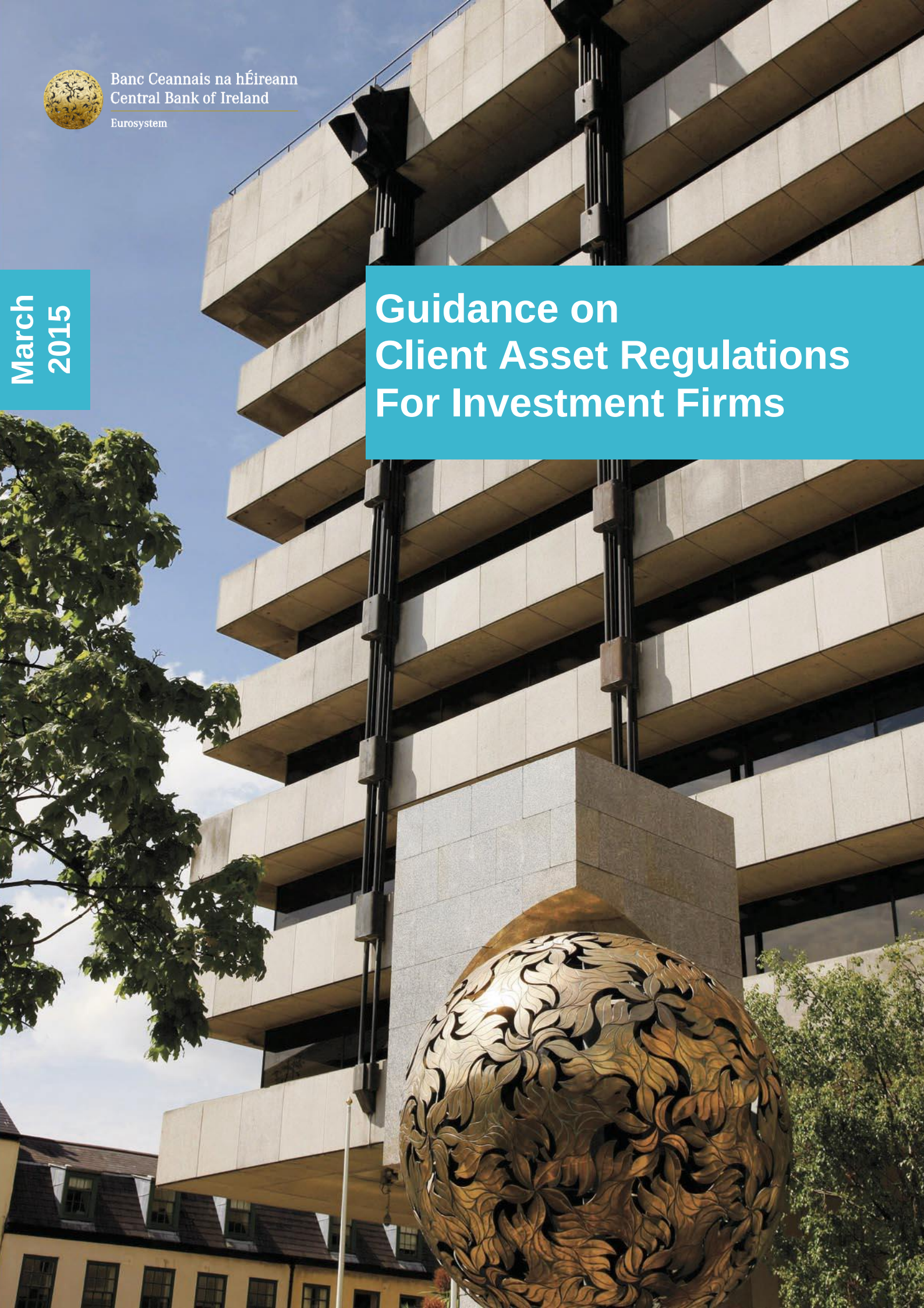

Banc Ceannais na hÉireann
Central Bank of Ireland
Eurosystem

March 2015

Guidance on Client Asset Regulations For Investment Firms

Revision History

Date	Version	Description
30 March 2015	1.0	Final

Contents

Purpose and Effect of the Guidance

The primary purpose of this document (the "Guidance") is to assist investment firms in complying with the Client Asset Regulations (SI No 104 of 2015) (the "Regulations") issued pursuant to Section 48 of the Central Bank (Supervision and Enforcement) Act 2013 in relation to the holding of client assets. An investment firm as defined in the Regulations holding client assets must to do so in accordance with the Regulations.

