

Central Bank of Ireland
Guidance on Client Asset Regulations¹

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¹ This Guidance is in draft form for the purposes of consultation. The Central Bank of Ireland reserves the right to make amendments as it deems appropriate.

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Purpose and Effect of the Guidance

The primary purpose of this document (“the Guidance”) is to assist regulated entities in complying with their obligations under the Central Bank (Supervision and Enforcement) Act 2013 Section 48 (“the Regulations”) in relation to the holding of client assets. The Regulations are applicable to those regulated entities as defined in the Regulations.

The existing Client Asset Requirements (issued 1 November 2007), were imposed under Regulation 79 of the European Communities (Markets in Financial Instruments) Regulations 2007(SI No 60 of 2007) (“MiFID”) on investment firms authorised under MiFID and under Section 52 the Investment Intermediaries Act, 1995 (“IIA”) for investment business firms authorised under IIA. When the Regulations come into law, the existing Client Asset Requirements will be replaced by the Regulations. However, any legal proceedings, or any investigation, disciplinary or enforcement action in respect of any provision of the existing Client Asset Requirements that applied prior to the issue of the Regulations may be continued, and any breach of any provision of the existing Client Asset Requirements that applied prior to the issue of the Regulations may subsequently be the subject of legal proceedings, investigation, disciplinary or enforcement action by the Central Bank.

While aspects of the proposed draft Regulations provide for almost a prescriptive translation of the Client Asset Regulations contained under MiFID, it also proposes imposing key Regulations to further enhance the processes and controls a firm should have in place to protect and safeguard client assets. The imposition of the Regulations on firms authorised under MiFID or the IIA does not affect their authorisation e.g. the Client Asset Regulations and all other Regulations contained in MiFID and the provisions of the IIA continue to apply to regulated entities as defined in MiFID and the IIA when providing investment services/investment business services.

In the case of Fund Service Providers (“FSP”) as defined in the Regulations, it will be the first time that Client Asset Regulations will be applied in respect of client funds while the client funds are deposited in the Collection Account. When the funds are transferred to the Investment Fund, the Regulations do not apply. Likewise, the Regulations will apply when the funds flow back from the Investment Fund to the FSP and are deposited into the Collection Account for onward transmission to the client. This would apply in the case of the redemption of the Fund or where a Fund pays dividends.

If the Collection Account is an asset of the Investment Fund the Regulations will not apply.

Regulation 7.(1) requires a firm to appoint an individual to a Client Asset Oversight Role (“CAOR”) which will be a pre-approved controlled function. Such person will be appointed under Part 3 of the Central Bank Reform Act 2010 (“the Act”) and must conform to the standards issued pursuant to Section 50 of the Act.

Nothing in this Guidance may be construed so as to constrain the Central Bank of Ireland (“Central Bank”) from taking action, where it deems to be appropriate, in respect of any suspected prescribed contravention which comes to its attention.

It is not the policy of the Central Bank to provide legal advice on matters arising pursuant to the Regulations and any Guidance provided should not be construed as legal advice or a legal interpretation of the Regulations. It is a matter for any firm who may fall within the scope of the Regulations to seek legal advice regarding the application or otherwise of the Regulations to their particular set of circumstances.

The Central Bank has the power to administer sanctions for a contravention of the Regulations, under Part IIIC of the Central Bank Act 1942.

The Central Bank may update or amend this Guidance from time to time, as appropriate.

Structure of the Guidance

Guidance is only provided where it is considered it may be helpful in assisting in the interpretation of the Regulations, it is not provided for all the Regulations. The Guidance document should be read in a two page format with the Regulations on the left hand side of the Guidance document and the relevant Guidance where necessary in the corresponding right hand side of the Guidance document. The Guidance is not intended to be comprehensive nor to replace or override any legislative provisions. This Guidance should be read in conjunction with the Regulations.

The draft Client Asset Regulations are set out under the following seven headings which the Central Bank regards as the seven Client Asset Core Principles of a client asset regime with a once off Transition Regulation in respect of a firm's initial Client Asset Management Plan. For ease of reference this Guidance document is also set out on the same basis but in a Q&A format:

1. Segregation

A firm should physically hold, or arrange for the holding of, client assets separate from the firm's own assets and maintain accounting segregation between firm and client assets; for the avoidance of doubt this principle applies to clients' assets that may be held in nominee accounts.

2. Designation and Registration

A firm should ensure that client assets are clearly identified in its internal records and in the records of external parties and are identifiable from a firm's own assets.

3. Reconciliation

A firm should keep accurate books and records as are necessary to enable at any time and without delay, provide an accurate record of the client assets held by a firm for each client and the total held in the client asset account. A firm should conduct on a regular basis, a reconciliation between its internal records and those external records of any third party with whom client assets are held. In effect, a firm is reconciling its general internal client bank ledger to the external client bank record provided by a third party for example in the form of, a bank statement. Please see an illustrative form of a bank reconciliation on page 62 of this Guidance document, the firm should follow a similar format for its financial instrument reconciliation.

4. Daily Calculation

Each business day a firm should ensure that the aggregate balance on its client asset bank accounts (client money resource) as at the close of business on the previous business day is equal to the amount it should be holding on behalf of its clients (its client money requirement).

5. Client Disclosure and Client Consent

A firm should provide information to its clients in a way that informs the client on how and where their client assets are held and the resulting risks thereof. A firm should also inform its clients when their assets are operating within the client asset protection regime and when their assets are held outside the client asset protection regime.

6. Risk Management

A firm should ensure it has and applies systems and controls that are appropriate to identify risks in relation to client assets and should put in place mitigants to counteract these risks.

7. Client Asset Examination

A firm should engage its external auditor to report on the firm's safeguarding of client assets.

Scope of the Guidance

To whom do the Client Asset Regulations apply?

G1 (1) The Regulations made under Section 48 of the Central Bank (Supervision and Enforcement)

Act 2013 apply to the following regulated entities holding client assets:

- a) **investment firms** authorised under Part 4 of the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I 60 of 2007);
- b) **investment business firms** authorised under Section 10 of the Investment Intermediaries Act, 1995;
- c) **Fund Service Providers**, as defined in the Regulations, holding 'Collection Accounts' and
- d) any of the above firms in respect of passported activities carried out by the firms from a branch in another EEA country. The Regulations do not apply to an incoming EEA firm with respect to its passported activities in Ireland.

G1 (2) In this Guidance:

- a **firm** shall mean an investment firm, an investment business firm and Fund Service Providers as described in G (1) a), b) and c).
- an **investment firm** shall mean an investment firm, an investment business firm as described in G (1) a) and b).
- definitions in the Regulations will also have the same meaning in the Guidance

What are client assets?

G1 (3) Client assets consist of **client funds and client financial instruments/investment instruments**.

G1 (4) **Client funds** are defined in the Regulations and include funds owed to or held on behalf of clients including cash, cheques or other payable orders, units in a qualifying money market fund, current and deposit accounts including margin collateral associated with client positions and funds in excess of required margin.

G1 (5) An investment firm is holding client funds where the money has been lodged on behalf of a client of the investment firm in the name of the investment firm or any nominee of the investment firm and the investment firm has the capacity to effect transactions on that account.

G1(6) A Fund Service Provider is holding client funds when holding cash, in transit between an investor and an investment fund, in a Collection Account.

G1 (7) **Financial instruments** are defined in Part 3 of MiFID and **investment instruments** are defined in Part 1 of the IIA. Use of the term financial instrument in this document will also mean investment instrument.

G1 (8) An investment firm is holding client financial instruments where the investment firm has been entrusted by or on account of a client with those instruments and either holds those instruments, including by way of holding documents of title to them, or entrusts those instruments to any nominee and the investment firm has the capacity to effect transactions in respect of those instruments.

Examples of circumstances in which assets are client assets

G1 (9) An investment firm is holding client funds where funds have been lodged to an account opened by the investment firm held in the name of the investment firm or any nominee of the investment firm on behalf of a client pending investment or reinvestment or being returned to the client, and the investment firm has the capacity to effect transactions on that account.

G1 (10) Cheques will be client funds from the time of receipt of the cheque by the firm except where G1 (13) applies. Funds sent to a client by way of cheque or other payable order do not cease to be client funds until the cheque or other payable order is presented and paid by the eligible credit institution.

G1 (11) If a firm has agreed in writing to pay interest to clients, such interest is client funds when the interest is paid. Payment of accrued interest to clients prior to its receipt should not be paid from the client asset account unless previously funded by a firm.

These examples are not exhaustive and if in doubt a firm should be prudent in its approach and act in the best interests of its clients.

Examples of circumstances in which assets are not client assets

G1 (12) Where a client, in line with Directive 2002/47/EC on financial collateral arrangements², transfers full ownership of financial instruments or funds to an investment firm for the purpose of securing or otherwise covering present or future, actual or contingent or prospective obligations such financial instruments or funds should no longer be regarded as belonging to the client.

Where an investment firm has received full title or full ownership to money under a collateral arrangement, the fact that it has also taken a security interest over its obligation to repay that money to the client would not result in the money being client funds. But where an investment firm takes a charge or security interest over money held in a client asset account that money would still be client money as there would be no absolute transfer of title.

G1 (13) A firm which receives a cheque, or other payable order made payable to a third party (for example a product producer) and which directly transmits that cheque or other payable order to that party.

G1 (14) Funds that are due and payable to a firm itself, in accordance with the following provisions:

- the amount has been accurately calculated and is in accordance with a formula or basis previously disclosed to the client by the firm; or
- a number of business days as determined by the firm and recorded in its Client Asset Management Plan ('CAMP') have elapsed since a statement showing the amount of fees and commissions has been issued to the client, and the client has not raised any queries. The Central Bank expects the firm to allow at least ten business days to elapse; or
- the precise amount of fees or commissions has been agreed by the client in writing, or has been finally determined by a court, arbitrator or arbiter.

G1 (15) A cheque or other payable order received from a client is not honoured by the paying eligible credit institution.

² In accordance with Recital 27 of Directive 2004/39/EC, where a client enters into a financial collateral arrangement with a firm, the provisions of which satisfy the requirements of Directive 2002/47/EC, such financial instruments or client funds should no longer be treated as belonging to the client. Such provisions of Directive 2002/47/EC do not apply to a financial collateral arrangement entered into by a natural person.

- G1 (16) Client assets cease to be client assets where:
- they are paid, or transferred, to the client whether directly or into an account with an eligible credit institution or relevant party in the name of the client (not being an account which is also in the name of the firm)
 - where they are paid, or transferred, to a third party on the written instructions³ of the client and are no longer under the control of the firm. In addition, acting in accordance with the terms of an investment management agreement or the completion of an order or application form will be considered to be a request from the client to pay the client assets to the relevant third party.

These examples are not exhaustive and if in doubt a firm should be prudent in its approach and act in the best interests of its clients.

- G1 (17) If the Collection Account is an asset of the Investment Fund, the Regulations do not apply.

How should a firm deal with funds received for investment in an unregulated product?

- G1 (18) All client funds received by a firm irrespective of whether for investment in a regulated or unregulated product shall be deposited in a client asset account until invested as per the client's instructions. Until the investment decision is taken, in accordance with Regulation 2.(7), the funds should be deposited within the timeframe permitted in a designated client asset bank account.

³ Written instructions are not required where client assets are passed for settlement within CREST or other settlement system.

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Regulations

Principle of Segregation

What does segregation mean?

Regulation 2.(1) A firm shall keep client assets separate from the firm's own assets.

Regulation 2.(2) A firm shall not place in a client asset account or a Collection Account any asset other than a [client asset] except in accordance with Regulation 5(3) and 5(6).

Regulation 2.(3) A firm shall not use for the account of one client, the funds of another client except where such use is in accordance with a legally enforceable agreement.

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Guidance

Principle of Segregation

What does segregation mean?

- G2 (1) For the avoidance of doubt segregation also applies to client assets that may be held in a nominee company of the firm.
- G2 (2) Regulations 2.(1), 2.(2) and 2.(3) have implications for a firm in respect of the resulting balance arising from the performance of a firm's daily calculation. Where a firm's client money resource is less than its client money requirement, a firm should deposit its own firm money into the client asset bank account as soon as practicable but in any event no later than one business day from the date to which the calculation relates. But also, where the client money resource is greater than its client money requirement, a firm should transfer any excess funds (i.e. over and above the client money requirement) to the firm's own bank account. Refer to Principle of Daily Calculation for Regulations and specific Guidance in respect of the Daily Calculation.
- G2 (3) Regulations 2.(1) and 2.(2) have also implications for an investment firm in respect of margin received from a client. An investment firm may utilise required margin received from a client in respect of a margin transaction as firm money, however any excess margin received over the required margin should be treated as client funds by the investment firm. As the excess is client funds, the investment firm must lodge this excess into a client asset account. The Central Bank expects the investment firm to hold this excess margin in a separate designated client margin account.

Regulations

Principle of Segregation

Client assets shall only be used in accordance with client instructions

Regulation 2.(4) A firm shall not use a client asset otherwise than in accordance with an instruction relating to that client asset received by the firm from the client for whom that client asset is held.

