Banc Ceannais na hÉireann
Central Bank of Ireland
Eurosystem

2017

Consultation on Second Edition of the Central Bank Investment Firms Regulations including changes related to MiFID II

Consultation Paper CP 111

Banc Ceannais na hÉireann
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Consultation on Second Edition of the Central Bank Investment Firms Regulations

Contents

Introduction

Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments ('*MiFID*') introduced a comprehensive regulatory regime covering investment services and financial markets together with common investor protection standards throughout the EU. It set out the conditions for authorisation and on-going regulatory requirements that investment firms, regulated markets and multilateral trading facilities must meet. It was designed, amongst other things, to promote competition between trading venues and to ensure that investment firms authorised in one EU jurisdiction could passport services into other EU jurisdictions without the requirement for further authorisation in those jurisdictions. At EU level, MiFID was comprised primarily of the legal instruments set out in **Schedule 1** to this Consultation Paper.

MiFID was transposed into Irish law under the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007).

In 2010[1], the European Commission carried out a review of MiFID. Revisions to the regime were proposed in 2011 following market developments and experience gained from the financial crisis.[2] The principal objectives of updating the regulatory framework were to:

- strengthen investor protection;
- reduce the risks of a disorderly market;
- reduce systemic risks; and
- increase the efficiency of financial markets and reduce unnecessary costs for participants.

A revised MiFID regime was agreed at EU level in 2014. Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments ('*MiFID II'*) will repeal and replace MiFID. Both MiFID II and Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (*'MiFIR'*) were published in the Official Journal on 12 June 2014. Numerous Level 2 and 3 measures in relation to MiFID II have also been published at EU level since.

MiFID II represents an extensive overhaul of MiFID and in many areas, it is more detailed and complex than MiFID. The original scheduled implementation date for

[1] http://ec.europa.eu/finance/consultations/2010/mifid/docs/consultation_paper_en.pdf
[2] http://ec.europa.eu/internal_market/securities/docs/isd/mifid/COM_2011_656_en.pdf

MiFID II of 3 January 2017 has already been delayed to 3 January 2018. At EU level, MiFID II is comprised primarily of the legal instruments set out in **Schedule 2** to this Consultation Paper.

It should be noted that many of the legal instruments that come into effect under MiFID II will take the form of EU regulations which will have direct effect in Ireland without the need for changes to domestic law and regulation. However, Member States must amend their laws and regulations to give effect to any provisions of MiFID II that are in EU Directives and that are not directly applicable. There may also be a need for local measures to operationalise elements of the directly effective EU Regulations.

The Department of Finance ('*DoF*') is charged with transposing MiFID II into Irish law and it does so with technical assistance from the Central Bank of Ireland ('*Central Bank'*). In this regard, the DoF have published a consultation paper dated June 2016[3] in relation to the Member State discretions under MiFID II. In their consultation paper, the DoF have indicated at a high level their intended approach in relation to the transposition process. Following the public consultation, further information on transposition was also provided by DoF in a Feedback Statement published on 14 July 2017.[4]

The vast majority of the domestic legal requirements necessary to give effect to MiFID II in Ireland will be included in transposing regulations to be devised by the DoF. However, the transposition process will also necessitate changes to Central Bank rules. In this regard, the Central Bank has previously publicly consulted, for example, in relation to changes to our Minimum Competency Code in CP106[5]. In addition, following the publication of a Discussion Paper on the Payment of Commission to Intermediaries last year, it is planned that a Consultation Paper will be published in Q3 2017, outlining proposed measures to strengthen protections for consumers in the area of commission payments to intermediaries.

This Consultation Paper deals *inter alia* with proposed changes to the Client Asset Regulations[6] ('*CAR*') arising as a result of MiFID II together with the integration of those regulations into the Central Bank Investment Firms Regulations[7] in line with

[3] http://www.finance.gov.ie/sites/default/files/MiFID%202%20Public%20Consultation%20Paper%20final.pdf.

[4] http://www.finance.gov.ie/news-centre/press-releases/mifid-ii-feedback-statement

[5] https://www.centralbank.ie/news-media/press-releases/(21-11-2016)-central-bank-proposes-enhancements-to-minimum-competency-code

[6] S.I. No. 104 of 2015 Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) Client Asset Regulations for Investment Firms

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

the single investment firm rulebook approach outlined by the Central Bank in CP97[8].

In line with the objectives stated in CP97, it is proposed to also take this opportunity to integrate into the Central Bank Investment Firms Regulations both the Investor Money Regulations[9] ('*IMR*') and the Central Bank rules in relation to the capital requirements applied to market operators as set out in the Central Bank's feedback statement[10] on CP101.

Finally, some other consequential amendments to the existing Central Bank Investment Firms Regulations are proposed arising out of MiFID II and certain matters that have arisen since the first edition of the Central Bank Investment Firms Regulations became operational. The changes include certain technical amendments in relation to the regulatory requirements applied to Fund Administrators.

Format of this Consultation Paper

The proposed additional Parts of the Central Bank Investment Firms Regulations are attached to this Consultation Paper. In the main, these reflect existing regulatory requirements as set out above. For convenience, we have set out in the table below the additional Parts to be added to the Central Bank Investment Firms Regulations and have highlighted some of the main content/amendments arising:

New Part	Main Content/Amendments
Part 6	This Part integrates the existing CAR into the Central Bank Investment Firms Regulations with various modifications. The main modifications are set out below: - Duplication of MiFID II client asset rules has been removed or otherwise addressed; - Provisions that expand upon or are linked to a MiFID II client asset requirement have been re-drafted to read as complimentary to MiFID II; - All record-keeping requirements for investment firms permitted to hold client assets under this Part

[8] https://centralbank.ie/docs/default-source/publications/cp97/cp97-consultation-on-central-bank-investment-firm-regulations.pdf?sfvrsn=4

[9] S.I. No. 105 of 2015 Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) Investor Money Regulations for Fund Service Providers

[10] https://www.centralbank.ie/docs/default-source/publications/Consultation-Papers/cp101/cp101-feedback-statement.pdf?sfvrsn=4

	have been moved to one section; - All obligations to report to the Central Bank under this Part have been moved to one section; - All obligations to obtain client consents under this Part have been moved to one section; - Certain matters currently contained in the existing CAR Guidance have been put on a legislative footing in the Regulations; - Certain amendments have been made to the definitions set out in CAR. The changes include certain defined terms being renamed/amended and other unnecessary definitions being removed; and - The pan EU standards in relation to the safeguarding of client assets set out in MiFID II are applied to any firms authorised under the domestic IIA regime that are permitted to hold client assets. In light of the amendments above, it is expected that the CAR Guidance that accompanies the current CAR will require substantial revision in due course.
Part 7	This Part integrates the existing IMR into the Central Bank Investment Firms Regulations with various modifications. The main modifications are set out below: - All record-keeping requirements for investment firms permitted to hold investor money under this Part have been moved to one section; - All obligations to report to the Central Bank under this Part have been moved to one section; - Certain amendments have been made to the definitions set out in IMR. The changes include certain defined terms being renamed/amended and other unnecessary definitions being removed; and - Certain matters currently contained in the existing IMR Guidance have been put on a legislative footing in the Regulations. In light of the amendments above, it is expected that the IMR Guidance that accompanies the current IMR will require substantial revision in due course.
Part 8	This Part integrates the Central Bank's policy position on the capital requirements applied to market operators into the Central Bank Investment Firms Regulations. The policy position in this regard was set out in the feedback statement on CP101

	issued in July 2016.