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

While aspects of the Regulations provide for almost a prescriptive translation of the client asset provisions contained in MiFID, they also impose key Regulations to further enhance the processes and controls an investment firm should have in place to protect and safeguard client assets. The Regulations may be imposed on firms authorised under:

- MiFID;
- the IIA;
- UCITS[1] where the firm is a management company authorised to conduct services pursuant to Regulation 16(2) thereof; and
- AIFM[2] where the firm is authorised to conduct services pursuant to Regulation 7(4) thereof.

[1] The European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (S.I. 352 of 2011) ("UCITS").
[2] The European Union (Alternative Investment Fund Managers) Regulations 2013 (S.I No 257 of 2013) ("AIFM").

However, the imposition of the Regulations does not affect the authorisation of these entities; i.e., all regulations contained in MiFID, AIFM, UCITS and the provisions of the IIA continue to apply to firms as defined in MiFID, the IIA, AIFM and UCITS.

This Guidance may not be construed so as to constrain the Central Bank from taking action, where it deems to be appropriate, in respect of any suspected prescribed contravention which comes to its attention.

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

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

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

Structure of the Guidance

Guidance is only provided where it is considered it may assist in the interpretation of the Regulations; it is not provided for all the Regulations. **The Guidance document should be read in a two page format with the relevant excerpted Regulations on the left hand side of the Guidance document and the related Guidance where warranted in the corresponding right hand side of the Guidance document.** The Guidance is not comprehensive and does not replace or preempt any legislative provisions.

The Regulations are transposed into this document for convenience. If any inconsistencies occur as a result of errant transposition, or otherwise, the Regulations as published prevail.

The Regulations are set out under the following seven headings which the Central Bank regards as the seven core Client Asset Principles of a client asset regime. For ease of reference this Guidance document is also set out on the same basis, but for ease of interpretation, it is provided in a Q&A format:

1. Segregation

An investment firm should physically hold, or arrange for the holding of, client assets separate from the investment firm's own assets and maintain accounting segregation between the investment firm's own assets and client assets. For the avoidance of doubt this principle applies to client assets that may be held by a nominee.

2. Designation and Registration

An investment firm should ensure that client assets are clearly identified in its internal records and in the records of third parties. The client assets must be identifiable and separate from the investment firm's own assets.

3. Reconciliation

An investment firm should keep accurate books and records to enable it at any time and without delay to provide an accurate record of the client assets held by the investment firm for each client and the total held in the client asset account. An investment firm should conduct a reconciliation between its internal records and those external records of any third party with whom client assets are held as provided in Regulation 5(1) to 5(3). In effect, in respect of client funds, an investment firm is reconciling its general internal client asset bank ledger to the external client asset bank record provided by a third party, e.g., in the form of a bank statement. An illustrative form of a bank reconciliation is included at Appendix II of this Guidance

document; an investment firm should follow a similar format for its client financial instrument reconciliation.

4. Daily Calculation

Each working day an investment firm should ensure that the aggregate balance on its client asset bank accounts (*client money resource*) as at the close of business on the previous working day is equal to the amount it should be holding on behalf of its clients (*client money requirement*). An illustrative example of a daily calculation is included at Appendix II this Guidance document.

5. Client Disclosure and Client Consent

An investment firm should provide information to its clients in a way that informs the client on how and where their client assets are held and the resulting risks thereof. An investment firm should also inform its retail clients, in the Client Assets Key Information Document ("CAKID"), of the circumstances in which the Regulations will apply and will not apply (refer to Regulation 7(19)).

6. Risk Management

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

7. Client Asset Examination

An investment firm should engage an external auditor to report at least on an annual basis on the investment firm's safeguarding of client assets.

Throughout the Guidance, reference is made to certain reporting obligations to the Central Bank by the investment firm under the Regulations. Where possible, any obligation to report information in this regard should be completed by the investment firm using the Central Bank's Online Reporting System ("ONR").

Scope of the Guidance

To whom do the Client Asset Regulations apply?