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Guidance

Principle of Segregation

Client assets shall only be used in accordance with client instructions

- G2 (4) A firm should withdraw client assets out of a client asset account only on a specific instruction from the client, for example, this may be in the form of what has been agreed in a signed terms of business/client documentation, recorded telephone line and in the case of a FSP, the Investment Fund's Prospectus. Instructions are not required where client assets are passed for settlement within Crest or other settlement systems.
- G2 (5) Where a client has instructed that he does not wish his client assets to be held with a particular eligible credit institution, relevant party, qualifying money market fund or eligible custodian, the firm should act on the client's instruction within one business day of receiving such an instruction, proceeding as soon as practicable to :
- (i) return the client assets to the client, or to the order of the client,
 - or
 - (ii) proceed to invest the client assets in a manner as instructed by the client.
- G2 (6) In the event of a client instructing a firm to deposit client assets with a specific third party that does not meet with the firm's own internal risk assessment [see Regulation 2.(9) and 2.(12)], the firm should clearly explain to the client, that the third party in question does not meet the firm's internal assessment. If the client wishes to continue, the client's prior written consent should be obtained prior to depositing the client's assets with that specific third party- refer to Regulation 6.(18).

Regulations

Principle of Segregation

How should a firm hold client funds?

Regulation 2.(6) *Client funds may not be held by a firm otherwise than in a client asset account or a Collection Account maintained by the firm at one of the following:*

- (a) *a central bank;*
- (b) *a credit institution authorised pursuant to any law implementing the requirements of Directive 2006/48/EC;*
- (c) *a bank authorised in a non EEA country;*
- (d) *a qualifying money market fund;*
- (e) *a relevant party;*

Regulation 2.(7) *Any client funds received shall be deposited in a client asset account or Collection Account without delay and in any event not later than one business day after the receipt of such funds.*

Regulation 2.(8) *If a firm receives funds where it is not clear which client owns such funds or there is insufficient documentation to identify the client who owns such funds, the firm shall, within two business days, either identify the client concerned or return the funds.*

Guidance

Principle of Segregation

How should a firm hold client funds?

- G2 (7) The Central Bank expects a firm to lodge funds in the currency of receipt unless the firm has no client asset/Collection Account denominated in that currency and it would be unduly burdensome for it to open such an account, in which case the firm may convert the client funds and hold them in a client asset bank account/Collection Account in a different currency. Details of such arrangements and a general statement relating to its exchange rate policy should be set out in the firm's terms of business or investment agreement as appropriate, in the case of a FSP, this may be set out in the Prospectus of the Investment Fund.
- G2 (8) Where a firm receives client funds from a client either by way of a cheque or electronic transfer and the firm is not in a position to identify the client or the client has submitted inadequate documentation to enable the firm to set up the account, the firm should assess if it is appropriate for the firm to accept such client funds in the absence of the necessary paperwork and/or until such time as the client is identified.

The Central Bank expects a firm to set out in its CAMP, the steps a firm would follow in assessing how to deal with the receipt of client funds in this manner. Consideration of other regulations/legislation should be taken into account, e.g. anti-money laundering obligations. A firm should consider adopting cut-off time limits for the submission of the missing client documents. The timeframe adopted should be reflective of the importance of the level of documents omitted by the client, ensuring the adoption of such timeframes will not result in the firm breaching any other regulations/legislation; a firm should seek legal advice if it is in any doubt. Such assessment should be made without delay, but in any event, a firm should ensure it takes action in order to act in accordance with Regulation 2.(8). A firm should have clear procedures in place to ensure that those unallocated funds are monitored and reconciled each day. All such client funds should be included in the firm's daily reconciliation and daily calculation. The necessary paperwork should be obtained/completed and/or the client should be identified within the timeframe per the Regulations and as set out in the firm's CAMP.

Regulations

Principle of Segregation

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Guidance

Principle of Segregation

How should a firm hold client funds ctd.?

G2 (9) The payment of client funds into a client asset account/Collection Account is required under the Regulations and therefore this must be the business practice adopted by a firm. Without prejudice to any subsequent regulatory action which might follow for breach of the Regulations, on ad hoc basis, if a client pays client funds into a firm's own bank account, the firm should transfer those client funds into a client asset account/Collection Account without delay but in any event no later than one business day in accordance with Regulation 2.(7). A firm should not ignore such an occurrence and when such an exception occurs, the firm should investigate as to why client funds were lodged in this manner, i.e. initially into the firm's own bank account and put a procedure in place to prevent such an event re-occurring and this procedure should be reflected in the firm's CAMP.

Likewise, if client financial instruments are lodged into an investment firm's own custody account, the investment firm should transfer those client financial instruments without delay. An investment firm's CAMP should document the procedure and timeframe an investment firm should follow when financial instruments are transferred in this manner.

G2 (10) Where a firm receives a mixed remittance or is liable to pay client funds to a client (including interest on client funds) it should comply with Regulation 2.(6) and 2.(7). Remittance that is not client funds should be paid out of the client asset bank account/Collection Account. A firm should set out in its CAMP, its procedures and timeframe as regards handling mixed remittances.

Regulations

Principle of Segregation

What should a firm do in relation to depositing client assets with a third party?

Regulation 2.(9) *Client funds shall only be deposited with one of the entities listed Regulation 2.(6) where the firm:*

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

Regulation 2.(10) *A firm shall review the arrangements for the holding of any client funds deposited with one of the entities listed in Regulation 2.(6) at least every six months.*

Regulation 2.(12) *Client financial instruments shall not be deposited by an investment firm with a third party otherwise than in a client asset account maintained by the investment firm at that third party and only where the investment firm:*

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

Regulation 2.(13) *An investment firm shall review the arrangements for the holding of any client financial instruments deposited with that third party at least every six months.*

Regulation 2.(5) *Where client assets are transferred to a third party, the firm shall ensure that such transfers are overseen and approved by a member of staff other than the staff member who conducted the transfer.*

Guidance

Principle of Segregation

What should a firm do in relation to depositing client assets with a third party?

- G2 (11) As part of this assessment, the Central Bank expects a firm to take into account how the clients' rights would be affected in the event of the insolvency of the firm or the third party or both. A firm should ensure that any liens or encumbrances granted are permitted by the regulatory client asset protection regime.
- G2 (12) The Central Bank expects a firm to clearly document in its CAMP the procedures which it will follow to carry out the review required by Regulations 2.(9),(10),(12) and (13). The outcome of this review should result in the firm producing a written risk assessment of the third party which should be approved and evidenced by senior management of the firm.
- G2 (13) A firm should notify the Central Bank in writing as soon as it becomes aware of the default of any third party with whom client assets are held stating whether the firm intends to make good any shortfall that has arisen or may arise and the amounts involved.

Regulations

Principle of Segregation

What should a firm notify to a third party when it passes client funds to a third party?

Regulation 2.(11) A firm shall notify in writing any third parties with whom client funds are deposited that such funds are client funds.

What should an investment firm notify to a third party when it passes client financial instruments to a third party?

Regulation 2.(14) An investment firm shall notify in writing any third party with whom client financial instruments are deposited that such instruments are client financial instruments.

What should an investment firm do in relation to depositing client financial instruments with a third party in a third country?

Regulation 2.(15) An investment firm shall not deposit client financial instruments with a third party in a third country that does not regulate the holding and safekeeping of client financial instruments unless:

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

Guidance

Principle of Segregation

What should a firm notify to a third party when it passes client funds to a third party?

G2 (14) While not prescriptive, the Central Bank expects that a firm will include this notification when it is issuing the client funds transfer instruction to a third party.

What should an investment firm notify to a third party when it passes client financial instruments to a third party?

G2 (15) While not prescriptive, the Central Bank expects that a firm will include this notification when it is issuing the client financial instruments transfer instruction to a third party.

What should an investment firm do in relation to depositing client financial instruments with a third party in a third country?

G2 (16) An investment firm should clearly explain in plain English what if any risks exist when holding client assets in a 3rd country. The Central Bank expects such information to be provided to the client in the Client Asset Key Information Document- refer to Regulation 6.(20). Where assets will be held with a third party in a third country that does not regulate the holding of and safekeeping of client financial instruments, an investment firm should also obtain the client's prior written consent - refer to Regulation 6.(18).

Regulations

Principle of Segregation

What type of records is a firm required to maintain to segregate client assets for each client?

Regulation 2.(16) *A firm shall keep a record of each transaction on a client asset account in such a manner and form that:*

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

Regulation 2.(17) *A firm shall keep the records required under Regulation 2.(16) separate from records relating to transactions which are not related to the client asset account.*

Guidance

Principle of Segregation

What type of records is a firm required to maintain to segregate client assets for each client?

- G2 (17) A firm may hold client assets in an individually designated client asset account/Collection Account e.g. XYZ Ltd client asset a/c Joe Bloggs or a pooled designated client asset account(s)/Collection Account (s) e.g. XYZ Ltd client asset.
- G2 (18) Where a firm holds client assets in pooled client asset accounts/Collection Account, accounting segregation should be maintained. In its internal records, a firm should maintain detailed accurate records in order to identify how much each client holds in that pooled client asset account/Collection Account and movements in that balance.
- G2 (19) In turn, a firm should be able to identify where those pooled client assets/Collection Accounts are held externally, for example, if pooled client asset accounts are held with a number of third parties, the firm should be able to identify which client assets are held in each pooled client asset account/Collection Account with each third party for each individual client.

Regulations

Principle of Segregation

When is a firm required to issue a client with a receipt?

Regulation 2.(18) Where a firm receives client funds the firm shall, as soon as practicable after receiving those funds, send to the client a receipt in writing for those funds except where the client funds are received in settlement of a specific contract.

What is the length of time a firm should maintain records to demonstrate compliance with these Regulations?

Regulation 2.(19) A firm shall retain all records demonstrating compliance with these regulations for six years after the date of the creation of the record concerned.

Regulation 2.(20) Where a firm holds a record or another party holds a record on behalf of a firm, under or in relation to these regulations electronically, the firm shall ensure that it can produce such records within one business day.

When is a firm required to report matters pertaining to these Regulations to the Central Bank?

Regulation 2.(21) A firm shall report such matters to the Bank, pertaining to these Regulations, as may be determined by the Bank from time to time.

Guidance

Principle of Segregation

When is a firm required to issue a client with a receipt?

G2 (20) The issuing of a receipt is applicable both in the case of client funds received from a client in the form of cheques or electronic transfers or any other form of payment.

What is the length of time a firm should maintain records to demonstrate compliance with these Regulations?

G2 (21) For the avoidance of doubt, the retention of records for 6 years after the date of the creation of the record concerned is applicable to all of the Client Asset Regulations.

When is a firm required to report matters pertaining to these Regulations to the Central Bank?

G2 (22) While a firm will be required to report breaches of these Regulations – refer to Regulation 7. (2)(c), the Central Bank may also request a firm to report, where necessary, other information in respect of its compliance with any aspect of these Regulations, for example, material reconciling differences arising from the client asset reconciliations- refer to Reconciliation Principle.

Regulations

Principle of Designation and Registration

How should a client account be designated in a firm's internal records?

Regulation 3.(1) Before depositing client assets with a third party, an investment firm shall in its own accounts specify each client asset account it holds with any third party as a client asset account.

Regulation 3.(2) Before depositing client assets with a third party, a fund service provider shall in its own accounts specify each Collection Account it holds with any third party as a Collection Account and reference shall be made to the investment funds for which the Collection Account is used.

How should a client account be designated in the records of a third party?

Regulation 3.(3) Before depositing client assets with a third party, an investment firm shall instruct the third party to, in its external financial records, designate the title of a client asset account held with it in a manner which makes clear that the client assets are not assets of the investment firm.

Regulation 3.(4) Before depositing client assets with a third party, a fund service provider shall instruct the third party to, in its external financial records, designate the title of the Collection Account by the name "Collection Account" and reference shall be made to the investment fund(s) by which the Collection Account is used.

Regulation 3.(5) A firm shall within one business day of the initial lodgement of the client assets in a client asset account or a Collection Account with a third party verify that the assets are held in an account which is designated as a client asset account or a Collection Account and keep a record of such verification and if the third party does not so designate in accordance with Regulations 3.(3) and 3.(4), the firm shall withdraw the assets without delay, and in any event within one business day of carrying out the verification assessment.

Guidance

Principle of Designation and Registration

How should a client account be designated in a firm's internal records?

G3 (1) In advance of putting any transactions through an investment firm's internal financial records, an investment firm should designate in its own internal records each client bank and custodian account it holds with a third party by the title 'client asset account'. If an investment firm has limited capacity in its financial records to record the full title, an abbreviation such as 'clt asset' is acceptable, but it should be a distinguishable relevant title. The designation should be in the name field of the client asset bank and safe custody account and not in the address field or any other field within the internal financial records. Note, the designation in respect of a Collection Account requires specific designation to be used with no variation permitted and it should be in the name field of the Collection Account.

How should a client account be designated in the records of a third party?

G3 (2) In the external financial records of a third party holding a client asset bank account or safe custody account, the title of the account should be sufficiently designated to make it clear that the client assets do not belong to the firm. In the case of a Collection Account, it should have the title 'Collection Account'. This designation should be in the name field of the client asset bank and safe custody account and not in the address field or any other field within the third party's financial records. A firm should verify this designation with the external parties. The Central Bank expects the verification to take the form of a bank statement, custodian statement or other electronic form. A firm may hold this verification electronically. This requirement is applicable each time a client account is opened. In some instances, a third party may amend an existing client asset/Collection Account name/number, the Central Bank would not be in favour of this approach, if a change has to be made to such an account, the account should be closed and a new account opened.

Regulations

Principle of Designation and Registration

What should a firm obtain from a third party prior to depositing client assets with a third party?