In addition to the new Parts set out above, certain limited amendments to the existing First Edition of the Central Bank Investment Firms Regulations are also proposed. The main changes are highlighted in the attachment to this Consultation Paper.

When the consultation process is complete we intend to publish a final set of consolidated Central Bank Investment Firms Regulations. The final set of Regulations may contain further structural or technical changes in light of the responses received to the consultation or otherwise. For example, it is expected that the final consolidation exercise will involve technical and legal drafting changes to ensure accuracy and consistency between different parts of the Regulations and to the extent that it is practicable to do so, definitions will be included in a single section of the Regulations

In addition to revising existing Central Bank Guidance to align it with the new Regulations, we will also consider whether any additional Guidance on the requirements might also be useful.

Questions for consideration

While we are consulting on all of the new Parts of the Central Bank Investment Firms Regulations and the limited amendments to the existing Regulations, we would welcome stakeholders' views on the following questions in particular:

1. In the existing CAR, a series of defined terms are used to describe or refer to third parties with whom client assets (client funds or client financial instruments) may be held or deposited. These terms include for example 'eligible credit institution', 'eligible custodian', 'relevant party' and 'related party'. There are also separate definitions (or terms otherwise used) in relation to nominees including 'nominee', 'nominee company' and 'eligible nominee'. While this terminology appears to have been carried over from earlier versions of the client asset requirements, the terminology seems unnecessarily confusing and perhaps warrants revision in light of MiFID II. For example, MiFID II has certain specifications concerning the third parties with whom client assets may be deposited. In this regard, MiFID II specifies that client funds may only be deposited with a third party meeting the criteria set down in Art. 4 (1) of Commission Delegated Directive (EU) 2017/593 and client financial instruments may only be deposited with a third party where the criteria set down in Article 3 (1) – (4) of Commission Delegated Directive (EU) 2017/593 are met. Do you consider that there is

scope to better align definitions contained in the existing CAR to MiFID II and/or to otherwise streamline the number of defined terms (or terms otherwise referenced) in the existing CAR as outlined above? Please provide any clear suggestions you may have for improvement in this area.

2. Sections of the existing CAR have been deleted or modified in the new proposed Part 6 of the Central Bank Investment Firms Regulations in order to eliminate duplication of MiFID II requirements or to express CAR requirements in such a way that they are read as being complimentary to MiFID II requirements. For example, the requirement for an annual external auditors assurance report in CAR is linked to the overarching equivalent requirement[11] in MiFID II. The intention here is to ensure that any additional domestic rules under CAR are not read in isolation from the overarching EU wide MiFID II requirements. Do you agree with this approach and are there any rules in the existing CAR that you consider are not adequately addressed in the revised Part 6 proposed when read in conjunction with MiFID II requirements on the safeguarding of client assets?

3. As part of the integration of the IMR into the Central Bank Investment Firms Regulations proposed in Part 7, certain changes to the IMR have been effected as described above. Do you have any comments in relation to the drafting revisions to the IMR?

4. Certain established defined terms in the existing CAR and the IMR have been amended for clarity, consistency and to ensure that the defined term better reflects its meaning. Do you have any comments in relation to the amendments proposed? Is it envisaged that such amendments would have any significant operational impact?

Consultation Responses

The Central Bank invites all stakeholders to provide comments on the matters set out and the questions raised in this Consultation Paper.

Please make your submissions electronically by e-mail to invfirmspolicy@centralbank.ie or in writing, to:

Investment Firms Regulations Consultation

Markets Policy Division

[11] Article 8 of Commission Delegated Directive (EU) 2017/593.

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Responses should be submitted no later than 27 September 2017.

It is the policy of the Central Bank to publish all responses to its consultations. All responses will be made available on our website. Commercially confidential information should not be included in consultation responses. We will send an e-mail acknowledgement to all responses sent by e-mail. If you do not get an acknowledgement of an e-mailed response please contact us on +353 1 2246000 to correct the situation.

Markets Policy Division

Central Bank of Ireland

26 July 2017

Schedule 1

MiFID EU Legislative Framework

<table>
<tr><th colspan="2">Level 1</th></tr>
<tr><td colspan="2">EU Council & Parliament Directive 2004/39/EC</td></tr>
<tr><th colspan="2">Level 2 (Delegated Acts)</th></tr>
<tr><td>EU Commission Directive 2006/73/EC</td><td>EU Commission Regulation (EC) No. 1287/2006</td></tr>
<tr><th colspan="2">Level 3 (CESR/ESMA Guidelines, Q & A's and similar convergence measures)</th></tr>
<tr><td colspan="2">Various convergence measures issued by CESR and subsequently by ESMA</td></tr>
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Schedule 2

MiFID II EU Legislative Framework

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<tr><th colspan="3">Level 1</th></tr>
<tr><td colspan="3">EU Council & Parliament Directive 2014/65/EC (15 May 2014) + No. 2016/1034 (30 June 2016)</td></tr>
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<tr><th colspan="3">Level 2 (RTS/ITS)</th></tr>
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<tr><th colspan="3">Level 3 (ESA Guidelines, Q & A’s and similar convergence measures)</th></tr>
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PROPOSED AMENDMENTS TO THE FIRST EDITION OF THE CENTRAL BANK INVESTMENT FIRMS REGULATIONS 2017 (S.I. No. 60 of 2017) – highlighted in strike through

PART 2
GENERAL SUPERVISORY REQUIREMENTS FOR INVESTMENT FIRMS

Chapter 1
General Requirements

Relationship with the Bank

4. (1) In addition to any obligations imposed on investment firms under [reference to MiFID II transposing Regulations to be inserted] a~~A~~n investment firm shall consult the Bank before -

(a) engaging in any new area of business or field of activity,

(b) establishing any regional ~~branch,~~ office in the State or any subsidiary~~,~~ or

(c) introducing material changes to the investment firm's operating model.

(2) In addition to any obligations imposed on investment firms under [reference to MiFID II transposing Regulations to be inserted], a~~A~~n investment firm shall notify the Bank, in writing, as soon as it becomes aware of any of the following:

(a) a breach by the investment firm of –

(i) these Regulations,

(ii) supervisory and regulatory requirements, and

(iii) any other enactment or legal instrument which may reasonably be considered to be of prudential concern to the Bank or which may impact on the reputation or good standing of the investment firm;

(b) any situation or event which impacts, or potentially impacts, on the investment firm to a significant extent;

(c) the commencement of any legal proceedings by, or against, the investment firm;

(d) the initiation of any criminal prosecution against -

(i) the investment firm, or

(ii) any officer or employee of the investment firm for offences relating to money laundering, terrorist financing, fraud, misrepresentation, dishonesty or breach of trust;

(e) a visit to the investment firm by –

(i) any regulatory, professional, statutory or law enforcement authority or body operating in the State, or

(ii) an authority in any other jurisdiction that performs a function similar to the functions performed by the Bank;

(f) the imposition on the investment firm of any sanction, fine, penalty or other administrative measure by any of the authorities or bodies referred to in subparagraph (e).

(3) An investment firm shall -

(a) not change its name without the prior written approval of the Bank,

(b) notify the Bank within 5 working days, in writing, of any change to the investment firm's registered office address, postal address, telephone number or email address, and

(c) state on its headed paper that it is regulated by the Bank.

(4) An investment firm shall not provide the Bank, in purported compliance with supervisory and regulatory requirements, with information which it knows or ought reasonably to know to be false or misleading in a material respect.

