant to section 9 of the Act of 1971 are subject to the requirements in Part 6.

(e) management companies authorised pursuant to the UCITS Regulations are subject to the requirements in Parts 6 and 7,

(f) alternative investment fund managers authorised pursuant to the AIFM Regulations are subject to the requirements in Parts 6 and 7,

(g) fund service providers are subject to the requirements in Part 7, and

(h) 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.

(10) A MiFID investment firm subject to reporting requirements under these Regulations and meeting the definition of systematic internaliser as defined in these Regulations shall notify the Bank of its systematic internaliser status in such manner, in such form and with such accompanying information as may be specified on the website of the Bank from time to time.

(11) A MiFID investment firm subject to reporting requirements under these Regulations or a market operator operating a trading venue which trades commodity derivatives or emission allowances or derivatives thereof shall submit a position report to the Bank, in such manner, in such form and with such accompanying information as may be specified on the website of the Bank from time to time.

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 trans- action 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 out-sourcing,

(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 com- ply 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 para- graph (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

out- sourcing 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 out-sourcing 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 "out- sourcing 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 out- sourcing 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 out- sourcing 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 Com- mon 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 per- mission 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 can- celled 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 con- sider 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 intra- day, 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;

"Capital Requirements Directive" means Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC [OJ No. L 176, 27.06.2013, p. 1];

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

"client asset applicability matrix" means the information contained in an investment firm's client asset management plan- which identifies the investment firm's investment services and business lines, and in each case indicates whether or not the requirements in this Part apply;

"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,

(e) Section 9 of the Act of 1971 as a credit institution,

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;

"prime brokerage agreement" means a written agreement between an investment firm and a client for prime brokerage services;

"prime brokerage services" means a package of services under a prime brokerage agreement which gives an investment firm a right to use client financial instruments for its own account and which may comprises of the following:

(a) safekeeping and administration of client financial instruments;

(b) clearing services; and

(c) financing, the provision of which may includes one or more of the following:

(i) capital introduction;

(ii) margin financing;

(iii) stock lending;

(iv) stock borrowing;

(v) entering into repurchase or reverse repurchase transactions;

and which, in addition, may comprise consolidated reporting and other operational support;

"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 with- draw, 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 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 and record in writing 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 under- taking 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) 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 client financial instruments which the investment firm owes to its clients. Such reconciliation shall be carried out within 10 working days of the date to which the reconciliation relates.

(6) An investment firm shall count all client financial instruments physically held by the investment firm, or any nominee of the investment firm, and reconcile, at least monthly, the results of this count to the record of client financial instruments maintained by the investment firm.

(7) In respect of those client financial instruments which have not been deposited with a third party, 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 client financial instruments, as recorded by the party responsible for maintaining the record of legal entitlement of client financial instruments. Such reconciliation shall be carried out within 10 working days of the date to which the reconciliation relates.

(8) 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.

(9) 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.

(10) An investment firm shall—

(a) ensure that the reconciliations required pursuant to Regulations 57(1), 57(2), 57(3), 57(5), 57(6) and 57(7) 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 or discrepancy identified through the performance of the reconciliations required pursuant to Regulations 57(1), 57(2) 57(3), 57(5), 57(6) and 57(7),

(c) identify the cause of any reconciliation difference or discrepancy

identified in Regulation 57(10)(*b*) within 5 working days; and

(d) resolve any reconciliation difference or discrepancy identified in Regulation 57(10)(*b*) as soon as practicable.

(11) In the event of a shortfall of client financial instruments identified through the performance of the reconciliation required pursuant to Regulation 57(5), an investment firm shall deposit into a third party client asset account without delay and in any event within three working days from the date on which the reconciliation was performed, such money, financial instruments or a combination of both from the investment firm's own assets, to address the shortfall.

(12) In the event of an excess of client financial instruments identified through the performance of the reconciliation required pursuant to Regulation 57(5), an investment firm shall withdraw from a third party client asset account, without delay and in any event within three working days from the date on which the reconciliation was performed, such financial instruments from a third party client asset account as is necessary to address the excess.