Regulation 3.(6) *A firm shall, in advance of depositing client funds with a third party, enter into an agreement in these Regulations to be known as a “Funds Facilities Letter” and it shall be a term of such Funds Facilities Letter:*

- a) *that the parties acknowledge that funds in the client asset account/ Collection Account are held by the firm as trustee for the relevant clients;*
- b) *that the third party shall hold and record the funds in the client asset account/ Collection Account separate from the firm’s funds and the funds of the third party;*
- c) *that the third party will designate the title of the client asset account/Collection Account in its records in such a way as to make it clear that the client funds do not belong to the firm, in the case of a fund service provider the title shall be “Collection Account”;*
- d) *that the third party is not entitled to combine the client asset account/Collection Account with any other account and that the third party is not entitled to exercise any right of set-off or counterclaim against client funds in that client asset account/Collection Account in respect of any sum owed to it by any person, including any other account of the firm;*
- e) *that the third party will deliver to the firm a statement as often as is required to enable the firm to comply with Regulations 4.(1), 4.(2) and 4.(4) and such statement shall specify all client funds held by the third party for the firm;*
- f) *that the third party will not make withdrawals from the client asset account/ Collection Account other than to the firm or on the firm’s instructions by authorised signatories; and*
- g) *the extent of the third party’s liability in the event of the loss of client funds whether caused by the fraud, wilful default or negligence of the third party or otherwise, or an agent appointed by the third party.*

Guidance

Principle of Designation and Registration

What should a firm obtain from a third party prior to depositing client assets with a third party?

- G3 (3) Before a firm deposits client assets with a third party, it shall enter into an agreement with the third party known as 'Funds Facilities Letter and Financial Instruments Facilities Letter' (see Regulation 3.(6) and 3.(7) for detail of letter content). These letters are regarded as master letters obtained at the outset of the business relationship with the third party, if such a relationship changes, the letters may need to be reviewed. A firm may also have other legal agreements with a third party for the purpose of providing custodial services, a firm should ensure that such legal agreements do not contradict/contravene the provisions contained in these Regulations and in particular, Regulation 3.(6) and 3.(7).

Regulations

Principle of Designation and Registration

What should a firm obtain from a third party prior to depositing client assets with a third party ctd.?

Regulation 3.(7) In advance of depositing client financial instruments with a third party, an investment firm shall enter into an agreement (in these Regulations to be known as a “Financial Instruments Facilities Letter”) and it shall be a term of such Financial Instruments Facilities Letter:

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

Guidance

Principle of Designation and Registration

What should a firm obtain from a third party prior to depositing client assets with a third party ctd.?

See Guidance in G3 (3)

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Regulations

Principle of Designation and Registration

What should a firm obtain from a third party prior to depositing client assets with a third party ctd.?

- h. the extent of the third party's liability in the event of the loss of client financial instruments whether caused by the fraud, wilful default or negligence of the third party or otherwise, or an agent appointed by the third party; and*
- i. that the third party will deliver to the investment firm a statement or similar document as often as is required to enable the investment firm to comply with Regulation 4.(3) and such statement shall specify all financial instruments held and a description and the amount of all the financial instruments held in the client asset accounts.*

Regulation 3.(8) A firm shall:

- a) arrange for all Funds Facilities Letters and Financial Instruments Facilities Letter where applicable to be reviewed by the individual occupying the client asset oversight role to ensure that such letters adhere to the requirements in Regulations 3.(6) and 3.(7);*
- b) retain evidence of the review in (a) for 6 years;*
- c) retain all Facilities Letters and terms of business between the firm and a third party for 6 years after these agreements cease;*
- d) review annually the provisions of the Funds Facilities Letter and the Financial Instruments Facilities Letter to ensure their compliance with these regulations and such a review shall be approved in writing by the individual performing the client asset oversight role, and*
- e) review the provisions of the Funds Facilities Letter and the Financial Instruments Facilities Letter if there is a change in the manner in which client assets are to be held and such a review shall be approved in writing by the individual occupying the client asset oversight role.*

Guidance

Principle of Designation and Registration

What should a firm obtain from a third party prior to depositing client assets with a third party ctd.?

See Guidance in G3 (3)

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Regulations

Principle of Designation and Registration

What should a firm obtain from a third party prior to depositing client assets with a third party ctd.?

Regulation 3.(9) A firm shall, in advance of opening a client asset account or a Collection Account with a third party, obtain Confirmation in writing from the third party:

- (a) of the details of the account; and
- (b) that the conditions applicable to the account are as documented in the Funds Facility Letter or Financial Instruments Facility Letter.

What should a firm do when a client asset or a Collection Account is closed?

Regulation 3.(10) When a client asset account or a Collection Account is closed, a firm shall obtain confirmation in writing from the third party with whom the client asset account or Collection Account was opened, that the account is closed and has a nil balance.

Guidance

Principle of Designation and Registration

What should a firm obtain from a third party prior to depositing client assets with a third party ctd.?

- G3 (4) Notwithstanding the master facilities letters referred to in Regulation 3.(6) and 3.(7), a firm has also to obtain a written Confirmation from a third party as outlined in Regulation 3.(9) each time a client asset account/Collection Account is opened with a third party. Each Confirmation should clearly document the applicable client asset bank/Collection and safe custody account numbers. Where client asset accounts/Collection Accounts are opened simultaneously (on the same day), one Confirmation may be obtained but the firm should ensure that the Confirmation from the third party lists all applicable accounts.

What should a firm do when a client asset or a Collection Account is closed?

- G3 (5) The firm should retain this confirmation.

Regulations

Principle of Designation and Registration

How should an investment firm hold client financial instruments?

Regulation 3.(11) *An investment firm shall hold documents of title to client financial instruments in the case of registered financial instruments and bearer financial instruments:*

- a) *itself, or*
- b) *with a nominee company, wholly owned by the firm; or*
- c) *with a relevant party or an eligible custodian in a safe custody account designated as a client account subject to the firm maintaining the capacity to effect transactions on the account in question.*

Regulation 3.(12) *An investment firm shall have procedures to record client financial instruments, including procedures for the receipt and holding of physical financial instruments and such procedures shall enable the effective monitoring of the movement of such client financial instruments.*

Regulation 3.(13) *The procedures referred to in Regulation 3.(12) shall be included in the investment firm's client asset management plan.*

Guidance

Principle of Designation and Registration

How should an investment firm hold client financial instruments?

- G3 (6) An investment firm should accept the same level of responsibility to its clients on behalf of any nominee company owned or controlled by the investment firm with respect to client financial instruments held by that nominee company. Therefore all the Regulations should be complied with by the investment firm in respect of client assets held in this manner.
- G3 (7) In the case where an investment firm physically receives client financial instruments, the investment firm should have clear procedures in place to ensure that the financial instruments are entered onto a log to monitor the movement of the client financial instruments. Details of the client financial instrument should be entered onto the log on the day of receipt; the investment firm is not required to record the value of the instruments. The log should be monitored and updated each day client financial instruments are received or transferred out by the investment firm.

Regulations

Principle of Designation and Registration

How should an investment firm register client financial instruments?

Regulation 3.(14) *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 their financial instruments in the name of:*

- a) *an [eligible nominee] which is:*
 - i. *a person nominated in writing by the client who is independent of the investment firm;*
 - ii. *a nominee company wholly owned by the investment firm;*
 - iii. *a nominee company wholly owned by an exchange which is a regulated market;*
 - iv. *a nominee company wholly owned by [relevant party] or eligible custodian; or*
- b) *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 jurisdiction outside the State.*

Guidance

Principle of Designation and Registration

How should an investment firm register client financial instruments?

No guidance deemed necessary

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Regulations

Principle of Designation and Registration

What should an investment firm do before it deposits client's collateral with a third party?

Regulation 3.(15) With respect to collateral margined transactions, an investment firm, in advance of depositing collateral with, or pledges, charges or grants a security arrangement over the collateral to, an eligible credit institution, relevant party or eligible custodian, shall:

- (a) notify the eligible credit institution, relevant party or eligible custodian that the investment firm:
 - i. is under an obligation to keep this collateral separate from the investment firm's collateral; and*
 - ii. that the eligible credit institution, relevant party or eligible custodian must not claim any lien or right of retention or sale over the collateral except to cover the obligations to the eligible credit institution, relevant party or eligible custodian which gave rise to that deposit, pledge, charge or security arrangement or any charges relating to the administration or safekeeping of the collateral.**
- (b) instruct the eligible credit institution, relevant party or eligible custodian that:
 - (i) the value of the collateral passed by the investment firm on behalf of clients must be credited to the investment firm's client transaction account with that party;*
 - (ii) in the case where the collateral is liquidated to satisfy margin requirements, the balance of the sale proceeds must be immediately paid into a client asset account; and*
 - (iii) in the case where the collateral is passed to an exchange or clearing house, the sale proceeds must be dealt with in accordance with the rules of the relevant exchange or clearing house;**
- (c) ensure that a client's fully paid (non-collateral) financial instruments account and its collateral financial instruments margin account will be held in separate accounts and that no right of set-off will apply.*

Guidance

Principle of Designation and Registration

What should an investment firm do before it deposits client's collateral with a third party?

No Guidance deemed necessary

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Regulations

Principle of Reconciliation

What must a firm reconcile?

Regulation 4.(1) *An investment firm shall reconcile, at least monthly, the balance of all client funds held as recorded by the investment firm with the balance of all client funds held as recorded by third parties as set out in a statement or other form of confirmation from the third party and such a reconciliation shall be carried out by the end of the following business day to which the reconciliation relates.*

Regulation 4.(2) *Without prejudice to regulation 4.(1), for client asset accounts which hold client funds and have daily transactions, an investment firm shall reconcile the balances referred to in regulation 4(1) daily and such reconciliation shall be carried out by the end of the following business day to which the reconciliation relates.*

Regulation 4.(3) *An investment firm shall reconcile, at least monthly, the balance of client financial instruments held as recorded by the investment firm with the balance of all client financial instruments held as recorded by third parties as set out in a statement or other form of confirmation from the third party and such a reconciliation shall be carried out within 10 business days of the date to which the reconciliation relates.*

Regulation 4.(4) *A fund service provider shall reconcile the Collection Account each day that a transaction occurs on that account, but in any event, at least monthly and such reconciliation shall be carried out by the end of the following business day to which the reconciliation relates.*

Guidance

Principle of Reconciliation

What must a firm reconcile?

- G4 (1) In order to carry out the reconciliations a firm should, where applicable, reconcile:
- (a) the balance on each client asset bank account/Collection Account as recorded by the firm with the balance on that account as set out in the statement or other form of confirmation or similar document issued by the central bank, qualifying money market fund, eligible credit institution or relevant party with which those client asset accounts/Collection Accounts are held currency by currency. Dormant accounts should be included;
 - (b) an investment firm's client asset safe custody records of client dematerialised financial instruments with statements or similar documents⁴ obtained from qualifying money market fund or eligible custodians and, in the case of dematerialised financial instruments not held through an eligible custodian, statements from the person who maintains the record of legal entitlement;
 - (c) an investment firm's records of cash collateral held in respect of clients' margined transactions with the statement or similar document issued by the person with whom the collateral is located; and
 - (d) client financial instruments physically held by an investment firm. An investment firm should count at least monthly all client financial instruments physically held by it, or any nominee company wholly owned by the investment firm, and reconcile the results of this count to its record of the client financial instruments held in its physical possession. This reconciliation should be carried out within ten business days of the date to which the reconciliation relates.

The above is not an exhaustive list; a firm should reconcile all accounts that hold client assets within the timeframe as provided in Regulations 4.(1) to 4.(4). In order to comply with Regulations 4.(1) to 4.(4), a firm needs to ensure that the reconciliation is performed from client asset records that are accurate and the reconciliation itself is performed accurately.

⁴ This statement or similar document may be provided on-line on condition that the investment firm retains a copy, either in electronic or hard copy format and can be reproduced within one business day when requested to do so.

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Principle of Reconciliation

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Principle of Reconciliation

What must a firm reconcile ctd.?

- G4 (2) The Central Bank would expect client asset bank accounts such as term deposit accounts to fall into the category of Regulation 4.(1) on the basis that these client asset accounts would not have daily transactions being processed through the account and transactions would be effected at fixed times, for example at maturity or if the length of the term was 'broken'. An investment firm may have other client asset bank accounts such as a current account(s), call accounts; the frequency of transactions in these client asset bank accounts may be infrequent and therefore could possibly be subject to a greater risk of misappropriation. The Central Bank expects a firm to apply Regulation 4.(2). in respect of such client asset bank accounts. As provided in Regulation 4.(4), Collection Accounts should be reconciled each time a transaction goes through the account but in any event at least monthly. A firm should have procedures in place to be able to monitor when transactions are processed through its client asset bank accounts.
- G4 (3) In the case of securities financing, an investment firm should ensure that the records of the investment firm include:
- (a) details of the client on whose instructions the use of the financial instruments has been effected, and
 - (b) the number of financial instruments used belonging to each client who has given consent, so as to enable the correct allocation of any loss or gain.

What should an investment firm do if there is a shortfall in client financial instruments held with a third party?

- G4 (4) Where reconciling items arise from the reconciliation of client financial instruments held with a third party, an investment firm should investigate and identify the cause of any differences in the reconciliation within one business day, as required by Regulation 4.(9). If, following the investigation of the reconciling items, a shortfall in client financial instruments is identified, an investment firm should immediately:

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Principle of Reconciliation

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Principle of Reconciliation

- a) make good the shortfall from the investment firm's own assets; or
- b) deposit in a client asset account funds to the value of and in respect of the shortfall, until such time as the shortfall in financial instruments is eliminated.

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Regulations

Principle of Reconciliation

Who in a firm should carry out the reconciliation and what records should be maintained?

