



STATUTORY INSTRUMENTS.

S.I. No. 105 of 2015

CENTRAL BANK (SUPERVISION AND ENFORCEMENT) ACT 2013
(SECTION 48(1)) INVESTOR MONEY REGULATIONS 2015 FOR FUND
SERVICE PROVIDERS

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In exercise of the powers conferred on the Central Bank of Ireland (the "Bank") by section 48 of the Central Bank (Supervision and Enforcement) Act 2013 (the "Act"), the Bank, having consulted with the Minister for Finance and the Minister for Jobs, Enterprise and Innovation in accordance with section 49(1) of the Act, hereby makes the following Regulations:

1. These Regulations may be cited as the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) Investor Money Regulations 2015 for Fund Service Providers.

2. In these Regulations:

"assurance report" has the meaning provided in Regulation 8(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;

"Bank" means the Central Bank of Ireland;

"collection account" means an account opened with a third party by a fund service provider to hold 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 assets in the account from the fund service provider's own firm assets held elsewhere; and

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

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

"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 European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (S.I. No. 352 of 2011) as a management company,
- (c) authorised pursuant to the European Union (Alternative Investment Fund Managers) Regulations 2013 (S.I. No. 257 of 2013) 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.

“Head of Investor Money Oversight” has the meaning given in Regulation 7(1);

“investor” means any person:

- (a) from or on behalf of whom the fund service provider receives 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;

“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 management plan” means the plan created pursuant to Regulation 7(3) 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 held in a fund service provider’s collection accounts;

“investor money facilities letter” has the meaning provided in Regulation 4(4);

“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;

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

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

“related party” in relation to a fund service provider means:

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

Segregation

3. (1) For the purposes of these Regulations, a fund service provider is deemed to hold investor money where:

- (a) it has been lodged into a collection account in any of the credit institutions listed in Regulation 3(9);
- (b) is held in the name of the fund service provider or any nominee of the fund service provider; and
- (c) the fund service provider has the capacity to effect transactions on that collection account.

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

(3) A fund service provider shall keep investor money separate from all non-investor 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.

(4) Without prejudice to Regulation 3(11), a fund service provider shall not place in a collection account any money other than investor money except in accordance with Regulation 6(3).

(5) Except in accordance with a legally enforceable agreement, a fund service provider shall not use the money of an investor for any purpose other than for the sole account of that investor.

(6) A fund service provider shall not 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.

(7) Without prejudice to the generality of Regulation 3(4) and Regulation 3(11), a fund service provider is not required to pay into a 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.

(8) 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.

Holding Investor Money

(9) Investor money may only be held by a fund service provider in a collection account maintained by the fund service provider at any of the following:

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

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

(11) Without prejudice to Regulation 3(12), 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 that money into a collection account of that fund service provider and, thereafter shall, without delay, transfer out of or withdraw from the collection account such money as is not investor money.

(12) If a fund service provider receives investor money where:

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

the fund service provider, having due regard to other legislation, shall first pay the investor money into a collection account and, thereafter, shall within 5 working days of the initial receipt of such money, either identify the investor concerned or return the money.

(13) Investor money shall only be deposited with any one of the credit institutions listed in Regulation 3(9) where the fund service provider:

- (a) is satisfied that the legal, jurisdictional, regulatory requirements and market practices relevant to the holding of investor money with that credit institution 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.

(14) Where investor money is deposited with any of the credit institutions listed in Regulation 3(9), the fund service provider shall, at least every 6 months, review the arrangements for the holding of investor money with that credit

institution as against the criteria set out in Regulation 3(13) and such review shall be approved by the Head of Investor Money Oversight.

Investor Money Records

(15) A fund service provider shall keep an accurate record of each transaction on a collection account in such a manner and form that:

- (a) the investor for, or in respect of, whom the transaction was conducted is identified;
- (b) the transaction is accounted for by the fund service provider separate from all other transactions of the fund service provider.

(16) A fund service provider shall keep the records required under Regulation 3(15) separate from records relating to transactions which are not related to the collection account.

(17) A fund service provider shall retain for 6 years such records as are required by these Regulations and such records as are necessary to demonstrate compliance with these Regulations.

(18) Where, under or in relation to these Regulations, a fund service provider holds a record or 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.