Acquisition and disposal of assets

5. (1) Without prejudice to any obligations arising under [reference to MiFID II transposing Regulations to be inserted] and s~~S~~ubject to paragraph (2), an investment firm shall notify the Bank, in writing, before any direct or indirect acquisition, or disposal, by it of shares or other interest in any other undertaking or business.

(2) Paragraph (1) does not apply to a MiFID investment firm acquiring shares or other interest to be held, or disposing of shares or other interest held, by it in any undertaking or business where these are for the purpose of trading book activities.

PART 4

FUND ADMINISTRATOR REQUIREMENTS

Chapter 2

Outsourcing Requirements

Check and release of the Final NAV and prohibition on outsourcing of the maintenance of the shareholder register

19. (1) A fund administrator shall ensure that -

(a) a senior staff member ~~member of senior management~~ of the fund administrator completes, signs and dates a review of the check and release of each investment fund final NAV prior to the release of that final NAV, and

(b) documentary evidence of the check on the final NAV is maintained for a period of at least 6 years.

(2) A fund administrator shall not outsource the –

(a) maintenance of the shareholder register, or

(b) subject to paragraph (3), the check and release of the investment fund final NAV.

(3) An outsourcing service provider may check and release the final NAV in such circumstances and to the extent and subject to such conditions as may be determined by the Bank from time to time.

(4) Where the check and release of the final NAV is outsourced in accordance with paragraph (3), an additional check of the investment fund final NAV shall be completed by the fund administrator on the day following the release of the final NAV by the outsourcing service provider, in accordance with the procedures set out paragraphs (1)(a) and (b).

PART 5
OWN FUNDS AND CAPITAL ADEQUACY REQUIREMENTS FOR FUND ADMINISTRATORS

Interpretation

27. In this Part –

"expenditure requirement" means the amount arising from the calculation under Regulation 29;

"own funds" means the amount arising from the calculation under Regulations 31 to 41;

"own funds requirement" means the amount of own funds required under Regulation 28.

Fund administrator own funds requirement

28. (1) A fund administrator shall have, at all times, own funds that are at least equal to the higher of -

(a) €125,000, or

(b) the fund administrator's expenditure requirement calculated in accordance with Regulation 29.

(2) Subject to paragraph (3), a~~A~~ fund administrator shall calculate its own funds by applying the requirements set out in Regulations 31 to 41.

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

SCHEDULE

REPORTING REQUIREMENTS

Regulation 8

Part 1

Fund Administrators		
Data Item (1)	**Reporting Frequency (2)**	**Reporting Deadline (3)**
Annual Audited Accounts (Upload)	Annual	4 months after firm reporting year end
Annual Accounts (Data Entry)	Annual	4 months after firm reporting year end
Related Party Annual Accounts Upload (if required)	Annual	4 months after firm reporting year end
Management/Interim Accounts (Upload)	Annual	2 months after firm reporting half-year end
Management/Interim Accounts (Data Entry)	Annual	2 months after firm reporting half-year end
Management/Annual Accounts (Upload)	Annual	1 month after firm reporting year end
Management/Annual Accounts (Data Entry)	Annual	1 month after firm reporting year end
Annual Ownership Confirmation Upload	Annual	1 month after calendar year end
Annual PCF Confirmation	Annual	1 month after calendar year end
Minimum Capital Requirement	Bi-Annual	1. Submitted with Audited Accounts 4 months after firm reporting year end 2. Submitted with Interim Accounts 2 month after firm interim accounts reporting period
Bank Statements	Bi-Annual	1. Submitted with Audited Accounts 4 months after firm reporting year end 2. Submitted with Interim Accounts 2 month after firm interim accounts reporting period
Non-Irish Authorised Funds Return	Quarterly	20 working days after calendar quarter end
Quarterly Management Accounts (if required)	Quarterly	20 working days after calendar quarter end
Quarterly Minimum Capital Requirement (if required)	Quarterly	20 working days after calendar quarter end
Monthly Management Accounts (if required)	Monthly	20 working days after calendar month end
Monthly Minimum Capital Requirement (if required)	Monthly	20 working days after calendar month end
Outsourcing Return	Annual	At calendar year end

7[ ]

PROPOSED ADDITIONAL PARTS OF THE CENTRAL BANK INVESTMENT FIRMS REGULATIONS (Parts 6-8)

PART 6
CLIENT ASSET REQUIREMENTS

Interpretation

47. (1) In this Part –

"assurance report" has the meaning assigned to it in Regulation 9(1)[1];

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

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

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

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

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

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

"client financial instruments" means financial instruments as defined in Regulation 3(1) of the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. [60] of 2007) or investment instruments as defined in section 2(1) of the Investment Intermediaries Act 1995, which is held by an investment firm on behalf of a client and includes, without limitation, any -

(a) client financial instrument that is held with a nominee, and

(b) claim relating to, or a right in or in respect of a financial instrument;

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

(a) client funds held by or with a nominee, and

(b) in the case of money that is comprised partly of client funds and partly of other money, that part of the money that is client funds, but does not include money that an investment firm-

(i) receives from or on behalf of the client, or

(ii) owes to or retains on behalf of the client

[1] Reference is to existing CAR, however this reference will be updated to reflect the relevant provision of the MiFID II transposing Regulations.

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

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

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

"collateral" means, with respect to a client -

(i) client funds, or

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

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

"collateral margined transaction" means a transaction effected by an investment firm with or for a client relating to a financial instrument under the terms of which the client will, or may, be liable to make a deposit of cash or collateral, either at the outset or subsequently, in order to secure performance of an obligation which the client may have to perform when the transaction falls to be completed or upon the earlier closing out of the client's position with such financial instruments;

"eligible custodian" means -

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

(b) a credit institution;

"eligible nominee" means -

(a) a person nominated in writing by the client who is not a related undertaking to the investment firm;

(b) a nominee;

(c) a nominee company of an exchange which is a regulated market;

(d) a nominee company of a relevant party or eligible custodian; or

(e) a custodian or relevant party outside the State, but only where it is not feasible to do otherwise due to the nature of the law or market practice of the relevant jurisdiction outside the State;

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

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

"Head of Client Asset Oversight" has the meaning assigned to it in Regulation [insert reference from the MiFID II transposing Regulations on the appointment of a single officer with responsibility for matters relating to the safeguarding of client assets (Article 7 L2D)];

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

"investment firm" means a person authorised by the Bank pursuant to -

(a) the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. [60] of 2007) as an investment firm, or

(b) Section 10 of the Investment Intermediaries Act 1995 as an investment business firm, or

(c) the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (S.I. No. 352 of 2011) as a management company which is authorised to conduct services pursuant to Regulation 16(2) of S.I. No. 352 of 2011 and in respect of those services only, or

(d) the European Union (Alternative Investment Fund Managers) Regulations 2013 (S.I. No. 257 of 2013) as an alternative investment fund manager which is authorised to conduct services pursuant to Regulation 7(4) of the S.I. No. 257 of 2013 and in respect of those services only but shall not include the following:

(i) a restricted activity investment product intermediary within the meaning of section 2(1) of the Investment Intermediaries Act 1995;

(ii) an investment business firm authorised under the Investment Intermediaries Act 1995 who satisfies all of the following:

(I) its authorisation is limited to the provision of the investment business service specified in section 26(1)(a)(i) of the Investment Intermediaries Act 1995 or the provision of investment advice in relation to that investment business service;

(II) its authorisation permits it to transmit orders to a person, or class of persons, not Specified in section 26(1A) of the Investment Intermediaries 1995;