Regulation 4.(5) a firm shall keep a record of:

- a) each reconciliation;*
- b) the information upon which the reconciliation is based;*
- c) the person responsible for such reconciliation.*

Regulation 4.(6) All 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.

Regulation 4.(7) If a firm outsources the performance of the reconciliation to a third party, the firm shall ensure that the third party concerned has appropriate processes, systems and controls for the performance of this activity before any outsourcing takes place.

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Principle of Reconciliation

Who in a firm should carry out the reconciliation and what records should be maintained?

- G4 (5) The Central Bank expects a firm to be in a position to demonstrate upon request, the date upon which a reconciliation was prepared, evidence of who carried out the reconciliation and evidence of who reviewed it. This evidence can be in electronic form. It is also expected that the reconciliation is reviewed by a person other than the preparer.
- G4 (6) A firm may maintain the reconciliation electronically provided it can be reproduced without delay and in any event within one business day- refer to Regulation 2.(20). A firm should ensure that each reconciliation has relevant supporting backup material to facilitate the verification of figures in the reconciliation, the backup material should include statements received from third parties. Such statements may be provided online, provided that a firm maintains a copy and can produce these statements without delay, in any event no later than one business day after being requested to do so.
- G4 (7) Where a firm outsources the performance of reconciliations, it should have appropriate oversight of the process to ensure that the third party has appropriate processes, systems and controls for the performance of this activity. The manner in which the firm exercises oversight should be documented in detail in the firm's CAMP. The firm should maintain a record to evidence the oversight of the process.

Regulations

Principle of Reconciliation

What should a firm do if it has been unable or failed to perform the reconciliation?

Regulation 4.(8) *A firm shall inform the Bank without delay and in any event within one business day when the firm has been unable to or has failed to carry out any reconciliation referred to in Regulations 4.(1), 4.(2), 4.(3) and 4.(4).*

What should a firm do if there is reconciling items arising from the reconciliation?

Regulation 4.(9) *A firm shall start to investigate and identify the cause of any differences in the reconciliation required pursuant to Regulations 4.(1), 4.(2), 4.(3) and 4.(4) within one business day and the firm shall keep a record of any differences.*

Regulation 4.(10) *A firm shall resolve any reconciliation differences identified as soon as practicable.*

Guidance

Principle of Reconciliation

What should a firm do if it has been unable or failed to perform the reconciliation?

G4 (8) Notwithstanding any regulatory action that may be taken, where a firm is unable or fails to perform the reconciliation, the Central Bank expects a firm to perform the reconciliation without delay ensuring where applicable that the reconciliation is carried out for all relevant dates.

What should a firm do if there is reconciling items arising from the reconciliation?

G4 (9) While not an exhaustive list, in general reconciling differences may arise as a result of:

1. Timing differences - Differences in timing between when a firm recognises a transaction and when a third party recognises the same transaction. Such differences are referred to as timing differences and will automatically correct themselves over a short period of time once both parties have recognised the transaction. Timing differences are best illustrated when a firm issues a cheque. At the time of issuing a cheque, a firm will recognise the transaction and remove the funds from their client asset bank account/Collection Account. The bank (who is the third party in this example) will only recognise the payment of the funds on presentation of the cheque by the payee. On recognition of the transaction by the bank, this transaction will no longer appear as a reconciling difference.

2. Errors on the part of a third party - Reconciling items may appear due to errors on the part of a third party. Errors may arise due to a third party incorrectly processing an amount within their own records. The difference in records should be identified as a reconciling difference until such time as the error is corrected.

Regulations

Principle of Reconciliation

When is a firm required to notify the Central Bank of reconciling differences in the client asset reconciliation?

Regulation 4.(11) A firm shall report such matters pertaining to this Regulation as may be determined by the Bank from time to time.

Guidance

Principle of Reconciliation

What should a firm do if there is reconciling items arising from the reconciliation ctd?

3. Errors on the part of a firm - Reconciling items may appear due to errors on the part of a firm which have not been corrected at the time of completing the reconciliation.

A firm may process an amount incorrectly leading to a reconciling difference arising between its own records and that of a third party.

The Central Bank expects a firm to take a pro-active approach investigating and resolving reconciling differences without delay thereby ensuring that the number of reconciling differences remaining on a reconciliation are minimised. Refer to subsequent section which details when a firm is required to report to the Central in respect of reconciling differences.

When is a firm required to notify the Central Bank of reconciling differences in the client asset reconciliation?

G4 (10) The Central Bank does not require a firm to report all reconciling differences but rather expects a firm to report material reconciling items with the level of materiality determined by the firm. In considering its determination of materiality, the Central Bank draws attention to the guidance provided by the Central Bank in G 4 (11) to G 4 (12) and in particular to the maximum timeframe provided by the Central Bank in G (13) under the reconciling categories of timing differences, errors on the part of a 3rd party and errors on the part of a firm. When the Regulations take effect, the Central Bank will write to each firm instructing a firm when and how often it has to report its material reconciling differences. The Central Bank where necessary may engage with a firm to discuss how its material reconciling differences have been determined and assess if other factors need to be considered.

Regulations

Principle of Reconciliation

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Guidance

Principle of Reconciliation

When is a firm required to notify the Central Bank of reconciling differences in the client asset reconciliation ctd.?

➤ How could materiality be calculated and should it be based on quantum alone?

G4 (11) As way of assistance, when considering whether a reconciling item is material the Central Bank expects the following considerations to be taken into account:

- i. The amount of the reconciling difference.
- ii. The number of reconciling items appearing within reconciliations over time.
- iii. The length of time that a reconciling item remains outstanding.
- iv. The nature of the reconciling difference.

G4 (12) Taking the quantum of the reconciling difference into account alone when seeking to establish whether an amount is material may result in a number of low value reconciling differences being ignored when in aggregate these issues may prove to be material to a firm. Low value items by virtue of their nature, age or number of occurrences may be indicative of significant underlying issues within a firm which should be reported to the Central Bank.

If the Central Bank sets a threshold for reporting reconciling items based on quantum alone, a risk may arise that client asset accounts with balances under the materiality threshold, as communicated by the Central Bank, may not be subject to reconciliation by the firm on the assumption that if the Central Bank considers these amounts immaterial for its own purposes the firm may do the same. Failure to reconcile any client asset account regardless of the balance is considered to be a breakdown in controls.

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Principle of Reconciliation

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Guidance

Principle of Reconciliation

When is a firm required to notify the Central Bank of reconciling differences in the client asset reconciliation ctd.?

➤ **When could a reconciling difference be considered material?**

G4 (13) Materiality could be based on the nature of that item after taking into account the period it remains outstanding rather than on quantum of that item alone. The Central Bank expects a firm to determine when a reconciling item is material under the following categories of reconciling items taking into account the considerations as noted in G4 (11). Under the following categories below, the Central Bank has provided the maximum timeframe within which such a reconciling item should be reported to the Central Bank. If a firm concludes that a lesser time period is material for its business model, the firm should notify the Central Bank and report accordingly.

Timing differences

By their nature timing reconciling differences, other than unrepresented cheques, should clear within a relatively short space of time. Therefore, the Central Bank expects any reconciling timing difference that has not cleared within a maximum of ten (10) business days should be considered to be material and should be reported to the Central Bank as provided for in G4 (10). The firm should report the aggregate value of unrepresented cheques outstanding for more than three (3) months.

Errors on the part of a 3rd party

It is a firm's responsibility to contact the 3rd party in order to resolve any errors which it identifies. Errors which remain un-reconciled in excess of fifteen (15) business days should be reported to the Central Bank as provided for in G4 (10).

Errors on the part of the Firm

Errors identified in the firm's records which result in the firm having to lodge firm money into the client asset bank account should be reported to the Central Bank without delay. All other errors should be reported to the Central Bank if they remain un-reconciled in excess of fifteen (15) business days as provided for in G4 (10).

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Principle of Reconciliation

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Guidance

Illustrative Format for Reconciliation

Balance per General Ledger		A
Timing Differences: Transactions in the General Ledger but not in the Bank Statement		B
[List items identified]	(Date/Description/Amount)	
Unpresented Cheques		
[List items identified]	(Date/Description/Amount)	C
Uncorrected errors identified in own records		D
[List items identified]	(Date/Description/Amount)	
Amended balance per General Ledger		E (A±B±C±D)
Balance per third party's statement		F
Timing Differences: Transactions in the third party's but not in the GL		G
[List items identified]	(Date/Description/Amount)	
Uncorrected errors identified in the third party's statement		H
[List items identified]	(Date/Description/Amount)	
Amended balance per third party's statement		I (F±G±H)
Unexplained reconciling difference*		J (E-I)
* should amount to 0		

Regulations

Principle of Daily Calculation

What is the daily calculation for an Investment Firm?

Regulation 5.(1) An investment firm shall, each business day, ensure that its client money resource as at the close of business on the previous day is equal to the client money requirement

Regulation 5.(2) For the purposes of Regulation 5.(1), an investment firm shall use values in its own accounting records or its own accounting records which have been reconciled with bank records, rather than values contained in statements received from credit institutions or other third parties

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Guidance

Principle of Daily Calculation

What is the daily calculation for an Investment Firm?

➤ What is client money requirement for an Investment Firm?

G5 (1) The client money requirement represents all cash held on behalf of clients or validly due to clients as of the date of the calculation that should be recorded in the books and records of the investment firm appropriately adjusted for reconciling items on the client asset bank reconciliation. For example, cash is validly due to the client if the client has delivered an asset but the client has not been credited with the proceeds, or funds have been returned to the client but the funds have not been cleared in the client asset bank account of the investment firm (e.g. uncashed cheques). In effect, the client money requirement may be more commonly known as a firm's client creditors' ledger appropriately adjusted for reconciling items on the client asset bank reconciliation.

An investment firm writing margin transactions should also include:

- (a) any excess margin due to clients and
- (b) the amount a firm would be liable to pay to clients in respect of their margined transactions, if each clients' open position was liquidated and the account was closed.

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the net amount a firm would receive in respect of a firm's margined transactions for clients with counterparties, if each clients' open position was liquidated and the firm's account with the counterparty was closed.

G5 (2) A firm should not use for the account of one client the funds of another except where such use is in accordance with a legally enforceable agreement [see Regulation 2.(3)]. A firm should satisfy itself regarding the provisions of this legal agreement.

Regulations

Principle of Daily Calculation

What should an investment firm do if its client money resource is less than its client money requirement?

Regulation 5.(3) In the event of a shortfall of client funds in a client asset account, an investment firm shall, without delay and in any event within one business day, deposit in the client asset account such money as is necessary to cover the shortfall.

Guidance

Principle of Daily Calculation

➤ **What is the client money resource for an Investment Firm?**

- G5 (3) The client money resource represents the sum of all an investment firm's client asset bank balances that should be recorded in the books and records of an investment firm appropriately adjusted by reconciling items on the client asset bank reconciliation. Any funds held in foreign currency should be converted to the base currency using the Central Bank rate for that day or any other established automatic rate feed. In effect, the client money resource may be more commonly known as a firm's client asset bank ledger appropriately adjusted by reconciling items on the client asset bank reconciliation.

➤ **What should an investment firm do if there is an overdrawn balance in a client asset bank account?**

- G5 (4) In the event of an investment firm having an overdrawn client asset bank balance in a particular client asset bank account, it should include this overdrawn balance in the client money resource for the purpose of the daily calculation in order to provide a true client money resource position. This overdrawn client asset balance should be funded immediately with a review carried out to establish as to why the overdrawn client asset balance occurred and a procedure put in place to avoid it re-occurring.

What should an investment firm do if its client money resource is less than its client money requirement?

- G5 (5) Where its client money resource is less than its client money requirement, an investment firm should deposit its own firm money into the client asset bank account as soon as practicable but in any event no later than one business day from the date to which the calculation relates. Where the client money resource is greater than its client money requirement, an investment firm should transfer any excess firm's money over and above the client money requirement to the investment firm's own firm's bank account as soon as practicable but in any event no later than one business day from the date to which the calculation relates. Therefore, an investment firm's client money resource should only contain what the investment firm is required to hold for its clients on a given day.

Regulations

Principle of Daily Calculation

What is the daily calculation for a Fund Service Provider?

Regulation 5(4) A fund service provider shall, each business day, ensure that its client money resource as at the close of business on the previous day is equal to the client money requirement.

Regulation 5(5) For the purposes of Regulation 5.(4), a fund service provider shall use values in its own accounting records or its own accounting records which have been reconciled with bank records, rather than values contained in statements received from credit institutions or other third parties.

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Guidance

Principle of Daily Calculation

What is the daily calculation for a Fund Service Provider?

➤ What is the client money requirement for a Fund Service Provider?

- G5 (6) In respect of Collection Account(s) held by a FSP, the client money requirement includes cash which is mainly received for pending subscriptions prior to the dealing date of the investment funds or cash received from the investment funds as a result of, for example redemptions/ dividends and has yet to be paid to the investors of the investment funds.
- G5 (7) A FSP should not use for the account of one client the funds of another except where such use is in accordance with a legally enforceable agreement [see Regulation 2.(3)]. A FSP should satisfy itself regarding the provisions of this legal agreement.

➤ What is the client money resource for a Fund Service Provider?

- G5 (8) The client money resource for Collection Accounts stands as the sum of all Collection Accounts in credit that should be recorded in the books and records of the Fund Service Provider appropriately adjusted by reconciling items on the bank reconciliation and not the net sum of the Collection Accounts as stated in the bank statement. - see definition of client money resource for fund service providers in the Regulations.