(19) A fund service provider shall report such matters to the Bank, pertaining to these Regulations, as may be determined by the Bank from time to time. Such a determination may be in respect of:

- (a) fund service providers generally, fund service providers sharing any particular characteristic or a particular fund service provider; and
- (b) any one or more Regulations, or all of the Regulations, of these Regulations.

Designation

4. (1) In advance of opening a collection account with a third party, a fund service provider shall designate in its own financial records, each collection account it will hold with any third party as a 'collection account' in the account name.

(2) In advance of opening a collection account with a third party, a fund service provider shall ensure that the third party will designate in the financial records of the third party, each collection account as a 'collection account' in the account name.

(3) Prior to or within one working day of the initial lodgement of investor money in a collection account with a third party, a fund service provider shall

verify that the money is held in an account which is designated as a collection account and keep a record of such verification and if the third party does not, in its external financial records, make a designation in accordance with Regulation 4(2), 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.

Investor Money Facilities Letter

(4) In advance of opening a collection account with a third party, a fund service provider shall enter into an agreement with the third party (in these Regulations to be known as an "Investor Money Facilities Letter") and the terms of such Investor Money Facilities Letter shall state that:

- (a) the parties acknowledge that money in the collection account is held by the fund service provider in trust for the relevant investors;
 - (b) the third party shall hold and record the money in the 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 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 collection account with any other account and the third party is not entitled to exercise any right of set-off or counter claim against investor money in that 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 5(1) and such statement shall specify all investor money held by the third party for the fund service provider;
 - (f) the third party will not make withdrawals from the collection account other than by instruction from an authorised person of the fund service provider.
- (5) A fund service provider shall:
- (a) arrange for a review of every Investor Money Facilities Letter by the Head of Investor Money Oversight to ensure that every such letter adheres to the requirements in Regulation 4(4);
 - (b) retain evidence of the review provided for in paragraph (a) for 6 years;
 - (c) retain every Investor Money Facilities Letter between the fund service provider and a third party for 6 years.

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

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

(7) A fund service provider shall without delay, obtain confirmation in writing, from the third party with whom the collection account was opened, when a collection account is closed and confirmation that it had a nil balance on the date it was closed.

Reconciliation

5. (1) In relation to collection accounts which hold investor money, 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 held, as recorded by third parties as set out in a statement or other form of confirmation from the third party and such reconciliation shall be carried out by the end of the working day immediately following the working day to which the reconciliation relates.

(2) A fund service provider shall keep a record of:

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

(3) 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.

(4) 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.

(5) If a fund service provider outsources the performance of the reconciliation to a third party, the fund service provider shall take reasonable steps to ensure that the third party has appropriate processes, systems and controls in place to ensure continuity in the effective performance of this outsourced activity.

(6) A fund service provider shall inform the Bank when the fund service provider has failed to carry out any reconciliation referred to in Regulation 5(1) together with the reasons for such a failure. The fund service provider shall provide this information to the Bank without delay and in any event within one working day of the date on which the reconciliation should have been performed.

(7) A fund service provider shall:

- (a) investigate within one working day the cause of any reconciliation difference in the reconciliation required pursuant to Regulation 5(1);
- (b) identify the cause of any such reconciliation difference identified in Regulation 5(7)(a) within 5 working days;
- (c) resolve any reconciliation difference identified in Regulation 5(7)(b) as soon as practicable.

(8) Without prejudice to Regulation 3(19), a fund service provider shall report such matters pertaining to these Regulations as may be determined by the Bank from time to time.

Daily Calculation

6. (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 6(1), a fund service provider shall use values in its own accounting records which may have been reconciled with statements received from credit institutions, rather than values contained in statements received from credit institutions.

(3) In the event of a shortfall of investor money in a collection account, a fund service provider shall deposit into a 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 collection account, a fund service provider shall withdraw from a 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 6(3) and 6(4), in the event of a shortfall or an excess in a foreign currency collection account that is held outside the EEA, a fund service provider shall issue an instruction to its credit institution, without delay and in any event within one working day, to:

- (a) deposit into a 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 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 its credit institution acts on such an instruction without delay.

(6) Without prejudice to Regulation 3(19), a fund service provider shall report such matters pertaining to these Regulations as may be determined by the Bank from time to time.

(7) A fund service provider shall keep a record of:

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

(8) 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.

(9) 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.