G1 (1) The Regulations issued in pursuant of Section 48 of the Central Bank (Supervision and Enforcement) Act 2013 apply to the following regulated entities holding client assets:

a) **investment firms** authorised under Part 4 of MiFID;

b) **investment business firms** authorised under Section 10 of the IIA;

c) **UCITS management companies** authorised under UCITS which is authorised to conduct services pursuant to Regulation 16(2) of S.I. 352 of 2011;

d) **alternative investment fund managers** authorised under AIFM which is authorised to conduct services pursuant to Regulation 7(4) of the S.I. No 257 of 2013;

e) any of the above firms (a, b, c & d) in respect of passported activities carried out by the firms from a branch in another European Economic Area ("EEA") country.

The Regulations do not apply to an incoming EEA investment firm with respect to its passported activities in Ireland or any branch of an EEA investment firm operating in Ireland.

G1 (2) In this Guidance:

- an **investment firm** shall mean an investment firm, an investment business firm, an alternative investment fund manager or a UCITS management company as described in G (1) a), b), c) and d)
- definitions in the Regulations have the same meaning in the Guidance.

What are client assets?

G1 (3) Client assets consist of **client funds and client financial instruments/investment instruments**. Use of the term client financial instrument in this guidance document will also mean investment instrument.

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

Examples of circumstances in which assets are client assets

G2 (1) Cheques and other payable orders will be client funds from the time of receipt of the cheque or other payable order by the investment firm except where G2 (5) applies. Funds sent to a client by way of cheque or other payable order do not cease to be client funds until the cheque or other payable order is presented and paid by the eligible credit institution.

G2 (2) If an investment firm has agreed in writing to pay interest to clients, such interest is client funds when the interest is paid. Payment of accrued interest to clients prior to its receipt should not be paid from the client asset account unless previously funded by an investment firm.

G2 (3) Where an investment firm receives margin[3] in respect of margin transactions, such margin will be deemed to be client assets unless full ownership has been transferred (refer to G2 (4)).

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

Examples of circumstances in which assets are not client assets

G2 (4) Where a client transfers full ownership of client assets to an investment firm for the purpose of securing or otherwise covering present or future, actual or contingent or prospective obligations, such client assets should no longer be regarded as belonging to the client.

Where an investment firm has received full title or full ownership to money under a collateral arrangement, the fact that it has also taken a security interest over its obligation to repay that money to the client would not result in the money being client funds.

But where an investment firm takes a charge or security interest over money held in a client asset account, that money would still be client funds as there would be no absolute transfer of title.

[3] Margin is the amount of cash or collateral which a person is required to deposit at any time as security for an investment position.

When a client enters into an arrangement to transfer full ownership, the Central Bank would expect an investment firm to evidence that it has considered the appropriateness of such a transaction for each client and has clearly explained to the client the implications of this transaction(s), i.e., one of which is, these assets will not be regarded as client assets. An investment firm is reminded of its obligation under Regulation 3(1): "*an investment firm shall act honestly, fairly and professionally in accordance with the best interests of its clients".*

G2 (5) An investment firm which receives a cheque, or other payable order made payable to a third party (e.g., a product producer), and which directly transmits that cheque or other payable order to that party.

G2 (6) Funds that are due and payable to an investment firm itself, in accordance with the following provisions:

- the amount is in accordance with a formula or basis previously disclosed to the client by the investment firm; or
- a number of working days as determined by the investment firm and recorded in its Client Asset Management Plan[4] ("CAMP") have elapsed since a statement showing the amount of fees and commissions issued to the client, and the client has not raised any queries. The Central Bank expects the investment firm to allow at least ten working days to elapse; or
- the precise amount of fees or commissions has been agreed by the client in writing, or has been finally determined by a court of competent jurisdiction.

G2 (7) A cheque or other payable order received from a client is not honoured by the paying eligible credit institution.

G2 (8) Client assets cease to be client assets where:

- they are paid, or transferred, to the client whether directly or into an account with an eligible credit institution or relevant party in the name of the client (not being an account which is also in the name of the investment firm); or

[4] Refer to Regulation 8.(3)

- where they are paid, or transferred, to a third party on the written instruction[5] of the client and are no longer under the control of the investment firm. In addition, acting in accordance with the terms of an investment management agreement or the completion of an order or application form will be considered to be a request from the client to pay the client assets to the relevant third party.

