S.I. No. of 201[4]

CENTRAL BANK (SUPERVISION AND ENFORCEMENT) ACT 201[3] (SECTION [48(1)] REGULATIONS 201[4][1]

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[1] These regulations are in draft form for the purposes of consultation. The Central Bank of Ireland reserves the right to make amendments as it deems appropriate.

S.I. No. of 201[4]

CENTRAL BANK (SUPERVISION AND ENFORCEMENT) ACT 201[3] (SECTIONS 48(1)) REGULATIONS 201[4]

In exercise of the powers conferred on the Central Bank of Ireland ("the Bank") by section 48 of the Central Bank (Supervision and Enforcement) Act 2013 (the "Act"), the Bank, having consulted with [ ] in accordance with section 48 of the Act and, in accordance with regulation 79 of the European Communities (Markets in Financial Instruments) Regulations 2007 (SI No. 60 of 2007 the "MiFID Regulations"), having received the prior approval of [ ], hereby makes the following regulations:

1. These Regulations may be cited as the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) Regulations 201[4].
2. In these Regulations:

   "authorised signatories" means an employee of a firm who has the authority to commit the firm to a binding agreement;

   "Bank" means the Central Bank of Ireland;

   "bearer financial instrument" means a financial instrument, the holder of which is not registered on the books of the issuer and the value of which is payable to the person possessing the financial instrument;

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

   "client asset management plan" means the plan created pursuant to regulation 7(3) for the purpose of safeguarding client assets;

   "client assets" means client funds and client financial instruments;

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

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

   (b) includes in its title an appropriate description to distinguish assets in the account from the investment firm's own assets; and

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

   "Client Assets Key Information Document" has the meaning in Regulation 6(20);

   "client financial instrument" means financial instruments as defined in regulation 3(1) of European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007) and investment instruments as defined in section 2(1) of the Investment Intermediaries

Act 1995, which are held by a firm on behalf of a client and includes those client financial instruments which are held with a nominee;

"client funds" means any money owed to or held on behalf of a client and includes client funds held in a nominee;

"client money requirement" means the total amount of money that a firm owes to its clients;

"client money resource" means the total amount of client funds held in an investment firm's client asset accounts;

"client money resource for fund service providers" means the sum of all collection accounts in credit;

"collateral" means with respect to a client:

(i) client funds; or

(ii) a client financial instrument which has been paid for in full by the client,

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

"collateral margined transaction" means

(a) a transaction effected by an investment firm with or for a client relating to a financial instrument under the terms of which transaction the client will, or may, be liable to make a deposit of collateral, either at the outset or subsequently, to secure performance of obligations which the client may have to perform when the transaction falls to be completed or upon the earlier closing out of the client's position; and

(b) includes, but is not limited to,

(i) futures,

(ii) options,

(iii) rollovers,

(iv) options purchased by a client the terms of which option provide that the maximum liability of the client in respect of that [option] will be limited to the amount payable as premium.

"collection account" means an account opened and maintained by a fund service provider to hold funds to be delivered from a client to an investment fund.

"durable medium" means any medium that enables a client to store information addressed personally to the client in a way that renders it accessible for future reference for a period of time adequate for the purposes of the information and allows the unchanged reproduction of the information;

"eligible custodian" means a person whose authorisation from the Bank or equivalent third country regulator, includes the safekeeping and administration of financial instruments on

behalf of clients, including custodianship and related services such as cash management or collateral management;

"Funds Facilities Letter" has the meaning provided in Regulation [3(6)];

"firm" means a person authorised by the Central Bank of Ireland pursuant to:

(a) [European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007); or

(b) the Investment Intermediaries Act 1995]; or
a fund service provider; or

(c) the relevant legislation as a funds service provider;

"fund service provider" means a person authorised pursuant to:

(a) section 10 of the Investment Intermediaries Act 1995 to solely carry out

i. the administration of collective investment schemes or fund accounting services or acting as a transfer agent or registration agent for such schemes; or

ii. custodial operations involving the safekeeping and administration of investment instruments;

(b) the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (S.I 352 of 2011) as a management company;

(c) Unit Trusts Act 1990 as a management company;

(d) Part XIII of the Companies Act 1990 as a management company;

(e) Investment Limited Partnership Act 1990 as a General Partner;

(f) Investment Funds Companies and Miscellaneous Provisions Act 2005 as a management company;

(g) the European Union (Alternative Investment Fund Managers) Regulations 2013 (No. 257 of 2013) as an alternative investment fund manager.

"investment firm**"** shall mean a person authorised pursuant to the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007) or the Investment Intermediaries Act 1995 but does not include a person authorised pursuant to section 10 of the Investment Intermediaries Act 1995 to solely carry out

i. the administration of collective investment schemes or fund accounting services or acting as a transfer agent or registration agent for such schemes; or

ii. custodial operations involving the safekeeping and administration of investment instruments;

"investment fund" means a collective investment undertaking, including investment compartments thereof, which –

(a) raises capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors, and

(b) requires authorisation under one of the following:

UCITS Regulations 2011,

the Unit Trust Act 1990,

Part XIII of the Companies Act 1990,

the Investment Limited Partnership Act 1990,

the Investment Funds and Companies and Miscellaneous Provisions Act 2005;

"investment services" means the services of 'investment advice' or 'investment services' as defined in regulation 3(1) of European Communities (Markets in Financial Instruments) Regulations 2007 (SI 60 of 2007) or the services of 'investment advice' and 'investment business services' as defined in section 2 of the Investment Intermediaries Act 1995;