(III) a person so authorised but only to carry out custodial operations involving the safekeeping and administration of investment instruments;

(IV) a person so authorised but only to carry out the administration of collective investment schemes or fund accounting services or acting as a transfer agent or registration agent for such schemes; or

(iii) a certified person within the meaning of section 55 of the Investment Intermediaries Act 1995;

"investment firm's own assets" means any asset held by an investment firm other than client assets;

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

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

"nominee company" means a body corporate whose business consists solely of acting as a nominee holder of investment instruments or other property;

"other money" means any money which is not client funds;

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

"related undertaking", in relation to an investment firm, means -

(a) if the investment firm is a company, another company that is related to it within the meaning of section 2 of the Companies Act 2014,

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

(c) if the businesses of the investment 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 investment 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 investment firm, or

(f) if provision is required to be made for the investment firm and another person in any consolidated accounts compiled in accordance with the 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;

"relevant person" has the meaning assigned to it in [relevant provision of the MiFID II transposing Regulations defining "relevant person"];

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

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

"third party" means -

(a) in relation to client funds -

(i) any of the entities listed in [relevant provision of the MiFID II transposing Regulations transposing Article 4(1) of the Commission Delegated Directive of 7 April 2016],

(b) in relation to client financial instruments -

(i) entities that meet the requirements in [relevant provision of the MiFID II transposing Regulations transposing Article 3 of the Commission Delegated Directive of 7 April 2016],

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

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

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

(c) may include an account where the client assets of multiple clients of an investment firm are deposited in the one account;

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

(2) A word or expression used in this Part or the description or explanation of a matter set out in this Part has, unless the contrary intention appears, the same meaning, description or explanation in this Part that it has in Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU or [insert reference to MiFID II Transposing Regulations].

Chapter 1
General Requirements

Segregation

48. (1) In this Regulation "instruction" includes a written agreement by which a client has instructed the investment firm to manage client assets on a discretionary basis.

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

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

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

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

Holding and depositing client funds

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

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

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

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

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

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

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

(6) Where an investment firm receives from, or on behalf of, a client, money that is comprised of a mixture of client funds and other money, the investment firm shall first pay all of the client funds and other money into a third party client asset account and thereafter shall, without delay, transfer out of, or withdraw, from the third party client asset account the other money.

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

(a) it is not clear if that money is client funds, or

(b) there is insufficient documentation to identify the client who owns such money,

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

(8) Where client funds are deposited with a third party the investment firm shall, at least every 6 months, review the arrangements for the holding of client funds with that third party as against the criteria set out in Regulation 3(14)[2].

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

Holding and depositing client financial instruments

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

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

(a) has been entrusted by, or on account of, a client with those client financial instruments, and

(b) either -

(i) holds those client financial instruments, including by way of holding documents of title to them, or

(ii) entrusts those client financial instruments to a nominee,

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

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

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

[2] Reference is to existing CAR, however this reference will be updated to reflect the relevant provision of the MiFID II transposing Regulations.

(a) itself, or

(b) with a nominee, or

(c) with a relevant party in a safe custody account designated as a third party client asset account subject to the investment firm maintaining the capacity to effect transactions on the account in question.

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

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

(7) Where client financial instruments are deposited with a third party, the investment firm shall, at least every 6 months, review the arrangements for the holding of the client financial instruments with that third party as against the assessment criteria set out in Regulation 3(17)[3].

Registration of client financial instruments

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

Designation

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

(a) designate in its own financial records each third party client asset account as a 'client asset account' or use some such other abbreviation in the account name that makes it readily identifiable as an account containing client assets,

[3] Reference is to existing CAR, however this reference will be updated to reflect the relevant provision of the MiFID II transposing Regulations.

(b) ensure that the third party will designate in the financial records of the third party, the name of a third party client asset account held with it in a manner which makes it clear that the client assets are not assets of the investment firm.

Funds facilities agreement and financial instruments facilities agreement

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

(a) the investment firm and the third party acknowledge that the client funds in the third party client asset account are held by the investment firm in trust for the relevant clients,

(b) the third party shall maintain a record of the client funds in the third party client asset account separate from the investment firm's own funds and the funds of the third party,

(c) the third party will designate the name of the third party client asset account in its records in such a way as to make it clear that the client funds do not belong to the investment firm,

(d) the third party is not entitled to combine the third party client asset account with any other account and the third party is not entitled to exercise any right of set-off or counterclaim against client funds in that third party client asset account in respect of any sum owed to it by any person, including any other account of the investment firm,

(e) the third party will provide the investment firm with a statement as often as is required to enable the investment firm comply with Regulations 57(1) to 57(2) and such statement shall specify all client funds deposited with the third party for the investment firm, and

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

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

(a) the investment firm and the third party acknowledge that client financial instruments in the third party client asset account are held by the investment firm in trust for the relevant clients,

(b) the third party shall hold and record client financial instruments separate from the investment firm's own financial instruments and financial instruments of the third party,

(c) the third party will designate the name of the third party client asset account in its records in such a way as to make it clear that the client financial instruments do not belong to the investment firm,

(d) the third party is not entitled to combine the third party client asset account with any other account or to exercise any right of set-off or counterclaim against client financial instruments in that third party client asset account in respect of any sum owed to it by any person, except -

(i) to the extent of any charges relating to the administration or 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) the third party will specify what the arrangements will be for registering client financial instruments if they will not be registered in the client's name,

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

(g) the third party may only claim a lien or security interest over a client's financial instruments -

(i) to the extent of any charges relating to the administration or safekeeping of that client's financial instruments, or

(ii) where that client has failed to settle a transaction by its due settlement date, and

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

Verification and third party confirmations

54. (1) Prior to, or within one working day of the initial deposit of client assets in a third party client asset account, an investment firm shall verify that the client assets are held in an account which is designated as a third party client asset account and if the third party does not, in its external financial records make a designation in accordance with Regulation 4(2)[4], the investment firm shall withdraw the client assets without delay, and in any event within 3 working days of the carrying out of the verification assessment.

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

(a) confirmation of the details of the third party client asset account, including the account number, and

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

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

Collateral margined transactions

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

[4] Reference is to existing CAR, however this reference will be updated to reflect the relevant provision of the MiFID II transposing Regulations.

(a) notify the credit institution, relevant party or eligible custodian that the investment firm -

(i) is under an obligation to keep the collateral separate from the investment firm's collateral, and

(ii) that the relevant party or eligible custodian must not claim any lien or right of retention or sale over the collateral except to cover the obligations to the relevant party or eligible custodian which gave rise to that deposit, pledge, charge or security arrangement, or any charges relating to the administration or safekeeping of the collateral,

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

(i) the value of the collateral passed by the investment firm on behalf of clients must be credited to the investment firm's third party client asset account with the relevant party or eligible custodian,

(ii) where collateral has been passed and the initial margin has been liquidated to satisfy margin requirements, any balance of the sale proceeds that is not a margin requirement must be paid into a third party client asset account without delay, and

(iii) where collateral is passed to an exchange or clearing house, any balance of the sale proceeds that is not a margin requirement must be dealt with in accordance with the rules of the relevant exchange or clearing house,

(c) ensure that a client's fully paid (non-collateral) financial instruments and a client's margin financial instruments will be held in separate third party client asset accounts with the relevant party or eligible custodian and that no right of set-off will apply to either of these accounts.