Regulations

Principle of Daily Calculation

What should a Fund Service Provider do if its client money resource is less than its client money requirement?

Regulation 5.(6) In the event of a shortfall in a Collection Account, a fund service provider shall, without delay and in any event within one business day, deposit in the Collection Account such money as is necessary to cover the shortfall.

DRAFT

Guidance

Principle of Daily Calculation

What should a Fund Service Provider do if its client money resource is less than its client money requirement?

G5 (9) Where a Fund Service Provider transfers funds from the Collection Account to an investment fund prior to receiving such funds into the Collection Account from the client, it will result in a deficit in the Collection Account. The Fund Service Provider should ensure that any credit balances available in the Collection Account are not used to fund or reduce this deficit. Prior to operating in this manner, the Fund Service Provider should ensure that it has a credit facility in place to finance such deficits or it operates a separate Collection Account for credit balances. The Fund Service Provider should describe how this process is managed and should justify the appropriateness and robustness of the implemented risk mitigates in the CAMP.

The FSP should ensure that there is a credit facility agreement in place, either by the FSP or the investment funds for which the Collection Account is in operation for, to ensure that any shortfall by one investor or one investment fund can be funded by this agreement and not by another investor or another investment fund. Where a credit facility exists the FSP should ensure that such credit facility does not attach a lien/charge over the client assets. It is the FSP's responsibility to ensure that it is acting within its authorisation obtained from the Central Bank.

The FSP should document, in its CAMP, the risks, processes and controls to manage potential risks to the investors of the investment fund using the Collection Account. In addition, the FSP is required to implement mitigants to minimise the risks associated with the operation of the Collection Account. Finally, the FSP should ensure that investors are made aware of the risks associated with the operation of the Collection Account.

Regulations

Principle of Daily Calculation

When is a firm required to notify the Central Bank of a shortfall in a client asset account or a Collection Account?

Regulation 5.(7) A firm shall report such matters pertaining to this Regulation as may be determined by the Bank from time to time.

DRAFT

Guidance

Principle of Daily Calculation

When is a firm required to notify the Central Bank of a shortfall in a client asset account or a Collection Account?

Investment firm – Client Asset Account

G5 (10) The level of funding for each investment firm will vary and whether this level of funding is material will also differ for each investment firm. As a result, the Central Bank will require each investment firm to assess if its level of funding is material and inform the Central Bank in writing as to its rationale in making this determination.

When these Regulations take effect, the Central Bank will write to each investment firm requesting the investment firm to report its material funding levels each day together with the reasons thereof including its materiality rationale. Likewise, the Central Bank will also request an investment firm to notify the Central Bank in writing and the reasons thereof, when the level of money it withdraws from its client asset bank account is material; this is on the basis that its client money resource exceeds its client money requirement. The Central Bank where necessary may engage with an investment firm to discuss its funding and its rationale

Fund Service Provider – Collection Account

G5 (11) When the Regulations take effect, the Central Bank will engage with the funds industry to agree when and how a FSP should report to the Central Bank when it has to fund a shortfall.

Regulations

Principle of Daily Calculation

Who in a firm should carry out the daily calculation and what records should be kept?

Regulation 5.(8) *A firm shall keep a record, which may be held in electronic form of:*

- a) *each calculation required by these regulations;*
- b) *the information upon which the daily calculation is based;*
- c) *who carried out such calculations.*

Regulation 5.(9) *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.*

Regulation 5.(10) *If a firm outsources the performance of the daily calculation to a third party, the firm shall ensure that the third party concerned has appropriate processes, systems and controls for the performance of this activity before the outsourcing takes place.*

What shall a firm do if it has been unable or has failed to perform any or all aspects of the daily calculation?

Regulation 5.(11) *A firm shall inform the Central Bank without delay, and in any event within one business day, when the firm has been unable to or has failed to carry out the daily calculation referred to in Regulations 5.(1) to 5.(4) together with the reasons for such a failure.*

Guidance

Principle of Daily Calculation

Who in a firm should carry out the daily calculation and what records should be kept?

- G5 (12) The Central Bank expects a firm to be in a position to demonstrate upon request, the date upon which a calculation was prepared, evidence of who carried out the calculation and reviewed it. This evidence can be in electronic form. It is also expected that the daily calculation is reviewed by a person other than the preparer.
- G5 (13) A firm may perform its daily calculations electronically provided that the daily calculations can be reproduced without delay, in any event no later than one business day when requested – refer to Regulation 2.(20).
- G5 (14) A firm should ensure that each daily calculation has the relevant supporting backup material for each calculation to enable the verification of figures in the daily calculation.
- G5 (15) Where a firm outsources the performance of the daily calculation, it should have appropriate oversight of the process to ensure that the third party has appropriate processes, systems and controls for the performance of this activity. The manner in which the firm oversees this activity should be documented in detail in the firm's CAMP. The firm should maintain a record to evidence the oversight of the process.

What shall a firm do if it has been unable or has failed to perform any or all aspects of the daily calculation?

- G5 (16) Without prejudice to any subsequent regulatory action which might follow for breach of the Regulations, the Central Bank expects the firm to carry out the daily calculation without delay and in any event within one business day of becoming aware of the non-performance of the required calculation. Where the firm cannot perform the daily calculation within one day of becoming aware of the non-performance, the Central Bank expects the firm to calculate in as much accuracy as possible the level of funding required to fund its client money requirement, funding where necessary. The firm should be prudent in exercising its judgement.

Regulations

Principle of Daily Calculation

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Guidance

Daily Calculation Example for an Investment Firm

Daily Calculation example for Client Funds for 30 April 2013 (carried out by firm on 1 May 2013).

This example is based on the assumption that the firm has identified its client asset creditors, the Central Bank expects a firm to have a process in place to identify when money becomes client money during the life cycle of a transaction.

Step 1

Funds owed to its clients (a firm's internal Creditors ledger only*) = **Client Money Requirement (A)**

Client List @ 30/04/13	€
A Smith	100k
A Jones	70k
J Bloggs	50k
B Murphy	80k
Total Creditors	300k
Unpresented cheques	60k**
Total Client Money Requirement (A)	360k

* if a client on the investment firm's debtor ledger is one of the same on its creditor ledger or there is a legally enforceable set off agreement in place between clients, a credit can be reduced by the amount of the debit for these specific clients.

**client funds paid to clients but the clients have yet to present for payment, note client funds remain client money until cleared by the bank. A firm should assess what other adjustments may be required to calculate a firm's total client money requirement (e.g. unidentified client funds; excess margin and net unhedged unrealised gains due to clients).

Step 2

Funds in client bank account (a firm's internal Bank Ledger) = **Client Money Resource (B)**

Bank List @ 30/04/13	€
Pooled client bank account held in Bank A	130k
Pooled client bank account held in Bank B	100K
Segregated client bank account held in Bank C	50K
Total Client Money Resource (before adjustments)	280K
Unpresented cheques	60k**
Total Client Money Resource (B)	340k

**client funds paid to clients but the clients have yet to present for payment, note client funds remain client money until cleared by the bank. A firm should assess what other adjustments may be required to calculate a firm's total client money resource.

Regulations

Principle of Daily Calculation

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Guidance

Principle of Daily Calculation

Step 3

Final step in the Daily Calculation to determine if the client money resource requires funding to meet the client money requirement

A @ 30/04/13	€360K
B @ 30/04/13	€340K
A-B @30/04/13	(€20K)***

*** in this example, the daily calculation carried out on 1 May 2013 demonstrates that the investment firm does not have sufficient funds to meet its creditors for the close business 30 April 2013, therefore it is required to put €20k of its own firm money into the client bank account to meet the shortfall, this transfer should be carried out no later than close of business 1 May 2013.

Regulations

Principle of Client Disclosure and Consent

What information should a firm provide to clients regarding arrangements for holding client assets prior to first receiving the client assets?

Regulation 6.(1) *Prior to first receiving client assets a firm shall:*

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

Regulation 6.(2) *Prior to first receiving client assets or first receiving collateral from clients, a firm shall notify the client in writing where applicable of the arrangements in relation to:*

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

Regulation 6.(3) *Where client assets are to be held in a pooled client asset account or Collection Account, prior to first receiving client assets a firm shall explain to the client in writing the nature of a pooled account and the risks of client assets being held in a pooled account.*

Guidance

Principle of Client Disclosure and Consent

What information should a firm provide to clients regarding arrangements for holding client assets prior to first receiving the client assets?

G6 (1) The Central Bank expects:

In the case of an investment firm, the information in respect of Regulations 6.(1) to 6.(3) will be disclosed in an investment firm's term of business, an investment firm should ensure this information is clearly documented.

In the case of a FSP, the information in respect of Regulations 6.(1) to 6.(3) should be disclosed in the Investment Fund's Prospectus, a FSP should ensure this information is clearly documented.

Regulations

Principle of Client Disclosure and Consent

What information should a firm provide to clients regarding a third party prior to first receiving the client assets?

Regulation 6.(4) *Prior to first receiving client assets, a firm shall provide to the client in writing, whose assets are to be held in a client asset account/Collection Account the following information:*

- a) *the name and registered address of any third party with whom the client assets are held,*
- b) *if the third party is a related party, the name and address of that other person, and*
- c) *the extent of the firm's liability in the event of default of the third party with whom the client assets are held.*

Regulation 6.(5) *Prior to first receiving client assets, a firm shall inform the client in writing in of:*

- (i) *the measures taken by the firm to ensure the protection of client assets, and*
- (ii) *any relevant investor compensation scheme applicable to the firm by virtue of its activities carried out in the State.*

Regulation 6.(6) *Where an investment firm has considered the factors set out in Regulation 2.(9) and where it is not possible under the law of the jurisdiction governing the manner in which client financial instruments are held for client financial instruments held with a third party to be held in a manner in which it can be separately identifiable from the proprietary financial instruments of the third party or the investment firm, the investment firm shall:*

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

Guidance

Principle of Client Disclosure and Consent

What information should a firm provide to clients regarding a third party prior to first receiving the client assets?

G6 (2) The Central Bank expects:

In the case of an investment firm, the information in respect of Regulations 6.(4) to 6.(6) will be disclosed in an investment firm's term of business. An investment firm should ensure it keeps the client informed of any changes to this information, for example, if the client assets are deposited with a third party which differs to that previously disclosed to the client.

In the case of a FSP, the information in respect of Regulations 6.(4) to 6.(5) should be disclosed in the Investment Fund's Prospectus, a FSP should ensure it keeps the client informed of any changes to this information, for example, if the client assets are deposited with a third party which differs to that previously disclosed to the client.

Regulations

Principle of Client Disclosure and Consent

What information should an investment firm provide to clients if it has any security interest on client assets?

Regulation 6.(7) Prior to receiving any client assets, an investment firm shall inform the client in writing of -

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

What information should a firm provide to clients where assets are held in another jurisdiction?

Regulation 6.(8) In advance of depositing client assets outside of the State, the firm shall provide a statement in writing to the client, before taking any action in relation to the client assets concerned, which contains the following information:

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

Guidance

Principle of Client Disclosure and Consent

What information should an investment firm provide to clients if it has any security interest on client assets?

- G6 (3) An investment firm should ensure that it obtains a client's consent in writing before granting any third party a security interest/lien over the client assets- refer to Regulation 6.(18). The Central Bank is not prescriptive in how a firm informs its clients.

What information should a firm provide to clients where assets are held in another jurisdiction?

- G6 (4) Where any of the provisions of Regulation 6.(8) are applicable, the Central Bank expects a firm to detail what these provisions actually mean, for example, in the case of Regulation 6.(8)(b), how does the legal regime applying differ to that of the State. A FSP should provide this information in the Investment Fund's Prospectus whereas the investment firm may possibly provide it in its terms of business.

Regulations

Principle of Client Disclosure and Consent

What information should an investment firm provide to clients with respect to a change in regulatory status of client financial instruments held by the firm?

Regulation 6.(9) Where an investment firm holding client financial instruments becomes aware that these financial instruments will change from being held subject to these Regulations to being held outside the scope of the Regulations (in this Regulation referred to as a “change in status”), the investment firm shall notify the client in writing, in advance of the change of status occurring, of the reasons for the change in status.

Guidance

Principle of Client Disclosure and Consent

What information should an investment firm provide to clients with respect to a change in regulatory status of client financial instruments held by the firm?

No Guidance deemed necessary

DRAFT

Regulations

Principle of Client Disclosure and Consent

What information should an investment firm provide to clients regarding collateral arrangements?

Regulation 6.(10) *In the case of collateral margined transactions, before an investment firm deposits collateral with, pledges, charges or grants a security arrangement over the collateral to, an eligible credit institution, relevant party or eligible custodian, it shall notify the client in writing:*

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

Regulation 6.(11) *Without prejudice to any other provision in the Regulations requiring the consent of a client, an investment firm shall obtain the consent in writing of the client in the case of collateral margined transactions:*

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

Regulation 6.(12) *An investment firm shall not*

- a) use collateral in the form of a client's financial instruments as security for the investment firm's own obligations without the prior written consent of the client;*
- b) use collateral in the form of a client's funds as security for the investment firm's own obligations without the prior written consent of the client; or*
- c) use a client's collateral as security for the obligations of another client or another person unless legally enforceable agreements are in place.*

Guidance

Principle of Client Disclosure and Consent

What information should an investment firm provide to clients regarding collateral arrangements?

G6 (5) The Central Bank expects that an investment firm will provide this information in its terms of business.

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Regulations

Principle of Client Disclosure and Consent

What information should be provided to clients regarding securities collateral?