(13) An investment firm shall -

(a) maintain a record of the money, financial instruments, or combination of both used by the investment firm to address a shortfall ~~in~~of client financial instruments as being held for the relevant client, and

(b) maintain a record of the actions the investment firm has taken to address the reconciliation difference or discrepancy, including an excess of client financial instruments.

(14) The records referred to in paragraph 13(b) shall include –

(a) a list of the money, financial instruments, or combination of both that the investment firm has used to address any shortfall, and

(b) a description of the reconciliation difference or discrepancy, including an excess of client financial instruments.

(15) An investment firm shall update its records when the reconciliation difference or discrepancy has been resolved.

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.

(7) An investment firm shall—

(a) ensure that the daily calculation required pursuant to Regulation 58(1) is performed using client asset records that are accurate and the daily calculation itself is performed accurately,

(b) investigate within one working day the cause of any difference or discrepancy identified through the performance of the daily calculation required pursuant to Regulation 58(1),

(c) identify the cause of any difference or discrepancy identified in Regulation 58(7)(b) within 5 working days, and

(d) resolve any difference or discrepancy identified in Regulation 58(7)(b) as soon as practicable.

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, capital re-organisations and transfers of business,

(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.

Credit institutions – notification to clients

62. (1) A credit institution which relies on paragraph 3(2) of Schedule 3 to the MiFID Regulations shall –

(a) in advance of providing a MiFID investment service to, or performing a MiFID investment activity for, a client -

(i) notify the client that its funds are held as deposits by the credit institution for that client in accordance with the Capital Requirements Directive and not under this Part or the MiFID Regulations; and

(ii) set out in its terms of business the circumstances, if any, in which it will cease to hold such funds as deposits in accordance with the Capital Requirements Directive and shall hold client funds in accordance with this Part and the MiFID Regulations.

Use of client financial instruments

63. (1) An investment firm shall maintain a copy of all material in order to evidence that prior express client consent has been received by the investment firm to allow it to enter into arrangements for securities financing transactions or otherwise use client financial instruments for their own account or the account of any other person or client of the investment firm.

(2) An investment firm shall maintain a copy of the material referred to in paragraph (1) for a period of at least 6 years.

Use of title transfer collateral arrangements

64. (1) An investment firm shall ensure that any title transfer collateral arrangement is the subject of a written agreement between the investment firm and the client.

(2) The written agreement referred to in paragraph (1) shall cover the client's agreement to the following:

(a) the terms for the arrangement relating to the transfer of full ownership of a client asset from a client to the investment firm;

(b) any terms under which the full ownership of an asset is to transfer from the investment firm back to the client; and

(c) to the extent that it is not covered by the terms under subparagraph (b), any terms for the termination of -

(i) the arrangement under subparagraph (a), or

(ii) the overall agreement in paragraph (1).

Termination of title transfer collateral arrangements

65. (1) Where a client communicates to an investment firm that it intends to terminate a title transfer collateral arrangement, and such communication is not in writing, the investment firm shall make a written record of the client's communication, and such record shall record the date such communication was received by the investment firm.

(2) An investment firm shall maintain the written record referred to in paragraph (1) or any written communication received directly from the client in respect of the client's intention to terminate the title transfer collateral arrangement, as applicable, for a period of at least 6 years.

(3) Where an investment firm agrees to the termination of a title transfer collateral arrangement, the investment firm shall notify the client of its agreement in writing. The notification shall state when the termination is to take effect and how the assets will be treated by the investment firm after termination of the arrangement.

(4) Where an investment firm does not agree to terminate a title transfer collateral arrangement, it shall notify the client of its disagreement in writing.

(5) An investment firm shall maintain a written record of any notification it makes to a client under paragraphs (3) and (4) for a period of at least 6 years.

(6) Where a title transfer collateral arrangement is terminated, or where the notification referred to in paragraph (3) does not state when the termination of the arrangement will take effect, then unless otherwise permitted by this Part and notified to the client, an investment firm shall treat those assets as client assets from the start of the next working day following the date of termination.