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

Securities financing transactions

56. (1) Without prejudice to the generality of Regulation 3(5)[5], an investment firm shall not enter into arrangements for securities financing transactions in respect of client financial instruments held by the investment firm on behalf of a client, or otherwise use such client financial instruments for its own account or the account of another client of the investment firm, unless the following condition is met:

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

Reconciliation

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

(2) In relation to third party client asset accounts which hold fixed term deposits, an investment firm shall reconcile, at least monthly, the balance of all client funds 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 within 3working days of the date to which the reconciliation relates.

(3) In relation to third party client asset accounts which hold client financial instruments, an investment firm shall reconcile, at least monthly, the balance of client financial instruments held, as recorded by the investment firm, with the balance of all client financial instruments held, as recorded by 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 working days of the date to which the reconciliation relates.

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

[5] Reference is to existing CAR, however this reference will be updated to reflect the relevant provision of the MiFID II transposing Regulations.

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

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

(7) An investment firm shall –

(a) ensure that the reconciliations required pursuant to Regulations 57(1), 57(2) and 57(3) are performed using client asset records that are accurate and the reconciliation itself is performed accurately,

(b) investigate within one working day the cause of any reconciliation difference in the reconciliation required pursuant to Regulations 57(1), 57(2) and 57(3),

(c) identify the cause of any reconciliation difference identified in Regulation 57(7)(b) within 5 working days, and

(d) resolve any reconciliation difference identified in Regulation 57(7)(b) as soon as practicable.

Daily calculation

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

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

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

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

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

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

Chapter 2
Client Disclosure

Information to be provided to clients in the terms of business

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

(a) its arrangements relating to the receipt of client assets,

(b) if applicable, a statement detailing its exchange rate policy,

(c) whether interest is payable in respect of client funds and the terms on which such interest is payable,

(d) where applicable, its arrangements relating to –

(i) the registration of client financial instruments and collateral, if these are not to be registered in the client's name,

(ii) claiming and receiving dividends, interest payments and other rights accruing to the client,

(iii) the exercise of conversion, subscription and redemption rights,

(iv) dealing with take-overs and capital re-organisations,

(v) the exercise of voting rights,

(e) where client assets are to be held in a pooled account, the nature of a pooled account and the risks of client assets being held in a pooled account,

(f) the trading name, registered address and website address of any third party with whom the client assets are to be held,

(g) if client assets are to be deposited outside of the State –

(i) that in the event of a default of a third party outside of the State, those client assets may be treated differently from the position which would apply if the client assets were deposited with a third party in the State, and

(ii) any additional risks that may arise where assets may be deposited in a third party outside of the State,

(h) in the case of collateral margined transactions, where an investment firm is to deposit collateral with, pledge, charge or grant a security arrangement over the collateral to a relevant party or eligible custodian –

(i) that the collateral will not be registered in the client's name if this is the case,

(ii) of the procedure which will apply in the event of the client's default, where the proceeds of sale of the collateral exceed the amount owed by the client to the investment firm,

(iii) of the circumstances in which the investment firm shall use a client's financial instruments in this manner.

Client assets key information document

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

(a) written in a language and a style that is clear, succinct and comprehensible,

(b) a separate and stand-alone document to any other document,

(c) accurate and relevant, and

(d) provided in a durable medium.

(2) The Client Assets Key Information Document shall provide -

(a) an explanation of the key features of the regulatory regime that applies to the safeguarding of client assets,

(b) an explanation of what constitutes client assets under that regime,

(c) the circumstances in which that regime applies and does not apply,

(d) an explanation of the circumstances in which the investment firm will hold client assets itself, deposit client assets with a third party and hold client assets in a jurisdiction outside the State,

(e) the arrangements applying to the holding of client assets and the relevant risks associated with these arrangements.

(3) An investment firm shall –

(a) review, at least annually, the content of the Client Assets Key Information Document, which has been provided to all retail clients, and

(b) ensure that the information contained therein is accurate and relevant having regard to Regulation 60(2).

(4) An investment firm shall inform all retail clients in good time of any material changes to the Client Assets Key Information Document in a durable medium, and in any event within one month of such changes having been issued.

Information to be provided to a client in the quarterly statement

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

(a) 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

(b) the market value of any collateral held as at the date of the statement.

Chapter 3
Client Consent

Client consent requirements

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

(a) where granting to a third party a lien, security interest and/or right of set-off over client assets;

(b) with respect to the arrangements for the giving and receiving of instructions by, or on behalf of, the client and any limitations to that authority, in respect of the provision of safe-keeping services which it provides;

(c) where client assets are passed to a third party outside the State;

(d) where a client instructs an investment firm to deposit client assets with a specific third party that does not meet the investment firm's internal risk assessment;

(e) when client assets are to be held in a pooled account with a third party;

(f) where interest earned on client funds in a third party client asset account is to be retained by the investment firm;

(g) where client financial instruments are to be deposited with a third party in a third country that does not regulate the holding and safe-keeping of client financial instruments; and

(h) in the case of collateral margined transactions –

(i) before an investment firm deposits collateral with, pledges, charges or grants a security arrangement over the collateral to a relevant party or eligible custodian,

(ii) where it proposes to use collateral in the form of client assets as security for the investment firm's own obligations, or

(iii) where it proposes to return to the client collateral other than the original collateral or original type of collateral.

Chapter 4
Risk Management and Assurance

Risk management

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

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

(a) ensuring that every Funds Facilities Agreement and Financial Instruments Facilities Agreement referred to in Regulations 53(1) and 53(2) is obtained and maintained in accordance with Regulation 67(2);

(b) reviewing, at least on an annual basis, the provisions of every Funds Facilities Agreement and Financial Instruments Facilities Agreement to ensure compliance with the requirements of this Part, in particular Regulations 53(1) and 53(2) (as the case may be);

(c) ensuring that any other agreement entered into between the investment firm and a third party does not contradict or supersede the requirements of this Part, in particular Regulations 53(1) and 53(2), or the terms of the Fund Facilities Agreement or the Financial Instruments Facilities Agreement;

(d) providing approval, in writing, of the reviews referred to in Regulations 49(8) and 50(7);

(e) ensuring that the client asset management plan referred to in Regulation 64(1) is produced, maintained, reviewed and updated as the information upon which the client asset management plan is based, changes;

(f) ensuring that any potential or actual breaches of this Part are reported in writing to the board of the investment firm in the case of a company or to each of the partners in the case of a partnership;

(g) ensuring that the Bank is notified, in accordance with Regulation 68, of any breaches of this Part without delay;

(h) approving any returns in relation to client assets that are required by this Part to be submitted to the Bank;

(i) reporting in writing to the board of the investment firm in the case of a company or to each of the partners in the case of a partnership in respect of any issues raised by the internal and external auditors in relation to client assets;

(j) ensuring that the relevant persons performing the daily calculations referred to in Regulation 58(1) and the reconciliations referred to in Regulations 57(1) to 57(3) are adequately trained and have sufficient skill and expertise to perform those functions;

(k) undertaking an assessment of risks to client assets arising from the investment firm's business model;

(l) ensuring that the client asset examination referred to in Regulation 65 is completed and the assurance report is submitted to the Bank through the Online Reporting System and in accordance with the timeframes set out in Regulation 68;

(m) ensuring that an appropriate person is available to provide cover to make submissions to the Bank, in periods where the Head of Client Asset Oversight is absent from the investment firm.

Client asset management plan

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

(2) The client asset management plan shall be reviewed –

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

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

to ensure that the information contained therein is accurate.