Regulation 6.(13) Without prejudice to the generality of Regulation 2.(4), an investment firm shall not enter into arrangements for securities financing transactions in respect of financial instruments held by the investment firm on behalf of a client, or otherwise use such financial instruments for its own account or the account of another client of the investment firm unless the following conditions are met:

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

Guidance

Principle of Client Disclosure and Consent

What information should be provided to clients regarding securities collateral?

- G6 (6) The Central Bank expects that an investment firm will provide this information to its clients in its terms of business.

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Regulations

Principle of Client Disclosure and Consent

What information should be provided to clients regarding securities collateral etc.?

Regulation 6.(14) *An investment firm shall not –*

- a) *enter into arrangements for securities financing transactions in respect of financial instruments which are held on behalf of a client in an pooled client asset account, or*
- b) *use financial instruments held in such a client asset account for their own account or the account of another client*

unless in addition to the conditions set out in Regulation 6.(13) at least one of the following conditions is met -

- (i) *each client whose financial instruments are held together in a pooled client asset account must have given prior express consent in accordance with regulation 6.(13) (a); and/or*
- (ii) *the investment firm must have in place systems and controls which ensure that only financial instruments belonging to clients who have given prior express consent in accordance with Regulation 6.(13) (a) are so used.*

Regulation 6.(15) *In advance of entering into securities financing transactions in relation to financial instruments held by the investment firm on behalf of a client or to use financial instruments for its own account or for the account of another client, an investment firm shall, in good time before the use of those instruments, provide the client in a durable medium a statement containing the following information –*

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

Guidance

Principle of Client Disclosure and Consent

What information should be provided to clients regarding securities collateral ctd.?

No Guidance deemed necessary

DRAFT

Regulations

Principle of Client Disclosure and Consent

What information should an investment firm provide to clients in an annual statement?

Regulation 6.(16) An investment firm shall, annually, send to each client for whom it holds client assets, a written statement on paper or on another durable medium, a copy of which should be able to be recreated by the investment firm and such a statement shall include the following information –

- a) details of all the financial instruments held by the investment firm for the client at the end of the period covered by the statement and the jurisdiction of where they are held,
- b) the extent to which any client assets have been the subject of securities financing transactions,
- c) the extent of any benefit that has accrued to the client by virtue of participation in any securities financing transactions and the basis on which that benefit has accrued,
- d) the amount of cash balances (which may be shown on a separate statement) held by the investment firm as of the statement date and the jurisdiction of where they are held,
- e) whether client assets held by the investment firm are covered by the provisions of these Regulations,
- f) 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
- g) the market value of any collateral held as at the date of the statement.

What information should a Fund Service Provider provide to clients?

Regulation 6.(17) Each time a Fund Service Provider receives client funds, the Fund Service Provider shall as soon as practicable issue to the client a receipt in writing for those funds and include at a minimum:

- a) the date on which the client funds will be transferred out to the investment fund; and
- b) information that these Regulations will apply to the client funds in the Collection Account but will cease to apply when the client funds have been transferred to the investment fund.

Guidance

Principle of Client Disclosure and Consent

What information should an investment firm provide to clients in an annual statement?

- G6 (7) Where the portfolio of a client includes the proceeds of one or more unsettled transactions, the information referred to in Regulation 6.(16) (a) may be based on either the trade date or the settlement date provided that the same basis is applied consistently to all such information in each statement.
- G6 (8) An investment firm needs to be able to demonstrate that the copy maintained can be provided when required and that it is an exact copy of the statement issued to the client.

What information should a Fund Service Provider provide to clients?

- G6 (9) Given the short period of time that the client funds are deposited in a Collection Account, issuing an annual statement to a client would not be practicable or may not provide the client with meaningful information as the money may have moved into the Investment Fund by the time the client receives the statement. Instead, the Central Bank requires the FSP to issue a more detailed receipt to its client over and above what is required in Regulation 2.(18).

Regulations

Principle of Client Disclosure and Consent

When should a firm obtain consent in writing from its clients?

Regulation 6.(18) *Prior to first receiving client assets and without prejudice to any other provision in the Regulations requiring the consent of a client, an investment firm shall obtain the consent in writing of the client in the following circumstances:*

- a) *where granting to any third party a lien or security interest over the client's assets;*
- b) *with respect to the arrangements for giving and receiving of instructions by, or on behalf of, the client and any limitations to that authority, in respect of the provision of safe-keeping services which it provides;*
- c) *where client assets are passed to other persons;*
- d) *when client assets are passed to a third party outside the State;*
- e) *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;*
- f) *when client asset are held in a pooled client asset account;*
- g) *where interest earned on client funds is to be retained by the investment firm; and*
- h) *where client financial instruments are to be deposited with a third party in a third country that does not regulate the holding and safekeeping of client financial instruments.*

Regulation 6.(19) *Prior to first receiving client assets and without prejudice to any other provision in the Regulations requiring the consent of a client, a fund service provider shall obtain the consent in writing of the client in the following circumstances:*

- a) *where client assets are to be passed to persons other than the investment fund;*
- b) *when client asset are held in a pooled Collection Account; and*
- c) *where interest earned on client funds is to be retained by the Fund Service Provider.*

Guidance

Principle of Client Disclosure and Consent

When should a firm obtain consent in writing from its clients?

- G6 (10) For investment firms, the Central Bank does not specify how an investment firm should obtain the necessary prior written consent but expects that this may be included in an investment firm's term of business. The Central Bank expects an investment firm to maintain evidence of obtaining the required client's prior written consent.
- G6 (11) For FSP's, the Central Bank expects a FSP to obtain the necessary prior written consent in the Investment Fund's Application Form. The FSP should maintain evidence of obtaining the required client's prior written consent.

Regulations

Principle of Client Disclosure and Consent

What information is a firm required to include in the Client Assets Key Information Document?

Regulation 6.(20) Prior to first receiving client assets, a firm shall provide the client with a Client Assets Key Information Document which shall include:

- (a) an explanation of these Regulations,*
- (b) an explanation of what constitutes clients assets,*
- (c) the circumstances in which these Regulations apply*
- (d) an explanation of the circumstances in which the firm will hold client assets itself, hold client assets with a third party and holds client assets in another jurisdiction,*
- (e) the arrangements applying to the holding of client assets and the relevant risks associated with the arrangements in which the clients assets are to be held,*
- (f) whether client assets are to be held in a pooled client asset account or pooled Collection Account,*
- (g) an explanation of what happens to client assets in the event that the firm or a third party holding client assets becomes insolvent, is subject to liquidation, receivership or examinership.*

Guidance

Principle of Client Disclosure and Consent

What information is a firm required to include in the Client Assets Key Information Document?

G6 (12) The Client Assets Key Information Document should at least contain:

a) an explanation of these Regulations

A firm should refer to the Client Asset Regulations being imposed under Section 48(2)(p) of the Central Bank (Supervision and Enforcement Act 2013 outlining what the Regulations mean. The firm should also refer the client to the Central Bank of Ireland's Guidance explaining the purpose of such Guidance. A link to the Regulations and Guidance on the Central Bank of Ireland's website at <Link> should also be provided.

A firm should also point out that while the purpose of the client asset regime is to regulate and safeguard the handling of client assets, it can never fully eliminate all risks relating to client assets, e.g. fraud, negligence.

b) An explanation of what constitutes clients assets

A firm should explain, that under the client asset regime, client assets mean client funds and client financial instruments and should define what client funds and client financial instruments are, using 'plain English' to the greatest extent possible. The firm should also state that the client asset regime does not relate to the value of a client investment.

c) The circumstances in which these Regulations apply

A firm should state the circumstances where the client asset regime applies and explain any limitations e.g. the client asset regime will only apply when a client lodges assets with a firm for the purpose of carrying on investment services, or when a client makes a direct payment to the firm in respect of a specific regulated investment.

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Principle of Client Disclosure and Consent

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Guidance

Principle of Client Disclosure and Consent

What information is a firm required to include in the Client Assets Key Information Document ctd.?

A firm should explain when assets cease to be clients assets, and any relevant situations where client assets may not be subject to the client asset regime due to the nature of how the asset is being held e.g. where the client holds the asset in a share certificate in its own name, and the investment firm is not holding it in safe custody arrangements.

An investment firm should state which financial instruments held by the investment firm are subject to the client asset regime and which are not e.g. where the asset held is an unregulated product and not subject to the regime and inform the client that this will also be disclosed in their statements.

A firm should explain any unique circumstances where the client asset regime may/may not apply. The firm should set out that the client asset regime will not apply when a cheque or payable order is made out by the client in the name of another firm, eligible credit institution or relevant party and the firm transmits that cheque or other payable order to that party.

- d) An explanation of the circumstances in which a firm will hold client assets itself, hold client assets with a third party and holds client assets in another jurisdiction

A firm should disclose to the client the circumstances under which it will:

- hold the client assets itself (or through a related company) e.g. when providing a nominee service, or
- hold the client assets through a third party e.g. an eligible credit institution or a custodian,
- hold the client assets in another jurisdiction.

Regulations

Principle of Client Disclosure and Consent

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Guidance

Principle of Client Disclosure and Consent

What information is a firm required to include in the Client Assets Key Information Document ctd.?

A firm should set out the circumstances under which client assets may be held under any of the options stated. Where the client assets are held outside the State, the firm should set out what investor compensation scheme applies. Where client assets are held by a third party on behalf of a firm, the firm should set out what Regulations that entity is subject to, or whether other similar requirements apply and any applicable risks or limitations. The firm should also set out the basis on which the third party was chosen to hold the client assets and whether it is a related or independent party of the firm.

- e) The arrangements applying to the holding of client assets and the relevant risks associated with the arrangements in which the clients' assets are to be held

A firm should set out and explain:

- its arrangements in regard to the holding of client assets,
- the possible risks involved,
- the implications related to the client asset regime – assets subject/not subject to the regime.

- f) Whether client assets are to be held in a pooled client asset account/Collection Account

If assets are held in a pooled client asset account/Collection Account the firm should set out:

- what this means, including the potential for the assets to be split among all beneficial owners in the pool in the event of a liquidation, or a shortfall arising in the pool of client assets,
- the alternatives to pooling (if applicable), and
- the benefits the client may get from pooling.

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Principle of Client Disclosure and Consent

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Guidance

Principle of Client Disclosure and Consent

What information is a firm required to include in the Client Assets Key Information Document ctd.?

- g) An explanation of the treatment of client assets in the event that the firm or a third party holding client assets becomes insolvent, is subject to liquidation, receivership or examinership

A firm should set out how clients' assets are legally segregated from the firm's own funds and investments. The firm may also wish to refer to any additional controls in place to ensure that clients' investments are protected.

A firm should set out how clients' assets are protected or what recourse is available in the event of a third party holding the client assets becomes insolvent or goes into receivership, examinership or liquidation.

A firm should also set out what happens in the event of any acts or omissions on the part of the third party.

A firm should also explain the checks/reviews/reconciliations it undertakes to any third party custodian(s) used.

A firm should draft their own responses under the headings in a) to g) above tailored to suit their particular business. It is essential that the firm drafts this document in 'plain English', in order to ensure that clients can fully understand how their assets will be held and consequently they can make informed decisions.

Regulations

Principle of Client Disclosure and Consent

How should the Client Assets Key Information Document be presented to clients?

Regulation 6.(21) An investment firm shall ensure that the Client Assets Key Information Document is a separate and standalone document to any other document.

Regulation 6.(22) The Client Assets Key Information Document shall be provided on a durable medium and all information shall be equally prominent.

Regulation 6.(23) An investment firm shall provide existing clients, at the time of the commencement of these Regulations, with the Client Assets Key Information Document in durable medium within 3 months.

Regulation 6.(24) A Fund Service Provider shall provide clients that make subsequent subscription for shares in an investment fund with the most recent version of the Client Assets Key Information Document in a paper or other durable medium.

How frequently should the content of the Client Asset Key Information Document be reviewed?

Regulation 6.(25) A firm shall:

- a) *review the content of the Client Assets Key Information Document at least annually,*
and
- b) *ensure that the information contained therein is accurate.*

Guidance

Principle of Client Disclosure and Consent

How should the Client Assets Key Information Document be presented to clients?

G6 (13) An investment firm should document in its CAMP the medium it will use to provide the Client Assets Key Information Document (“CAKID”) to its clients. An investment firm should provide the CAKID in a standalone format. Given the structure of the funds industry, a FSP should attach the CAKID to the Investment Fund’s Application Form. A firm should be able to demonstrate when requested to do so, evidence that it provided the CAKID to its clients.

G6 (14) Regulation 6.(21) refers to new clients signed up by the investment firm after these Regulations take effect whereas Regulation 6.(23) refers to clients of the investment firm that existed at the time these Regulations take effect.

In the case of a FSP, Regulation 6.(21) refers to clients that invest in a new Investment Fund that was launched after these Regulations take effect whereas Regulation 6.(24) refers to clients that make a subsequent subscription for shares in an Investment Fund that existed prior to these Regulations taking effect. The FSP should ensure a client receives the most up to date version of the CAKID. For the purposes of Regulation 6.(21) the Client Assets Key Information Document should be attached to the Investment Fund’s subscription form.

How frequently should the content of the Client Asset Key Information Document be reviewed?

G6 (15) Where the information is found to be inaccurate, and a firm is holding client assets for the client, it should inform the clients, documenting in its CAMP the medium it will use to notify its clients.

Regulations

Principle of Client Disclosure and Consent

How should a firm inform clients of any material change to the Client Assets Key Information Document?