Chapter 3

Client Consent

Client consent requirements

66.(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

67. (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 673(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 7167(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 684(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 7268, 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 695 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 7268;

(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

68.(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 without delay—

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

(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 684(2), and

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

(4) In addition to the information required by paragraph 1(9) of Schedule 3 to the MiFID Regulations, 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 an investment firm outsources to another party, any activity related to the safeguarding of client assets, including the performance of the reconciliation or the daily calculation referred to in Regulation 70, 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 72~~68~~(1)(c) and (d);

(o) such other matters as may be determined by the Bank from time to time;

(p) a client asset applicability matrix; and

(q) the location of an investment firm's internal client asset breach and incident log.

Client asset examination

69. (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 7268 and the timeframes referred to in Regulation 7268, 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 7268.

Chapter 5

Outsourcing, Record-Keeping and Reporting Requirements

Outsourcing requirements

70. (1) If an investment firm outsources to another party the performance of –any activity related to the safeguarding of client assets, including the performance of the reconciliation referred to in Regulation 57 or the daily calculation referred to 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

71.(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 6~~7~~3(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 6~~8~~4(2);

(i) a record of each title transfer collateral arrangement agreement and documentation relating to the termination of a title transfer collateral arrangement referred to in Regulations 65(2) and 65(5);

(j) a record of relevant material in order to evidence that prior express client consent has been received by the investment firm referred to in Regulation 63;

(k) 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

7~~2~~.(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 submit- ted 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 6~~9~~5(2)(*c*) and 6~~9~~5(5)(*b*) and where applicable, the information referred to in Regulation 72~~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

Investment firms providing Prime Brokerage Services

Prime brokerage statement of client assets

73. (1) Where an investment firm provides prime brokerage services to clients which relate to client assets, an investment firm shall make available to each of its clients to whom it provides such services a statement in a durable medium, disclosing -

(a) the balance and value at the close of each working day of the items referred to in paragraph (3), and

(b) any other matters the investment firm considers necessary to ensure that a client has up-to-date and accurate information about the balance of client funds and the value of client financial instruments held by the investment firm on behalf of the client.

(2) The statement referred to in paragraph (1) shall be made available to clients not later than the close of business on the next working day to which it relates.

(3) The statement shall include the following information:

(a) the total value of client financial instruments and the total balance of client funds held by the investment firm on behalf of a client; and

(b) the monetary value of each of the following:

(i) cash loans made to that client and accrued interest;

(ii) securities to be redelivered by that client under open short positions entered into on behalf of that client;

(iii) current settlement amount to be paid by that client under any futures contracts;

(iv) short sale cash proceeds held by the firm in respect of short positions entered into on behalf of that client;

(v) cash margin held by the investment firm in respect of open futures contracts entered into on behalf of that client;

(vi) mark-to-market close-out exposure of any OTC transaction entered into on behalf of that client secured by client financial instruments or client funds;

(vii) total secured obligations of that client against the investment firm; and

(viii) all other client financial instruments held on behalf of the client;

(c) the location of those client financial instruments held by the investment firm on behalf of a client, including client financial instruments deposited with a third party;

(d) a list of the third parties where client funds are deposited; and

(e) any other information as may be specified by the Bank from time to time.

(4) Where an investment firm already provides to its clients, the statement which is required pursuant to Article 91 of the 19 December Commission Delegated Regulation, that statement shall satisfy the requirement imposed under paragraph (1).

Prime brokerage client asset annex

74. (1) Where an investment firm provides prime brokerage services, an investment firm -shall ensure that every prime brokerage agreement under which a client has given prior express consent to the use of the client financial instruments, for the investment firm's own account or the account of any other person or client of the investment firm, includes information detailing the key provisions of the prime brokerage agreement as they relate to the use of client assets by the investment firm (to be known in this Part as a "Client Asset Annex").

(2) The Client Asset Annex shall set out a summary of the key provisions within the prime brokerage agreement permitting the use of client financial instruments by the investment firm, including:

(a) the contractual limit, if any, on the client financial instruments which an investment firm is permitted to use;

(b) all related contractual definitions upon which that limit is based;

(c) a list of numbered references to the provisions within that prime brokerage agreement which permit the investment firm to use the client financial instruments; and

(d) a statement of key risks to- client financial instruments if they are used by the investment firm, including but not limited to the risks to client financial instruments on the failure of the investment firm.

~~(2)~~(3) Where an investment firm provides prime brokerage services, an investment firm shall provide the client with an updated Client Asset Annex if the terms of the prime brokerage agreement are amended after execution of that agreement such that the original annex no longer accurately records the key provisions of the amended agreement.