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

(a) when material changes are made,

(b) at any time when there is any change to the investment firm's business model which affects the manner by which client assets are held, and

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

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

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

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

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

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

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

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

(g) the procedures that an investment firm follows with respect to the due diligence requirements referred to in Regulations 3(14) and 3(17);[6]

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

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

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

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

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

(m) the procedures that an investment firm will follow to ensure that client assets or client financial instruments are not lodged into an investment firm's own bank account or custody account;

(o) the procedures and timeframes that an investment firm will follow if, in error, client funds or client financial instruments are lodged by a client into an investment firm's own bank account or custody account;

(p) the basis and criteria that will be used by an investment firm to determine materiality for the purposes of Regulation 68(1)(c) and (d);

[6] Reference is to existing CAR, however this reference will be updated to reflect the relevant provision of the MiFID II transposing Regulations.

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

Client asset examination

65. (1) An investment firm shall arrange for the external auditor appointed in accordance with [relevant provision of the MiFID II transposing Regulations requiring the appointment of external auditor] to prepare a report as part of, or in addition to, the report required under Regulation [relevant provision of the MiFID II transposing Article 8 of the Commission Delegated Directive of 7 April 2016] (in this Part referred to as an "assurance report") in relation to that investment firm's safeguarding of client assets at least on an annual basis.

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

(a) has the necessary resources and skills relating to the business of the investment firm,

(b) receives the investment firm's full cooperation in a timely manner in relation to conducting the client asset examination and the preparation of the assurance report,

(c) in addition to the requirements of [relevant provision of the MiFID II transposing Article 8 of the Commission Delegated Directive of 7 April 2016], provides an assurance report as to whether, throughout the period to which the client asset examination relates -

(i) the investment firm has maintained processes and systems adequate to meet the requirements of this Part,

(ii) the investment firm was compliant with this Part,

(iii) any matter has come to the attention of the external auditor to suggest that the investment firm has acted in a manner which is not consistent with that documented within the client asset management plan which has been in operation, and

(iv) any changes made to the client asset management plan have been drafted in sufficient detail to meet the requirements of this Part, capturing the risks faced

by the investment firm in holding client assets, given the nature and complexity of the business of the investment firm,

(d) submits the assurance report to the Bank in accordance with the timeframes referred to in Regulation 68(4).

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

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

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

(a) arrange that an external auditor performs such procedures as the external auditor deems appropriate to enable the external auditor to determine whether anything has come to its attention that causes the external auditor to believe that the investment firm held client assets during that period, and

(b) ensure that the external auditor provides the assurance report to the investment firm in a timely manner and in any event, in good time to enable the investment firm to comply with its reporting obligations under Regulation 68.

Chapter 5

Outsourcing, Record-Keeping and Reporting Requirements

Outsourcing requirements

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

Record-keeping – general requirements

67. (1) An investment firm shall keep the records required under Regulation 3(20)[7] separate from records relating to transactions which are not related to the third party client asset account.

(2) An investment firm shall maintain the following, in a readily accessible form, for a period of at least 6 years:

(a) a record of the verification referred to in Regulation 54(1);

(b) every Funds Facilities Agreement and Financial Instruments Facilities Agreement between the investment firm and a third party;

(c) a record of the date upon which –

(i) the reconciliation referred to in Regulation 57(5) was prepared, and

(ii) the daily calculation, referred to in Regulation 58(5) was prepared;

(d) a record to evidence the review process referred to in Regulations 57(6) and 58(6);

(e) evidence of the review referred to in Regulation 63(2)(b);

(f) a record of each reconciliation required by Regulation 57 including –

(i) the information upon which the reconciliation is based,

(ii) the relevant person who carried out such reconciliation, and

(iii) the relevant person who reviewed such reconciliation;

(g) a record of each daily calculation required by Regulation 59 including –

(i) the information upon which the daily calculation is based

[7] Reference is to existing CAR, however this reference will be updated to reflect the relevant provision of the MiFID II transposing Regulations.

(ii) the relevant person who carried out such daily calculation, and

(iii) the relevant person who reviewed such daily calculation;

(h) a record of the client asset management plan review referred to in Regulation 64(2);

(i) all records required to demonstrate compliance with this Part.

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

Reporting requirements

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

(a) where the investment firm has failed to carry out the reconciliation referred to in Regulations 57(1), 57(2) and 57(3);

(b) where the investment firm has failed to carry out the daily calculation referred to in Regulation 58(1);

(c) any material reconciliation differences identified by an investment firm in accordance with the process referred to in Regulation 57(7);

(d) where applicable, the remedial actions referred to in Regulation 65(4) and the timeframe in which the investment firm carried out those remedial actions;

(e) any material lodgements or withdrawals by an investment firm from the client asset bank account;

(f) any breaches of or non-compliance with this Part.

(2) The notifications referred to in paragraphs (1)(a) and (b) shall be submitted together with the reasons for such failures and within one working day of the date on which the reconciliation or daily calculation, as applicable, should have been performed.

(3) The notifications referred to in paragraphs 1(c), (d) and (e) shall be submitted together with the reasons for such differences, transfers, breaches or non-compliance, as applicable, and immediately upon identification by an investment firm.

(4) An investment firm shall –

(a) submit the assurance report referred to in Regulation 65(2)(c) and 65(5)(b) and where applicable, the information referred to in Regulation 68(1)(d) -

(i) to the Bank through the Online Reporting System,

(ii) no later than 4 months after the period end to which the client asset examination relates..

Chapter 6
Miscellaneous

Application of provisions

69. The following provisions shall apply to firms authorised by the Bank pursuant to section 10 of the Investment Intermediaries Act 1995, that are investment firms within the meaning of this Part;

(a) [relevant provisions of the MiFID II transposing Regulations transposing Articles 16(8)-(10) of the MiFID II Directive];

(b) [relevant provisions of the MiFID II transposing Regulations transposing Articles 2-8 of the 7 April Commission Delegated Directive];

(c) [to the extent that these provisions relate to the provision of information to clients or reporting to clients on the safeguarding of client assets, Articles 46, 47, 49 and 63 of the 25 April Commission Delegated Regulation];

(d) [to the extent that these provisions relate to the retention of records in relation to the safeguarding of client assets, Articles 72(2) and Annex I of the 25 April Commission Delegated Regulation].

PART 7
INVESTOR MONEY REQUIREMENTS

Interpretation

70. (1) In this Part –

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

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

"fund service provider" means a person who is:

(a) authorised pursuant to section 10 of the Investment Intermediaries Act 1995 to carry out:

(i) the administration of collective investment schemes or fund accounting services or acting as a transfer agent or registration agent for such schemes, or

(ii) custodial operations involving the safekeeping and administration of investment instruments,

(b) authorised pursuant to the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (S.I. No. 352 of 2011) as a management company,

(c) authorised pursuant to the European Union (Alternative Investment Fund Managers) Regulations 2013 (S.I. No. 257 of 2013) as an alternative investment fund manager,

(d) referred to in the Unit Trusts Act 1990 as a management company,

(e) referred to in Part 24 of the Companies Act 2014 as a management company,

(f) referred to in the Investment Limited Partnerships Act 1994 as a General Partner,

(g) referred to in the Investment Funds Companies and Miscellaneous Provisions Act 2005 as a management company,

(h) a credit institution who acts as a depositary for investment funds or who provides fund administration services to such funds.