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

How should an investment firm deal with money received for investment in an activity that is not a regulated financial service?

G2 (9) Money received by an investment firm for investment in an activity that is not a regulated financial service[6] should not be deposited in a client asset account; this money should be held in a segregated account. If an investment firm chooses to operate a client asset type regime for its non regulated business, the Central Bank does not have an objection. However, it is critical the investment firm clearly explains to its clients that such assets:

a) are held separately from client assets;
b) will not be protected as client assets; and
c) will not be covered under the Investor Compensation Scheme.

[5] Written instructions are not required where client assets are passed for settlement within CREST or other settlement system.
[6] Investment that is not a client financial instrument or investment instrument

Regulations

Principle of Segregation

What does segregation mean?

Regulation 3(1) *An investment firm shall act honestly, fairly and professionally in accordance with the best interests of its clients.*

Regulation 3(2) *An investment firm shall:*

(a) keep client assets separate from the investment firm's own assets; and

(b) 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.

Regulation 3(3) *Without prejudice to Regulation 3(12), an investment firm shall not place in a client asset account any asset other than a client asset except in accordance with Regulation 6(3).*

Regulation 3(4) *Except in accordance with a legally enforceable agreement, an investment firm shall not use the assets of a client for any purpose other than for the sole account of that client.*

Guidance

Principle of Segregation

What does segregation mean?

G3 (1) Segregation also applies to client assets that may be held by a nominee.

G3 (2) An investment firm should understand and take steps to recognise the implications and requirements of Regulations 3(2) and 3(3) when calculating an investment firm's daily calculation.

Regulations

Principle of Segregation

Client assets shall only be used in accordance with client instructions

Regulation 3(5) *Without prejudice to Regulations 3(19), 4(15), 7(10), 7(11), 7(12), 7(13) and 7(16), an investment firm shall not use, change or transfer a client asset otherwise than in accordance with an instruction relating to that client asset received by the investment firm from the client for whom that client asset is held or as required by law or by order of any court of competent jurisdiction. For avoidance of doubt, an 'instruction' for these purposes includes a written agreement by which a client has instructed the investment firm to manage the client asset on a discretionary basis.*

Regulation 3(6) *Without prejudice to the generality of Regulation 3(3) and Regulation 3(12), an investment firm is not required to pay into a 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.*

Regulation 3(7) *Where, in accordance with an instruction from the relevant client, a client asset is transferred to a third party, the investment firm shall ensure that such transfer is overseen and approved by a member of staff other than the staff member who conducts the transfer.*

When is an investment firm deemed to hold client funds?

Regulation 3(8) *All money received from a client, or on behalf of a client, shall be held as client funds unless this money relates exclusively to an activity of the investment firm which is not a regulated financial service.*

Regulation 3(9) *For the purposes of these Regulations, an investment firm is deemed to hold client funds where-*

(a) the money has been lodged on behalf of a client of the investment firm to a client asset account with any one of the entities listed in Regulation 3(10) in the name of the investment firm or of any nominee of the investment firm; and

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

Guidance

Principle of Segregation

Client assets shall only be used in accordance with client instructions

G3 (3) An instruction from the client, for example, may take the form of what has been agreed in a signed terms of business/client documentation or recorded telephone line. Instructions are not required where client assets are passed for settlement within CREST or other settlement systems or for such transactions as mandatory corporate events.

When is an investment firm deemed to hold client funds?

No guidance deemed necessary

Regulations

Principle of Segregation

How should an investment firm hold client funds?

Regulation 3(10) *Client funds may not be held by an investment firm other than in a client asset account maintained by the investment firm at any one of the following:*

(a) a central bank;

(b) a credit institution authorised pursuant to any law implementing the requirements of Directive 2013/36/EU;

(c) a bank authorised in a non-EEA country;

(d) a qualifying money market fund.

Regulation 3(11) *Any client funds received shall be deposited in a client asset account without delay, and in any event not later than one working day after the receipt of such funds.*

Regulation 3(12) *Without prejudice to Regulation 3(13), where an investment firm receives from or on behalf of a client, money that:*

(a) is comprised of a mixture of client funds and other money, the investment firm shall first pay all of that money into a client asset account of that firm and thereafter shall, without delay, transfer out of or withdraw from the client asset account such money as is not client funds; and

(b) has been received for the purposes of or through it performing a function in the performance of which the investment firm is regulated by the Bank and that money is mixed or combined with money that the investment firm has received for the purposes of or through the investment firm performing a function in the performance of which it is not regulated by the Bank, the investment firm shall deal with all the money so received as though sub-paragraph (a) applied to it.