Regulation 6.(26) A firm shall inform clients who have been provided with a Client Assets Key Information Document within one month in writing of any material changes to this Document.

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Guidance

Principle of Client Disclosure and Consent

How should a firm inform clients of any material change to the Client Assets Key Information Document?

- G6 (16) An investment firm should document in its CAMP the medium it will use to notify clients of any material change to the Client Assets Key Information Document. If a FSP is holding client funds in a Collection Account at the time of a material change, it should inform the clients and document in its CAMP the medium it will use to do this.

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Regulations

Principle of Risk Management

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Guidance

Principle of Risk Management

What is meant by Risk Management for client assets?

- G7 (1) The Central Bank expects a firm to have appropriate risk management processes and systems in place to identify risks to the firm's objectives, processes and policies in respect of holding client assets, including in relation to Collection Accounts. A firm should be able to demonstrate how it meets the objectives of the client assets regime, including:
- A. The mitigation of the risk of misuse of client assets, including use by the firm without consent or contrary to the client wishes, whether as a result of maladministration or fraud;
 - B. The provision of a system which in the event of a firm's insolvency will enable the expeditious return of available client assets to the owner at the lowest cost.
- G7 (2) A firm is expected to consider and document in its CAMP how its business model contributes to risks associated with safeguarding client assets and the controls it needs to have in place to mitigate these risks.

How can a firm demonstrate appropriate risk management for client assets?

- G7 (3) A firm is required to carry out the following:
- a) appoint an individual to a Client Assets Oversight Role (CAOR) which should be a Pre-Approved Controlled Function ("PCF")⁵ (Regulation 7.(1) and
 - b) document and maintain a Client Assets Management Plan (CAMP) Regulation 7.(3)
- G7 (4) A firm is not limited to Regulations 7.(1) and 7.(3), it may adopt additional risk management processes to fully safeguard client assets. The firm may also adopt any other measures it deems appropriate to the nature, scale and complexity of its business model. The CAOR and CAMP should be tailored to the business model of the firm.

⁵ Subject to any Regulations made under Part 3 of the Central Bank Reform Act 2010 and any subsequent updates or amendments.

Regulations

Principle of Risk Management

Who should a firm appoint to the role of CAOR?

Regulation 7.(1) A firm shall appoint an individual to a client asset oversight role in order to facilitate the safeguarding of client assets (the “Client Asset Oversight Officer”).

What should the responsibilities of the Client Asset Oversight Officer include?

Regulation 7.(2) The responsibilities of the Client Asset Oversight Officer shall include:

- a) that the client asset management plan referred to in Regulation 7.(3) is produced, maintained, reviewed and updated as information upon which the client asset management plan is based, changes;
- b) that any matters relating to the safeguarding of client assets are reported to the board of the firm in the case of a company or to each of the partners in the case of a partnership;
- c) ensuring that the Bank is notified of any breaches of these regulations;
- d) approving any returns to the Bank in relation to client assets;
- e) reporting to the board in respect of any issues raised by the external auditors in relation to client assets;
- f) ensuring that the persons performing the daily calculations as required under Regulation 5.(1) and Regulation 5.(4) and the reconciliations required under Regulations 4.(1) to 4.(4) have sufficient skill and expertise to perform those functions;
- g) an assessment of risks to client assets arising from the firm’s business model

Guidance

Principle of Risk Management

Who should a firm appoint to the role of CAOR?

- G7 (5) The Board is ultimately responsible for safeguarding client assets; the requirement to have a Client Asset Oversight Officer does not detract from this. In most cases, the Central Bank expects a director to be nominated for the CAOR position. Where a firm proposes to appoint an individual who is not a director, for example, in a large firm, the individual should be a senior manager at the firm who has direct access to the Board in respect of that function.
- G7 (6) The Board should ensure that the individual undertaking the CAOR can demonstrate that he/she is free from any conflicts of interest in this area.
- G7 (7) The Client Asset Oversight Officer is required to comply with the Central Bank's current Fitness and Probity Standards and any subsequent updates or amendments.
- G7 (8) The Board should ensure that sufficient due diligence has been undertaken to support the nomination of the individual to the CAOR, monitor the on-going suitability as required by the Fitness and Probity Regulations and provide an appropriate level of support for the Client Asset Oversight Officer to carry out the role effectively.
- G7 (9) It is expected that the CAOR's role is filled at all times, where the Client Asset Oversight Officer may be absent from the firm for a very short period, i.e. annual leave, the Board and the Client Asset Oversight Officer should ensure that an appropriate CF is available to provide cover to make submissions to the Central Bank.

What should the responsibilities of the Client Asset Oversight Officer include?

- G7 (10) For the avoidance of doubt, Regulation 7.(2)(c) should include any breaches of these Regulations but should also include any matters pertaining to these Regulations determined by the Central Bank from time to time, for example, Regulation 4.(11) and Regulation 5.(7).

Regulations

Principle of Risk Management

What is the purpose of the CAMP?

Regulation 7.(3) A firm shall create, document and maintain a client asset management plan in order to safeguard client assets.

DRAFT

Guidance

Principle of Risk Management

What is the purpose of the CAMP?

G7 (11) The CAMP has the following key purposes:

- a) to demonstrate how a firm's systems and controls meet the principles of the client assets regime;
- b) to document a firm's business model and related risks in respect of the safeguarding of client assets and the controls in place to mitigate these;
- c) to enable the Board to document and monitor material changes to a firm's business model, changes to controls and processes and therefore the changes in the associated risks to safeguarding client assets;
- d) to make information readily available to assist in the prompt distribution of client assets particularly in the event of the firm's insolvency.

G7 (12) The CAMP should be regarded as a master document and not all material referred to in the CAMP needs to be contained within it, however it should record the location of where the information is readily available. Per Regulation 2.(20), if this information is held electronically, a firm shall ensure that it can produce such records within one business day.

Regulations

Principle of Risk Management

When should the CAMP be approved and by whom?

Regulation 7.(4) *A client asset management plan shall be reviewed:*

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

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

Regulation 7.(5) *As applicable, the board of a firm or each of the partners in a firm shall approve the client asset management plan:*

- a) on an annual basis; and*
- b) if there is any change to the firm's business model which affects the manner by which client assets are held.*

Guidance

Principle of Risk Management

When should the CAMP be approved and by whom?

- G7 (13) Material changes to the CAMP should be notified to the Board and discussed, including any significant changes to the firm's business or arrangements or any errors, omissions or control weaknesses highlighted from the regular monitoring, including the external auditors review(refer to Client Asset Examination section), to ensure it remains current. The results of this process should be documented and reported to the Board and an updated CAMP should be prepared and approved by the Board.
- G7 (14) A firm should define and document its materiality threshold levels. The rationale for these thresholds and related triggers should be set for dealing with breaches of its controls, processes and procedures. These should be approved by the Board and take into account both quantitative and qualitative factors, for example, the level of client assets, the complexity of client assets, the type of clients and prior history of breaches relating to client assets.
- G7 (15) A firm should specify and document a quantitative level, taking into account the amount of client assets held but also considering the firm's own net assets. Furthermore, a breach may be quantitatively immaterial but indicative of a qualitative issue with controls that may give rise to a greater risk of not effectively safeguarding client assets. A firm should document its judgment in this area. Staff should be sufficiently qualified, knowledgeable and experienced to identify issues both qualitative and quantitative. The firm may have different materiality levels or risk triggers for different processes and controls.
- G7 (16) A firm should document the materiality level for reporting and escalating matters to the Board in respect of any errors or breaches in its controls to safeguard client assets. In areas of judgement, a firm should document its approach and any triggers set.

Regulations

Principle of Risk Management

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Guidance

Principle of Risk Management

When should the CAMP be approved and by whom ctd.?

G7 (17) Material judgement made by management in relation to the following should be documented with the basis for that judgement and the information used to support it at that time:

- materiality;
- use of firm money to facilitate market settlement;
- concluding where a product or service is regulated or unregulated;
- approving new products;
- using new third parties; and
- managing concentration risk (client and counterparty).

In the event circumstances change, the impact on management's judgement should be considered and updated.

G7 (18) On an on-going basis, a firm should monitor its materiality level and in particular when there is a change to its business model, the environment and the level of client assets held, amending the materiality level when appropriate. Amendments to the materiality level should be approved by the CAOR and the Board and clearly communicated to the firm's staff.

Regulations

Principle of Risk Management

What is the minimum that should be included in the CAMP?

Regulation 7.(6) The client asset management plan shall record where applicable, at a minimum, the following:

- (a) details of a firm's business model, operational structures and governance arrangements, including but not limited to:
 - (i) reporting lines to the board and/or senior management in relation to client asset management;*
 - (ii) rationale for holding client assets;*
 - (iii) a record of how a firm is able to differentiate, monitor and control the client assets subject to these regulations from those assets which are not within the scope of these regulations;*
 - (iv) a record of the particular responsibilities of the client asset oversight role.**
- (b) range and type of client assets held by a firm including but not limited to:
 - (i) details of the client mandates in place including documenting the variety of investment instruments and services associated with each mandate;*
 - (ii) approval process for the addition of new products or removal of existing products offered by the firm, including a process for assessing whether products fall within the scope of these regulations;**
- (c) the range of investment services carried out;*
- (d) risks to the safeguarding of client assets*

Guidance

Principle of Risk Management

What is the minimum that should be included in the CAMP?

- G7 (19) For the purpose of Regulation 7(6)(a)(i), the firm should document the management information provided to the Board to monitor the risks and mitigants associated with the safeguarding of client assets including details of the recipients of this information. This management information should be recorded in the firm's CAMP or as outlined in G7 (12) noted where such information is located.
- G7 (20) For the purpose of Regulation 7(6) (a)(ii), if there is an outsourcing arrangement in place, with a group company or a third party for the safeguarding of client assets, the firm should clearly document the arrangement, identifying the outsourced company, the rationale for the outsourced arrangement and an explanation as to where the arrangement fits into the overall control process. The statement should also include as to what is excluded from the outsourcing arrangement. The firm should document how the effectiveness of the outsourced arrangement is overseen and monitored including identifying whom within the firm is responsible for oversight of each outsourced arrangement.
- G7 (21) For the purpose of Regulation 7(6)(a)(iii), the firm should document its rationale and judgement when there is ambiguity on concluding where a service or activity is not subject to the Regulations.
- G7 (22) For the purpose of Regulation 7(6) (d), a firm should document the material risks to client assets held. Factors to consider, in doing so, include items such as:
- counterparty risk including jurisdiction and associated legal risks,
 - concentration risk,

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Principle of Risk Management

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Guidance

Principle of Risk Management

What is the minimum that should be included in the CAMP ctd.?

- fraud,
- operational risk,
- complexity of assets,
- compliance with client mandates,
- outsourcing,
- group arrangements and
- any other relevant issues.

G7 (23) The Central Bank expects a firm to map the material risks identified to the relevant controls and processes in place, in order to mitigate these risks. When considering these risks, one aspect to consider is the investment cycle of a transaction in relation to client assets and this should be documented. This should, at a minimum, include the mechanism and control processes in place:

- from the initial receipt of client funds and client financial instruments,
- any subsequent investment and re-investment (both regulated and unregulated) where applicable and
- the final disbursement to the client.

The investment cycle could include but is not limited to flowcharts or illustrative diagrams showing critical interventions particularly in cases where a firm carries out any manual processing of client assets. The firm should record how cash is received and disbursed (for example via a pooled client asset account or a segregated individual client asset account). This should include where applicable the use of margin (including excess margin) and collateral accounts associated with client financial instruments and the related control processes associated with these.

Regulations

Principle of Risk Management

What is the minimum that should be included in the CAMP ctd.?

- (e) *processes and controls to mitigate those risks including but not limited to:*
- (i) *a description of how client assets are received and disbursed;*
 - (ii) *a description of how the ownership or registration of client financial instruments is safeguarded;*
 - (iii) *a description of the procedures relating to the removal of funds due to the firm from a client asset account or a Collection Account;*
 - (iv) *a description of how client financial instruments are held and monitored;*
 - (v) *a list of the firm's third parties;*
 - (vi) *a description of the systems and controls in relation to the production and submission of information in relation to client assets to a third party*

Guidance

Principle of Risk Management

What is the minimum that should be included in the CAMP ctd.?

- G7 (24) For the purpose of Regulation 7(6)(e)(i), this description should also include a situation where money is received but the firm is not clear which client has submitted the money or it has incomplete documentation on hand for the client to be set up on a firm's ledger-refer to Regulation 2.(8).
- G7 (25) For the purpose of Regulation 7(6)(e)(ii), where applicable, the processes and controls associated with the safeguarding of ownership or registration of financial instruments should be documented, taking into account the nature of the financial instrument, the relevant counterparty and jurisdiction as well as any outsourcing arrangements.
- G7 (26) In respect of Regulation 7(6)(e)(iii), where a firm receives mixed remittances into a client asset bank account/Collection Account, the control and processes surrounding the removal of funds due to it from the client asset bank account/Collection Account should be documented including the nature, frequency and timing of the removal process.
- G7 (27) For the purpose of Regulation 7(6)(e)(iv), where an investment firm physically holds client financial instruments, the process for so doing should be documented, including the business rationale, the extent of the service provided, the controls in place (for example, the location and access rights to a fire-proof safe) and the monitoring of such controls.
- G7 (28) For the purpose of Regulation 7(6)(e)(v), the Central Bank expects a firm to have and apply a process to ensure that any amendments to the list of third parties are made only following approval by senior management. Counterparty risks and the controls in place to mitigate them should be documented. A firm should document its processes in maintaining and updating relevant legal agreements (including liens) associated with the holding of client assets.