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

"investor" means any person -

(a) from or on behalf of whom the fund service provider receives or holds money for the purposes of subscribing to an investment fund,

(b) in respect of whom the fund service provider transfers money to an investment fund for the purposes of subscribing to or participating in that investment fund,

(c) in respect of whom the fund service provider receives from an investment fund money for transmission to the person, whether in respect of redemption proceeds or otherwise;

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

(a) investor money held by or with a nominee of the fund service provider,

(b) in the case of money that is comprised partly of investor money and partly of money of any other type, that part of the money that is investor money,

"investor money examination" has the meaning assigned to in Regulation 80(1);

"investor money management plan" means the plan created pursuant to Regulation 79(1) for the purpose of safeguarding investor money;

"investor money requirement" means the total amount of investor money that a fund service provider should hold on behalf of investors;

"investor money resource" means the total amount of investor money deposited in a fund service provider's collection accounts;

"investor money facilities agreement" has the meaning assigned to it in Regulation 74(1);

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

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

"fund service provider's own money" means any money that is owned by the fund service provider;

"other money" means any money which is not investor money;

"third party" means -

(a) a credit institution authorised in the EEA,

(b) a credit institution authorised within a signatory state, other than a State of the EEA, to the Basel Capital Convergence Agreement of July 1988; or

(c) a credit institution authorised in Jersey, Guernsey, the Isle of Man, Australia or New Zealand.

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

(a) is in the name of the fund service provider or its nominee;

(b) includes in its title the description, "collection account", to distinguish investor money in the account from the fund service provider's own firm money deposited elsewhere; and

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

Chapter 1
General Requirements

General requirements and segregation

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

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

(3) A fund service provider shall not -

(a) place in a third party collection account any money other than investor money except in accordance with Regulations 72(4) and 77(3),

(b) except in accordance with a legally enforceable agreement, use investor money for any purpose other than for the sole account of that investor,

(c) use, or transfer investor money otherwise than in accordance with an instruction relating to that investor money received by the fund service provider from the investor for whom that investor money is held or as required by law or by order

of any court of competent jurisdiction.

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

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

Holding and depositing investor money

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

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

(a) been lodged into a third party collection account in a third party,

(b) is deposited into a third party collection account, and

(c) the fund service provider has the capacity to effect transactions on that third party collection account.

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

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

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

(a) it is not clear if that money is investor money, or

(b) there is insufficient documentation to identify the investor who owns such money,

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

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

(a) is satisfied that the legal, jurisdictional, regulatory requirements and market practices relevant to the holding of investor money with that credit institution in the manner proposed do not adversely affect investor rights, and

(b) has exercised due skill, care and diligence in the selection and appointment of that entity.

(7) Where investor money is deposited with a third party, the fund service provider shall, at least every 6 months, review the arrangements for the holding of investor money with that third party as against the criteria set out in Regulation 72(6).

(8) A fund service provider shall not hold investor money without the prior written approval of the Bank.

Designation

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

(a) designate in its own financial records, each third party collection account as a 'collection account' in the account name that makes it readily identifiable as an account containing investor money,

(b) ensure that the third party will designate in the financial records of the third party, the name of the third party collection account held with it in a manner which makes it clear that the investor money is not the money of the fund service provider.

Investor money facilities agreement

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

(a) the fund service provider and the third party acknowledge that money in the third party collection account is held by the fund service provider in trust for the relevant investors,

(b) the third party shall maintain a record of the money in the third party collection account separate from the fund service provider's own money and the money of the third party;

(c) the third party will designate the name of the third party collection account in its records as a "collection account" to make it clear that the investor money does not belong to the fund service provider;

(d) the third party is not entitled to combine the third party collection account with any other account and the third party is not entitled to exercise any right of set-off or counterclaim against investor money in that third party collection account in respect of any sum owed to it by any person, including any other account of the fund service provider;

(e) the third party will provide the fund service provider with a statement as often as is required to enable the fund service provider to comply with Regulation 76(1) and such statement shall specify all investor money held by the third party for the fund service provider;

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

Verification and third party confirmations

75. (1) Prior to, or within one working day of the initial deposit of investor money in a third party collection account, a fund service provider shall verify that the investor money is held in an account which is designated as a third party collection account and if the third party does not, in its external

financial records, make a designation in accordance with Regulation 73(1)(b), the fund service provider shall withdraw the money without delay, and in any event within 3 working days of the carrying out of the verification assessment.

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

(a) confirmation of the details of the third party collection account, including the account number, and

(b) confirmation that the conditions applicable to the third party collection account are as documented in the Investor Money Facilities Agreement.

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

Reconciliation

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

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

(3) Each reconciliation shall be reviewed by a person who is independent of the person who carried out the reconciliation and of the person who produced and maintained the records used for the purpose of carrying out the reconciliation. Where a reconciliation computer system performs the reconciliation, the output from that process shall be reviewed by at least one person and that person must be independent from the person who produced and maintained the records used for the purpose of carrying

out the reconciliation and from any person who may have been involved in the computer based reconciliation process.

(4) A fund service provider shall -

(a) investigate within one working day the cause of any reconciliation difference in the reconciliation required pursuant to Regulation 76(1),

(b) identify the cause of any such reconciliation difference identified in Regulation 76(4)(a) within 5 working days,

(c) resolve any reconciliation difference identified in Regulation 76(4)(b) as soon as practicable.

Daily Calculation

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

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

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

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

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

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

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

and shall have and adhere to procedures to ensure that its credit institution acts on such an instruction without delay.

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

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

Chapter 2
Risk Management

Risk Management

78. (1) A fund service provider shall have an individual with an investor money oversight role in order to ensure the safeguarding of investor money (in this Part referred to as the Head of Investor Money

Oversight and shall ensure that the Head of Investor Money Oversight shall have the necessary resources, including staff that are adequately trained with sufficient skill and expertise to carry out the responsibilities listed in Regulation 78(2) having regard to the nature, scale and complexity of the business of the fund service provider.

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

(a) ensuring that every Investor Money Facilities Agreement referred to in Regulation 74(1) is obtained and maintained;

(b) reviewing, at least on an annual basis, the provisions of every Investor Money Facilities Agreement to ensure compliance with the requirements of this Part, in particular, Regulation 74(1);

(c) ensuring that any other agreement entered into between the fund service provider and a third party does not contradict or supersede the requirements of this Part, in particular Regulation 74(1), or the terms of the Investor Money Facilities Agreement;

(d) providing approval in writing of the review referred to in Regulation 72(7).

(e) ensuring that the investor money management plan referred to in Regulation 79(1) is produced, maintained, reviewed and updated as the information, upon which the investor money management plan is based, changes;

(f) ensuring that any potential or actual breaches of this Part are reported in writing to the board of the fund service provider in the case of a company or to each of the partners in the case of a partnership;

(g) ensuring that the Bank is notified, in accordance with Regulation 83, of any breaches of this Part without delay;

(h) approving any returns in relation to investor money that are required by this Part to be submitted to the Bank;

(i) reporting in writing to the board of the fund service provider in the case of a company or to each of the partners in the case of a partnership in respect of any issues raised by the internal and external auditors in relation to investor money;

(j) ensuring that the persons performing the daily calculations as referred to in Regulation 77(1) and the reconciliations as required under Regulation 76(1) are adequately trained and have sufficient skill and expertise to perform those functions;

(k) undertaking an assessment of risks to investor money arising from the fund service provider's business model;

(l) ensuring that the Investor Money Examination, as referred to in Regulation 80(1), is completed and the assurance report is submitted to the Bank through the Online Reporting System within the agreed timeframe;

(m) ensuring that an appropriate person is available to provide cover to make submissions to the Bank, in periods where the Head of Investor Money Oversight is absent from the fund service provider.

Investor money management plan

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

(2) An investor money management plan shall be reviewed -

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

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

to ensure that the information contained therein is accurate.