Regulation 3(13) *If an investment firm receives client funds where:*

(i) it is not clear which client owns such client funds, or

(ii) there is insufficient documentation to identify the client who owns such client funds,

the investment firm, having due regard to other legislation, shall, first pay the client funds into a client asset account of that investment firm and within 5 working days of the initial receipt of such client funds, either identify the client concerned or return the client funds.

Guidance

Principle of Segregation

How should an investment firm hold client funds?

G3 (4) The Central Bank expects an investment firm to lodge funds in the currency of receipt unless the investment firm has no client asset account denominated in that currency and it would be unduly burdensome for it to open such an account; in which case the investment firm may convert the client funds and hold them in a client asset bank account in a different currency. Details of such arrangements and a general statement relating to its exchange rate policy should be set out in the investment firm's terms of business or investment agreement as appropriate.

G3 (5) An investment firm should set out in its CAMP its procedures it will follow as regards handling mixed remittances (i.e., an amount received which is a mixture of client funds and other money) ensuring that processes complies with Regulation 3(12). An investment firm is only permitted to hold the exact amount of money in its client asset account to meet its client money requirement (refer to Regulation 6(3)). This will have timing implications for the handling of mixed remittances.

G3 (6) As part of the process provided for in Regulations 3(13), the Central Bank expects an investment firm to set out in its CAMP the steps an investment firm would follow in assessing how to deal with the receipt of client funds in this manner. Consideration of other Regulations/legislation should be taken into account, e.g., anti-money laundering obligations. An investment firm should consider adopting cut-off time limits for the submission of the missing client documents. The timeframe adopted should be reflective of the importance of the level of documents omitted by the client, ensuring the adoption of such timeframes will not result in the investment firm breaching any other Regulations/legislation; an investment firm should seek legal advice if it is in any doubt. Such assessment should be made without delay, but in any event, an investment firm should ensure it takes action in order to act in accordance with Regulation 3(13). An investment firm should have clear procedures in place to ensure that the unallocated funds are monitored and reconciled each day. All client funds should be included in the investment firm's daily reconciliation and daily calculation.

Regulations

Principle of Segregation

This page purposely left blank

Guidance

Principle of Segregation

How should an investment firm hold client funds (cont'd.)?

G3 (7) Without prejudice to any subsequent regulatory action which might follow for breach of the Regulations, if a client pays client funds into an investment firm's own bank account in error, the investment firm should transfer those client funds into a client asset account without delay but in any event no later than one working day in accordance with Regulation 3(11). An investment firm should not ignore such an occurrence and if such an exception occurs, the investment firm should:

a) investigate as to why client funds were lodged initially into the investment firm's own bank account;
b) put a procedure in place to prevent such an event re-occurring; and
c) reflect this procedure in the investment firm's CAMP.

G3 (8) Likewise, if client financial instruments are lodged into an investment firm's own custody account, the investment firm should transfer those client financial instruments into a client asset account without delay. An investment firm's CAMP should document the procedure and timeframe an investment firm should follow when client financial instruments are transferred in this manner.

Regulations

Principle of Segregation

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

Regulation 3(14) *Client funds shall only be deposited with any one of the entities listed in Regulation 3(10) where the investment firm:*

(a) is satisfied that the legal, jurisdictional, regulatory requirements and market practices relevant to the holding of client funds with that entity in the manner proposed do not adversely affect clients' rights; and

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

Regulation 3(15) *Where clients funds are deposited with any of the entities listed in Regulation 3(10), the investment firm shall, at least every 6 months, review the arrangements for the holding of client funds with that entity as against the criteria set out in Regulation 3(14), and such a review shall be approved in writing by the Head of Client Asset Oversight.*

Guidance

Principle of Segregation

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

G3 (9) As part of this assessment, the Central Bank expects an investment firm to take into account how the clients' rights would be affected in the event of the insolvency of the firm or the third party or both. An investment firm should ensure that any liens or encumbrances granted are permitted by the regulatory client asset protection regime.