Chapter 7

Miscellaneous

Application of provisions

75. 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.

Transfer of business

76. An investment firm shall notify the Bank of its intention to effect a material transfer of client assets to or from another entity, as part of a transfer of business, where the client assets relate to the business being transferred. Such notification shall be provided at least 3 months in advance of the transfer taking place.

PART 7

INVESTOR MONEY REQUIREMENTS

Interpretation

77. (1) In this Part—

"assurance report" has the meaning assigned to it in Regulation 8~~760~~(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

78.(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 792(4), 792(5) and 8477(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 781(3)(*a*) and Regulation 792(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

79. (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 7~~9~~2(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

80.(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

81.(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 8376(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

82. (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 8073(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

83. (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 8376(1),

(b) identify the cause of any such reconciliation difference identified in Regulation 8376(4)(*a*) within 5 working days, and

(c) resolve any reconciliation difference identified in Regulation 8376(4)(*b*) as soon as practicable.

Daily calculation

84.(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 8477(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 8477(3) and 8477(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

85.(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 8578(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 8174(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 8174(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 8174(1), or the terms of the Investor Money Facilities Agreement;

(d) providing approval in writing of the review referred to in Regulation 792(7);

(e) ensuring that the investor money management plan referred to in Regulation 8679(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 9083, 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 8477(1) and the reconciliations as required under Regulation 8376(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 870(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

86. (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 8679(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 792(4);

(g) the steps that a fund service provider will follow to identify the investor in the circumstances covered by Regulation 792(5);

(h) the procedures that a fund service provider will follow to carry out the review referred to in Regulation 792(7);

(i) where in accordance with Regulation 881, a fund service provider out- sources 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 9083(1)(*c*) and (*d*);

(m) such other matters as may be determined by the Bank from time to time.

Investor money examination

87.(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 9083(1)(*e*) and the timeframes referred to in Regulation 9083, 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 9083.

Chapter 3

Outsourcing, Record-keeping and Reporting Requirements

Outsourcing requirements

88.(1) If a fund service provider outsources to another party, the performance of the reconciliation referred to in Regulation 8376 or the daily calculation referred to in Regulation 8477, 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 out- sourced activity.

Record keeping — general requirements

89. (1) A fund service provider shall keep the records required under Regulation 892(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 8275(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 8376(2) was prepared, and

(ii) the daily calculation, referred to in Regulation 8477(6) was prepared;

(d) a record to evidence the review process referred to in Regulations 8376(3) and 8477(7);

(e) evidence of the review referred to in Regulation 8578(2)(*b*);

(f) a record of each reconciliation required by Regulation 8376(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 8477(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 8679(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

90.(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 8376(1);

(b) where the fund service provider has failed to carry out the daily calculation referred to in Regulation 8477(6);

(c) any material reconciliation differences identified by a fund service provider in accordance with the process referred to in Regulation 8376(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 8780(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 870(1) and where applicable, the information referred to in Regulation 9083(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

91. 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 9386;

"systemic capital add-on" means the amount referred to under Regulation 9588;

"Market Operator Risk and Capital Adequacy Assessment Process (MORCAAP) amount" means the amount specified under Regulation 9487.

General capital requirement framework

92. 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

93. (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 6months, 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

94. 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

95. 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

96.(1) For the purpose of Regulation 9487(*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 9487(*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

97.(1) For the purpose of Regulation 9487(*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

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

(a) the strategies, processes and systems referred to under Regulation 9689(1);

(b) the recovery plan referred to under Regulation 9689(2); and

(c) the wind-down plan referred to under Regulation 970(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

99. (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 9487 until such time as the Bank specifies otherwise.

MORCAAP — Documentation and submission to the Bank

100. (1) A market operator shall document the items referred to under points (*a*), (*b*) and (*c*) of Regulation 981(1) and shall consolidate such documentation into one MORCAAP document which is approved by the board of the market operator in accordance with Regulation 981.

(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

101. (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

102. 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

103. 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

104. The following Regulations are revoked:

(a) the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Investment Firms) Regulations 2017 [S.I. No. 604 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

105. 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.

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