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

(a) when material changes are made,

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

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

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

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

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

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

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

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

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

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

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

(i) where in accordance with Regulation 81, a fund service provider outsources to a another party, the performance of the reconciliation or the daily calculation, the

manner in which the fund service provider will exercise oversight over the outsourced activity;

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

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

(l) the basis and criteria that will be used by a fund service provider to determine materiality for the purposes of Regulation 83(1)(c) and (d);

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

Investor Money Examination

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

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

(a) has the necessary resources and skills relating to the business of the fund service provider,

(b) receives the fund service provider's full cooperation in a timely manner in relating to conducting the investor money examination,

(c) provides an assurance report as to whether, throughout the period to which the investor money examination relates -

(i) the fund service provider has maintained processes and systems adequate to meet the requirements of this Part,

(ii) the fund service provider was compliant with this Part,

(iii) any matter has come to the attention of the external auditor to suggest that the fund service provider has acted in a manner which is not consistent with that documented within the investor money management plan which has been in operation, and

(iv) any changes made to the investor money management plan have been drafted in sufficient detail to meet the requirements of this Part, capturing the risk faced by the fund service provider in holding investor money, given the nature and complexity of the business of the fund service provider.

(d) submits the assurance report to the Bank in accordance with the timeframes referred to in Regulation 83(3).

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

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

(6) If a fund service provider claims not to have held investor money throughout the period to which the investor money examination relates, the fund service provider shall -

(a) arrange that an external auditor performs such procedures as the external auditor deems appropriate to enable the external auditor to determine whether anything has come to its attention that causes the external auditor to believe that the fund service provider held investor money during that period,

(b) ensure that the external auditor provides the assurance report to the fund service provider in a timely manner and in any event, in good time to enable the fund service provider to comply with its reporting obligations under Regulation 83.

Chapter 3

Outsourcing, Record-keeping and Reporting Requirements

Outsourcing requirements

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

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

Record keeping – general requirements

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

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

(a) a record of the verification referred to in Regulation 75(1) ;

(b) every Investor Money Facilities Agreement between the fund service provider and a third party;

(c) a record of the date upon which –

(i) the reconciliation referred to in Regulation 76(2) was prepared, and

(ii) the daily calculation, referred to in Regulation 77(6) was prepared;

(d) a record to evidence the review process referred to in Regulations 76(3) and 77(7);

(e) evidence of the review referred to in Regulation 78(2)(b);

(f) a record of each reconciliation referred to in Regulation 76(1) including –

(i) the information upon which the reconciliation is based,

(ii) the person or reconciliation computer system that carried out such reconciliation, and

(iii) the person who reviewed such reconciliation;

(g) a record of each calculation referred to in Regulation 77(6) including –

(i) the information upon which the daily calculation is based,

(ii) the person who carried out the daily calculation, and

(iii) the person who reviewed the daily calculation;

(h) a record of the investor money management plan review referred to in Regulation 79(2);

(i) an accurate record of each transaction on a third party collection account in such a manner and form that –

(i) the investor for, or in respect of, whom the transaction was conducted is identified,

(ii) the transaction is accounted for by the fund service provider separate from all the other transactions of the fund service provider,

(j) all records required to demonstrate compliance with this Part.

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

Reporting requirements

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

(a) where the fund service provider has failed to carry out the reconciliation referred to in Regulation 76(1);

(b) where the fund service provider has failed to carry out the daily calculation referred to in Regulation 77(6);

(c) any material reconciliation differences identified by a fund service provider in accordance with the process referred to in Regulation 76(4);

(d) when the level of money the fund service provider lodges or withdraws from the third party collection account is material;

(e) where applicable, the remedial actions referred to in Regulation 80(5) and the timeframe in which the fund service provider carried out those remedial actions;

(f) any breaches or non-compliance with this Part.

(2) The notifications referred to in paragraphs 1(a), (b) and (c) shall –

(a) be submitted together with the reasons for such failures, and

(b) in the case of the notifications referred to in paragraphs 1(a) and (b) –

(i) within one working day of the date on which the reconciliation or daily calculation, as applicable, should have been performed.

(3) A fund service provider shall –

(a) submit to the Bank the assurance report referred to in Regulation 80(1) and where applicable, the information referred to in Regulation 83(1)(e) –

(i) to the Bank through the Online Reporting System,

(ii) no later than 4 months after the period end to which the investor money examination relates.

(4) The notifications referred to in paragraphs 1(c), and (d) shall be submitted together with the reasons for such differences or non-compliance as applicable and immediately upon identification by a fund service provider.

Part 8

Market Operators

Interpretation

84. In this Part –

"market operator" means a market operator of a regulated market authorised under Regulation 47(1)(a) of the European Communities (Markets in Financial Instruments) Regulations 2007;

"Common Equity Tier 1 capital" has the meaning set out in Regulation 31(3),[8] substituting 'fund administrator' for 'market operator' where necessary;

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

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

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

[8] This reference relates to the current edition of the Central Bank Investment Firms Regulations.

General capital requirement framework

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

Basic capital requirement

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

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

(a) subject to the prior written approval of the Bank, the deduction of material non-recurring expenditure incurred in the previous 6 months, and

(b) the addition of material exceptional expenses forecast for the next 6 months.

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

(a) 12 months operating expenses,

(b) 12 months capital expenditure, and

(c) such capital add-on as may be specified by the Bank to address applicable risks.

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

MORCAAP amount

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

(a) the market operator's internal assessment of the capital required to cover its business risks and associated mitigations in stressed market conditions;

(b) the amount of capital estimated by the market operator as required to support an orderly wind down of its business; and

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

Systemic capital add-on

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

MORCAAP - Internal assessment of capital required in stressed market conditions

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

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

(a) the recovery plan shall set out actions that would be taken to facilitate the continuation of the business or to secure the business or part of the business in a situation where a market operator is experiencing financial instability;

(b) the recovery plan shall not assume that financial support will be available from the State.

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

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

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

MORCAAP - Capital required for orderly wind down

90. (1) For the purpose of Regulation 87(b), a market operator shall draw up a plan setting out how the market operator would wind down in an orderly fashion within a defined time period in the

event of failure and shall estimate the amount of capital required to support such an orderly wind down of its business.

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

MORCAAP - Board approval

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

(a) the strategies, processes and systems referred to under Regulation 89(1);

(b) the recovery plan referred to under Regulation 89(2); and

(c) the wind-down plan referred to under Regulation 90(1).

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

MORCAAP - Capital add-ons

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

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

MORCAAP – Documentation and submission to the Bank

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

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

Capital Requirement Framework Report

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

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

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

General liquidity requirement

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

Liquid financial assets

96. Liquid financial assets shall meet the following criteria:

(a) Liquid financial assets shall be free from any encumbrance. An asset shall be deemed to be unencumbered when a market operator is not subject to any legal, contractual, regulatory or other restriction preventing it from liquidating, transferring, selling, assigning or, generally, disposing

of such asset within a 30-day period. This 30-day period may be extended, with the prior written permission of the Bank, in relation to deposits with credit institutions where a duration risk haircut is applied.

(b) Liquid financial assets shall not be held or issued by the market operator itself, its parent undertaking, its subsidiary or another subsidiary of its parent undertaking or by a special purpose entity with which the market operator has close links.

(c) Liquid financial assets may only comprise:

(i) cash and cash equivalents; and

(ii) securities, deposits and accrued interest subject to such haircuts as the Bank may specify from time to time in writing to a market operator on an individual basis.