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

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

Risk Management

7. (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 these Regulations referred to as the "Head of Investor Money Oversight") and shall ensure that the Head of Investor Money Oversight shall perform relevant duties including but not limited to the following:

- (a) ensuring that the investor money management plan referred to in Regulation 7(3) is produced, maintained, reviewed and updated as the information, upon which the investor money management plan is based, changes;
- (b) ensuring that potential or actual breaches relating to the safeguarding of investor money are reported in writing to the board of the fund service provider;
- (c) ensuring that the Bank is notified of any breaches of these Regulations without delay;
- (d) approving any returns that are required by these Regulations to be submitted to the Bank in relation to investor money;
- (e) report in writing to the board of the fund service provider in respect of any issues raised by the internal and external auditors in relation to investor money;
- (f) ensuring that the persons performing the daily calculations as required under Regulation 6(1) and the reconciliations as required under Regulation 5(1) are adequately trained and have sufficient skill and expertise to perform those functions;
- (g) undertaking an assessment of risks to investor money arising from the fund service provider's business model;
- (h) ensuring that the Investor Money Examination, as required by Regulation 8(1), is completed and the assurance report is submitted within the agreed timeframe;

- (i) ensuring that every Investor Money Facilities Letter is obtained and maintained;
- (j) reviewing at least on an annual basis the provisions of every Investor Money Facilities Letter to ensure its compliance with these Regulations;
- (k) performing the duties specified in Regulation 3(14).

(2) A fund service provider 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 7(1) having regard to the nature, scale and complexity of its business.

(3) A fund service provider shall have an investor money management plan in order to safeguard investor money and shall have produced the plan within 3 months of the date of commencement of these Regulations.

(4) An investor money management plan shall be reviewed:

- (a) at least once a year; and
- (b) if there is any change to the fund service provider's business model which affects the manner by which investor money is held;

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

(5) The fund service provider shall approve the investor money management plan on an annual basis or sooner if there is any change to the fund service provider's business model which affects the manner by which investor money is held.

(6) 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 and type of investor money held by a fund service provider;
- (c) risks to the safeguarding of investor money;
- (d) processes and controls to mitigate those risks; and
- (e) information to facilitate the distribution of investor money, particularly in the event of a fund service provider's insolvency.

Investor Money Examination

8. (1) A fund service provider shall arrange for an external auditor to prepare a report (in these Regulations referred to as an "assurance report") in relation to that fund service provider's safeguarding of investor money at least on an annual basis and shall ensure that the external auditor appointed for this purpose receives full co-operation in a timely manner in relation to the preparation of the assurance report.

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

(3) The fund service provider shall ensure that the external auditor shall provide an assurance report as to whether:

- (a) the fund service provider has maintained processes and systems adequate to meet the requirements of these Regulations throughout the period of the examination;
- (b) the fund service provider was compliant with the Regulations as at the period end date;
- (c) any matter has come to the attention of the auditor to suggest that the 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 throughout the period to which the examination relates; and
- (d) changes made to the investor money management plan since the date of the last report have been drafted in sufficient detail to meet the requirements of these Regulations capturing the risk faced by the entity in holding investor money given the nature and complexity of the business of the entity under examination up to the date of the current report.

(4) The fund service provider shall:

- (a) ensure that the external auditor shall provide the assurance report to the fund service provider in a timely manner; and
- (b) provide the assurance report to the Bank not later than 4 months after each financial year end.

(5) The fund service provider shall assess the findings of such a report.

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

(7) If a fund service provider, which is permitted to hold investor money, claims not to have held investor money for the period in question, the fund service provider shall:

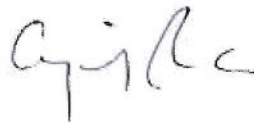
- (a) arrange that an external auditor shall perform such procedures as the auditor deems appropriate to determine whether anything has come to its attention that causes the auditor to believe that the fund service provider held investor money during that period;
- (b) ensure that the external auditor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

9. These Regulations come into operation on 1 April 2016.

Signed for and on behalf of the

CENTRAL BANK OF IRELAND

on this the 25 day of March 2015.



CYRIL ROUX

Deputy Governor (Financial Regulation)

EXPLANATORY NOTE

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

These Regulations prescribe rules for the safeguarding of investor money in fund service providers.

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