G3 (10) The Central Bank expects an investment firm to clearly document in its CAMP the procedures it would follow to carry out the reviews required by Regulations 3(14), 3(15), 3(17) and 3(18).

G3 (11) In the event of a client instructing an investment firm to deposit client assets with a specific third party that does not meet with the investment firm's own internal risk assessment (refer to Regulation 3(14) and 3(17)), the investment firm should clearly explain to the client, that the third party in question does not meet the investment firm's internal assessment. If the client wishes to continue, the client's written consent should be obtained prior to depositing the client's assets with that specific third party (refer to Regulation 7(16)).

Regulations

Principle of Segregation

When is an investment firm deemed to hold client financial instruments?

Regulation 3(16) *For the purposes of these Regulations, 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 instruments, and

(b) either-

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

(ii) entrusts those instruments to any nominee,

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

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

Regulation 3(17) *A client financial instrument shall not be deposited by an investment firm with a third party otherwise than in a client asset account maintained by the investment firm at that third party and only where the investment firm:*

(a) is satisfied that the legal, jurisdictional, regulatory requirements and market practices relevant to the holding of client financial instruments with that third party in the manner proposed do not adversely affect the clients' rights.

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

Regulation 3(18) *Where clients 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), and such a review shall be approved in writing by the Head of Client Asset Oversight.*

Guidance

Principle of Segregation

When is an investment firm deemed to hold client financial instruments?

No guidance deemed necessary

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

See Guidance G3 (9) to G3 (11) above.

Regulations

Principle of Segregation

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

Regulation 3(19) *An investment firm shall not deposit any client financial instrument with a third party in a third country that does not regulate the holding and safekeeping of client financial instruments unless:*

(a) the nature of the financial instrument or of the investment services connected to that financial instrument requires that financial instrument to be deposited with such a third party in that country; and

(b) the client has been informed of this and has given prior written consent to such an arrangement.

What records is an investment firm required to maintain to segregate client assets for each client?

Regulation 3(20) *An investment firm shall keep an accurate record of each transaction on a client asset account in such a manner and form that:*

(a) the client for or in respect of whom the transaction was conducted is identified;

(b) the transaction is accounted for by the investment firm separate from all other transactions of the investment firm.

Regulation 3(21) *An investment firm shall keep the records required under Regulation 3(20) separate from records relating to transactions which are not related to the client asset account.*

Guidance

Principle of Segregation

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

G3 (12) An investment firm should clearly explain to its clients in a comprehensible manner what, if any, risks exist when holding client assets in a third country. The investment firm must obtain the client's prior written consent as required in Regulation 7(16).

What records is an investment firm required to maintain to segregate client assets for each client?

G3 (13) An investment firm may hold client assets in an individually designated client asset account (e.g., 'XYZ Ltd client asset account - Joe Bloggs'), or a pooled designated client asset account(s) (e.g., 'XYZ Ltd client asset account').

G3 (14) Where an investment firm holds client assets in pooled client asset accounts, accounting segregation should be maintained. In its internal records, an investment firm should maintain detailed accurate records in order to identify how much each client holds in that pooled client asset account and movements in that balance.

Regulations

Principle of Segregation

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

Regulation 3(22) *Where an investment firm receives client funds 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.*

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

Regulation 3(23) *An investment firm shall retain for 6 years such records as are required by these Regulations and such records as are necessary to demonstrate compliance with these Regulations.*

Regulation 3(24) *Where under or in relation to these Regulations, an investment firm holds a record or another party holds a record on behalf of an investment firm electronically, the investment firm shall ensure that it can produce such records without delay.*

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

Regulation 3(25) *An investment firm shall report such matters to the Bank, pertaining to these Regulations, as may be determined by the Bank from time to time. Such a determination may be in respect of:*

(a) investment firms generally, investment firms sharing any particular characteristic or a particular investment firm; and

(b) any one or more Regulations, or all of the Regulations, of these Regulations.

Guidance

Principle of Segregation

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

G3 (15) The issuing of a receipt is applicable in the case of client funds received from a client in the form of cheques or any other form of payment other than electronic transfer**.**

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

G3 (16) The retention of records for six years is applicable to all of the Regulations.