"margin" means funds or other form of security which a client deposits as security to open and maintain an investment position;

"own asset" means any asset or money other than a client asset;

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

"pooled account" means a client asset account in which the client assets of more than one client are held;

"physical financial instrument" means a share certificate;

"proprietary financial instrument" means any financial instrument other than a client financial instrument;

"qualifying market fund" has the meaning given in regulation 160(1) of the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007);

"registered financial instrument" means a financial instrument registered in the name of a person;

"'related party', in relation to a firm, means-

(a) if the firm is a company, another company that is related within the meaning of section 140(5) of the Companies Act 1990,

(b) a partnership of which the firm is a member,

(c) if the businesses of the firm and another person have been so carried on that the separate business of each of them, or a substantial part thereof, is not readily identifiable, that other person,

(d) if the decision as to how and by whom the businesses of the firm and another person shall be managed are, or can be, made either by the same person or by the same group of persons acting in concert, that other person,

(e) a person who performs a specific and limited purpose by or in connection with the business of the firm, or

(f) if provision is required to be made for the firm and another person in any consolidated accounts compiled in accordance with Seventh Council Directive 83/349/EEC of 13 June 1983 [Note: OJ L 193, 18.7.1983, p.1], that other person."

"relevant party" means an exchange, clearing house, intermediate broker, OTC counterparty or investment firm

"safe custody account" means an account used for the safeguarding of client assets held by an investment firm on behalf of clients;

"securities financing transaction" has the meaning given to it in Article 2(10) of Commission Regulation (EC) No 1287/2006 of 10 August 2006;

Segregation of Client Assets

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

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) as applicable.

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.

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.

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.

Holding Client Funds

2.(6) Client funds may not be held by a firm otherwise than in a client asset acccount or a collection account, as applicable, 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.

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.

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.

2.(9) Client funds shall only be deposited with one of the entities listed in 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, care and diligence in the selection and appointment of that entity.

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.

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

Holding Client Financial Instruments

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 the client's rights.

(b) has exercised due skill and diligence in the selection and appointment of that third party.

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].

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.

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 instrument 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.

Client Asset Records

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.

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.

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.

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.

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.

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.

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3. **Designation and Registration**

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.

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.

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.

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 funds for which the collection account is used.

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 the carrying out of the verification assessment.

Funds Facilities Letter and Financial Instruments

3.(6) In advance of depositing client funds with a third party , a firm shall 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 account/collection account in respect of any sum owed to it by any person, including any other account of the firm; and

(e) that the third party will deliver to the firm a statement as often as is required to enable the firm 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;

(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.

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;

(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.

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 Facilitity 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.

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 Facilities Letter or Financial Instruments Facilities Letter.

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.

Treatment of client financial instruments

3.(11) An investment firm shall hold documents of title to client 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.

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.

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

Registration of client financial instrument

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.

Collateral margined transactions

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 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;

4. **Reconciliation**

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.

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.

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.

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.

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 a reconciliation.

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.

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.

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).

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.

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

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

5. **Daily Calculation**

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.

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.

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.

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.

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.

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.

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

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.

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.

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 any outsourcing takes place.

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.

6. Client disclosure and consent

Information to be provided to clients regarding arrangements for holding client assets prior to first receiving the client assets

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.

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.

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.

Information to be provided to clients in respect of any third party that holds client assets for the firm prior to receiving client assets

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 or 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.

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

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.

Information to be provided if an investment firm has any security interest on client assets

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.

Information to be provided to clients where assets are held in another jurisdiction

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 or collection account is held may be different to that of the State and that the rights of the 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 account or collection account is held may be different to that of the State.

Information to be provided to clients with respect to a change in regulatory status of client financial instruments

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.

Information to be provided to clients regarding collateral arrangements

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.

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

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.

Information to be provided to clients regarding securities collateral

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.

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.

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, 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.

Information to be provided to a client in an annual statement

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.

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 to the investment fund; and

(b) information that these Regulations shall 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.

Client Consent

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) where 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 assets 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.

6.(19) Prior to fist 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 assets are held in a pooled collection account; and

(c) where interest earned on client funds is to be retained by the fund service provider.

Client Assets Key Information Document

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.

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

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

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 a durable medium within 3 months.

6.(24) A fund service provider shall provide clients that make subsequent subscriptions to an investment fund with the most recent version of the Client Asset Key Information Document in a durable medium.

6.(25) A firm shall:

(a) review the content of the Client Asset Key Information Document at least annually, and

(b) ensure that the information contained therein is accurate.

6.(26) A firm shall inform clients who have been provided with a Client Assets Key Information Document within 1 month in writing of any material changes to this Document.

7. **Risk Management**

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").

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 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.

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

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.

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 effects the manner by which client assets are held.

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;

(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 with whom client assets are held and counterparties;

(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.

(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) where the most recent daily calculation is stored and details of how to access previous daily calculations;

(xiii) 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.

8. **Client Asset Examination**

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.

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

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 concerned;

(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.

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.

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

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.

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.

9. Transitional Requirements for Client Asset Management Plan

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.

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

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

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 carried out.

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.

10. These Regulations come into operation on [ ].

Signed for and on behalf of the
CENTRAL BANK OF IRELAND
on this the [ ] day of [ ] [ ]

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[ ]
Deputy Governor (Financial Regulation)