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Principle of Risk Management

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Guidance

Principle of Risk Management

What is the minimum that should be included in the CAMP ctd.?

- G7 (29) For the purpose of Regulation 7(6)(e)(vi), the Central Bank expects a firm to have appropriate segregation of duties to ensure documented controls are reviewed by independent and appropriately qualified and knowledgeable staff.

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Regulations

Principle of Risk Management

What is the minimum that should be included in the CAMP ctd.?

(f) information to facilitate the distribution of client assets, particularly in the event of a firm's insolvency, including but not limited to the location within the firm of:

- i. the list of all client assets;*
- ii. the list of all third parties holding client funds and client financial instruments, including all account numbers, details of the authorised signatories to the client asset accounts/Collection Accounts and whether such client asset accounts/Collection Accounts are pooled;*
- iii. all legal agreements between a firm and a third party holding client assets and any amendments to such agreements, including arrangements with sub-custodians;*
- iv. any agreements with other institutions such as exchanges or clearing houses;*
- v. all legal agreements between a firm and any nominee company which holds client assets on behalf of a firm;*
- vi. all account numbers of client asset accounts held with a nominee company ;*
- vii. all facilities letters from third parties holding client assets confirming their segregation;*
- viii. details of the relevant accounts on the general ledger system recording client asset transactions, including instructions on how to access reports on the system;*
- ix. details of all staff with access to the ledger system;*
- x. details of how to access or generate any relevant reports from the general ledger system;*
- xi. description of any key reports used to monitor client assets with instructions on how to generate such reports;*
- xii. record of where the most recent daily calculation is stored and details of how to access previous daily calculations;*
- xiii. records of where the most recent bank reconciliation is stored and details of how to access previous reconciliations;*
- xiv. all agreements a firm has with service providers in relation to client assets.*

Guidance

Principle of Risk Management

What is the minimum that should be included in the CAMP ctd.?

- G7 (30) The CAMP should be sufficiently detailed to enable the insolvency practitioner to understand the business model and controls for safeguarding client assets. An insolvency practitioner needs to know where the assets are and the type and value of client assets. A firm should ensure there is sufficient information available to enable the distribution of client assets to take place as quickly as possible with minimum cost to clients. This information could also be required in the event that a firm is required to facilitate an orderly transfer of assets to another firm.

Regulations

Principle of Client Asset Examination

What is the Client Asset Examination (“CAE”)?

Regulation 8.(1) A firm shall arrange for an external auditor to prepare a report in relation to that firm’s safeguarding of client assets on an annual basis.

Regulation 8.(2) The firm shall ensure that the external auditor has the necessary resources and skills relating to the business of the firm.

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Guidance

Principle of Client Asset Examination

What is the Client Asset Examination (“CAE”)?

G8 (1) The CAE is a requirement which is intended to provide assurance to the Board of a firm and the Central Bank that the firm has complied with the Regulations, including that the firm’s CAMP captures the risks faced by the firm in holding client assets and that it has acted in a manner consistent with its CAMP.

Separately, under Part 2 of the Central Bank (Supervision and Enforcement) Act 2013, the Central Bank can require a firm to provide a report to the Central Bank on any aspect of a firm’s compliance with the Regulations. Please note that this type of report is separate from the report required under Regulation 8.(1).

G8 (2) A firm should ensure that the audit firm it appoints has the necessary resources and skills relating to the business of the firm to prepare an objective report in the timescales set by the Central Bank. A firm should provide the auditor with all information and explanations that the auditor requires for the purposes of completing the CAE.

Regulations

Principle of Client Asset Examination

What is the scope of the CAE?

Regulation 8.(3) The report shall include an assessment of the following matters:

- a) the adequacy of the processes and systems in place to meet the requirements of these Regulations throughout the period of concern;*
- b) the firm's compliance with these Regulations as at the period end date;*
- c) any matter that has come to the attention of the auditor to suggest that the firm has acted in a manner which is not consistent with the client asset management plan which has been in operation throughout the period concerned;*
- d) whether changes made to the client asset management plan since the date of the last report are in sufficient detail to meet the objectives of the Regulations capturing the risks faced by the firm in holding client assets given the nature and complexity of the business of the firm up to the date of the current report.*

Guidance

Principle of Client Asset Examination

What is the scope of the CAE?

- G8 (3) The Central Bank expects the firm to obtain from the auditor a reasonable assurance opinion on the appropriateness and effectiveness of the processes and systems the firm has put in place to safeguard client assets and the firm's compliance with the Regulations. The Central Bank also expects a limited assurance opinion as to whether the firm is acting in a manner which is consistent with its CAMP and whether changes to the CAMP sufficiently capture all aspects of the business in respect of the safeguarding of client assets given the nature and complexity of the entity as a whole. (please see Appendix I - 'What the Central Bank would expect to see in an auditor's report').
- G8 (4) In relation to the assessment of the CAMP, a firm should ensure that the auditor reviews the process undertaken by the firm to assess the on-going appropriateness of the CAMP including evidence of the steps taken by the firm to test and maintain the CAMP.
- G8 (5) In addition to all other procedures which the auditor deems necessary for the completion of the CAE, subject to the considerations as set out within the auditor's technical standard on auditing the Regulations, the Central Bank expects that a firm would instruct the auditor at a minimum to seek:
- a) external confirmations of any balances held in respect of client assets by other financial institutions both at year-end and also on one other randomly scheduled date during the year; and
 - b) positive confirmation requests⁶, from a representative sample of clients as determined by the auditor, of client asset balances at the randomly selected date during the year, not to be the period end date.

⁶ International Auditing Standard (UK and Ireland) 505 External Confirmations - Positive confirmation request – A request that the confirming party respond directly to the auditor indicating whether the confirming party agrees or disagrees with the information in the request, or providing the requested information.

Regulations

Principle of Client Asset Examination

What is the timescale for submission to the Central Bank and what period should the CAE cover?

Regulation 8.(4) The firm shall ensure that the external auditor shall provide this report to the firm and to the Bank not later than 4 months after year end.

What should a firm do with any findings arising from the CAE?

Regulation 8.(5) Where applicable, the board of the firm or the partners in a partnership shall assess the findings of such a report.

Regulation 8.(6) The firm shall ensure that any remedial actions necessary arising from the report are set out in writing and that such remedial actions are carried out.

Guidance

Principle of Client Asset Examination

What is the timescale for submission to the Central Bank and what period should the CAE cover?

G8 (6) The period covered by the CAE must not exceed more than 53 weeks after the period the previous report was delivered to the Central Bank. In the case of a recently authorised firm, this period should not exceed more than 53 weeks from the date of the first receipt of the firm's authorisation.

What should a firm do with any findings arising from the CAE?

G8 (7) The report from the auditor should make provision for the firm to comment and to set out actions it has taken, or will take, where the report has identified recommendations for remediation. The Board should address those findings in a timely manner.

If by the date that the audit report is due for submission the auditor has not received the information identified above, the auditor must submit the report, together with an explanation for its absence.

G8 (8) Requiring firms to include the detail of remedial action will

- assist the Central Bank in monitoring the remedial actions taken by the firm;
- increase senior management's awareness of the matters identified by the auditors;
- improve the quality of the auditor's report by ensuring the auditor is made aware of all relevant facts; and
- reinforce the responsibility of the firm in respect of compliance with the Regulations.

Regulations

Principle of Client Asset Examination

What should a firm do that is authorised to hold client assets but may not be holding client assets at period end?

Regulation 8.(7) If a firm, which is permitted to hold client assets, claims not to have held client assets for the period in question, the firm shall arrange that the external auditor shall only determine that the firm does not and did not during that period, hold any client assets and the firm shall ensure that the external auditor shall provide this report to the firm and to the Bank not later than 4 months after year end.

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Guidance

Principle of Client Asset Examination

What should a firm do that is authorised to hold client assets but may not be holding client assets at period end?

- G8 (9) If a firm which is authorised to hold client assets claims not to hold client assets, the auditor should perform such procedures as they deem appropriate to enable the auditor to state in the audit report whether anything has come to their attention that causes the auditor to believe that the firm held client assets during the period covered by the report.

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Regulations

Transitional Regulation

What are the transitional requirements placed on a firm in respect of engaging an independent external expert regarding the initial adoption of the CAMP?

Regulation 9.(1) On the taking effect of these Regulations, the firm shall, within 3 months, obtain an assessment of the client asset management plan from an independent external expert (not being the firm's external auditor) and such an assessment shall include:

- a) whether the client asset management plan has been drafted in sufficient detail to capture the risks faced by the firm in holding client assets given the nature and complexity of the business of the firm and the environment within which it operates;*
- b) whether the controls identified within the client asset management plan have been implemented in a manner consistent with that documented within the client asset management plan;*
- c) whether the client asset management plan adequately covers all of the requirements as set out in Regulation 7.(6);*
- d) the identification of areas where in the opinion of the external expert the client asset management plan could be improved;*
- e) an assessment of the appropriateness of the process to be undertaken by the firm to assess the on-going adequacy of its client asset management plan including evidence of the steps taken by the firm to test and maintain the client asset management plan; and*

Regulation 9.(2) The firm shall ensure that the independent external expert has the necessary resources and skills relating to the business of the firm.

Guidance

Transitional Regulation

What are the transitional requirements placed on a firm in respect of engaging an independent external expert regarding the initial adoption of the CAMP?

- G9 (1) A firm should have its CAMP in place and approved by the Board within a reasonable timeframe of the Regulations taking effective. Following the formal adoption of the CAMP by the Board, a firm should engage an independent external expert without delay, who should not be the firm's auditor, to perform a qualitative critical assessment of the CAMP assessing the applicability of the CAMP in relation to the size and complexity of the firm, including an assessment of the appropriateness of the materiality levels.
- G9 (2) A firm should ensure that it engages an independent external expert that has the skill to understand the business model of the firm. A firm should provide the independent expert with all information and explanations that the independent expert requires for the purposes of assessing the CAMP.

Regulations

Transitional Regulation

What are the transitional requirements placed on a firm in respect of engaging an independent external expert regarding the initial adoption of the CAMP?

Regulation 9.(3) Where applicable, the board of the firm or the partners in a partnership shall assess the findings of such a report.

Regulation 9.(4) The firm shall ensure that any remedial actions necessary arising from the report are set out in writing and that such remedial actions are carried out.

Regulation 9.(5) The firm shall provide the Bank with the report required under Regulation 9.(1) within 3 months on the taking effect of these Regulations.

Guidance

Transitional Regulation

What are the transitional requirements placed on a firm in respect of engaging an independent external expert regarding the initial adoption of the CAMP?

- G9 (3) A firm should ensure that the external expert provides the Central Bank with the report setting out the result of their review and any remedial actions that in the opinion of the expert should be undertaken to improve the CAMP. Senior management of a firm should notify the Central Bank of any remedial actions undertaken or plans in place to address these findings by way of written explanations to be appended to the appropriate section of the external expert's report.
- G9 (4) The external expert is not responsible for the firm's comments in respect of remedial actions taken or plans to undertake the improvements identified and therefore will not be required to provide an opinion over the suitability of these actions.
- G9 (5) This regulation shall be a once-off regulation for a firm on adopting its CAMP.

Appendix I

What the Central Bank would expect to be included in an auditor's report

Reporting: Format of audit reporting to the Central Bank

The report shall be in a format which is acceptable to the Central Bank stating the matters set out in Regulation 8.(3).

Reporting: Client Asset Regulations not met as identified by the auditor

The auditor shall report all compliance breaches in respect of the matters identified in Regulation 8.(3) that come to their attention during the course of completing the examination.

In addition to any compliance breaches identified reporting shall include deficiencies in controls and processes identified as part of the auditors procedures, for example, omissions and gaps identified within the CAMP and ineffective IT General Controls as relates to the implementation and maintenance of effective systems and controls for the purposes of safeguarding client assets.

If the client asset report under Regulation 8.(3) states that one or more of the Regulations have not been met the auditor must state the specific requirements which have not been met detailing the respects in which they have not been met.

In relation to any breaches identified during the course of the examination by the auditor, the auditor shall seek an explanation as to the circumstances giving rise to the breach and any remedial actions undertaken or plans to undertake to correct those breaches. Such explanations, remedial actions or plans should be captured within the report to the Central Bank.

Where appropriate, the auditor may report a single entry in the schedule with an explanation of the frequency of a breach where there are similar repeated breaches and the context of those breaches are similar. The auditor is not responsible for the firm's comments in respect of remedial actions taken or plans to undertake the correction of breaches identified and therefore will not be required to provide an opinion over the suitability of these actions.

The auditor must deliver a draft of the report to the firm such that the firm has an adequate period of time, as agreed between the auditor and firm, to consider the auditor's findings and to provide the auditor with comments as required by Regulations 8.(5) and 8.(6).

Reporting: Breaches reported to the Central Bank by the firm during the period to which the examination relates

The auditor shall ensure that all breaches notified by the firm to the Central Bank are captured within the report.

The firm is responsible for providing the information required in Regulations 8.(5) and 8.(6) above to the auditor in a timely manner prior to the auditor having to deliver the report to the Central Bank.

Reporting: Inability to form an opinion

If the auditor is unable to form an opinion as to whether one or more of the requirements under Regulation 8.(3) have been met, the auditor must identify those specific requirements within the report and provide detailed reasons as to why they are unable to form an opinion.

Communication between the Auditor and the Central Bank

The Central Bank may meet with the auditors annually to discuss the content of the report as required amongst other relevant matters.