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

G3 (17) An investment firm will be required to report breaches of the Regulations (refer to Regulation 8(1)(c)). The Central Bank may request an investment firm to report, where necessary, other information in respect of its compliance with any aspect of the Regulations, e.g., material reconciliation differences arising from the client asset reconciliations (refer to Principle of Reconciliation (Regulation 5)).

Regulations

Principle of Designation and Registration

How should a client asset account be designated in an investment firm's internal financial records?

Regulation 4(1) *In advance of opening a client asset account with a third party, an investment firm shall designate in its own financial records each client asset account it will hold with any third party as a 'client asset account' in the account name.*

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

Regulation 4(2) *In advance of opening a client asset account with a third party, an investment firm shall ensure that the third party will designate in the financial records of the third party, the name of a client asset account held with it in a manner which makes it clear that the client assets are not assets of the investment firm.*

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

Guidance

Principle of Designation and Registration

How should a client asset account be designated in an investment firm's internal financial records?

G4 (1) An investment firm should designate in its own internal financial records each client asset bank and custodian account it holds with a third party by the title 'client asset account'. If an investment firm has limited capacity in its financial records to record the full title, an abbreviation such as 'clt asset' is acceptable, but it should be a distinguishable relevant title. The designation should be in the name field of the client asset bank and safe custody account and not in the address field or any other field within the internal financial records.

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

G4 (2) The designation should be in the name field of the client asset bank and safe custody account and not in the address field or any other field within the third party's financial records.

The Central Bank expects the verification to take the form of a bank statement, custodian statement or other electronic form. An investment firm may hold this verification electronically. For clarity, this verification process should be followed each time a client asset account is opened and not each time client assets are deposited in that particular client asset account. In effect, an investment firm has up to four working days after the initial lodgement of the client assets to withdraw the client assets if the client asset account is not correctly designated. This process of designation verification is a separate process to what is required under Regulation 4(8), which relates to ensuring that the client asset accounts are set up in accordance with the provisions of the Fund Facilities Letter and Financial Instrument Facilities Letter (refer to Regulations 4(4) & 4(5)).

G4 (3) For client asset accounts that have been opened prior to the commencement of the Regulations, an investment firm should review relevant documentation previously received from a third party to satisfy that the client asset accounts are correctly designated. The investment firm should maintain evidence of this review.

Regulations

Principle of Designation and Registration

What should an investment firm obtain from a third party in advance of opening a client asset account with a third party in respect of client funds?

Regulation 4(4) *In advance of opening a client asset account with a third party, an investment firm shall enter into an agreement (in these Regulations to be known as a "Funds Facilities Letter") and the terms of such Funds Facilities Letter shall be that:*

(a) *the parties acknowledge that the client funds in the client asset account are held by the investment firm in trust for the relevant clients;*

(b) *the third party shall hold and record the client funds in the 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 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 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 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 5(1) to 5(2) and such statement shall specify all client funds held by the third party for the investment firm; and*

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

Guidance

Principle of Designation and Registration

What should an investment firm obtain from a third party in advance of opening a client asset account with a third party in respect of client funds?

G4 (4) The Fund Facilities and Financial Instrument Facilities letter (refer to Regulations 4(4) & 4(5)), should be regarded as master letters obtained at the outset of the business relationship with the third party, if such a relationship changes, the letters need to be reviewed and may need to be amended.

Where an investment firm prints these letters on its own headed paper and provides the letters to the relevant third party for signature, it should ensure that the third party clearly signs, dates and stamps these letters with its official stamp. The letters should be signed by a person who has the necessary authority to sign on behalf of the third party.

G4 (5) An investment firm may also have other legal agreements with a third party for the purpose of providing custodial services; an investment firm should ensure that such legal agreements do not contradict/contravene the provisions contained in the Regulations and, in particular, Regulations 4(4) and 4(5).

Regulations

Principle of Designation and Registration

What should an investment firm obtain from a third party in advance of opening a client asset account with a third party in respect of client financial instruments?

Regulation 4(5) *In advance of opening a client asset account with a third party, an investment firm shall enter into an agreement (in these Regulations to be known as a "Financial Instruments Facilities Letter") and the terms of such Financial Instruments Facilities Letter shall be that:*

(a) *the parties acknowledge that client financial instruments in the 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 financial instruments and financial instruments of the third party;*

(c) *the third party will designate the name of the 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 client asset account with any other account or to exercise any right of set-off or counterclaim against client financial instruments in that 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 client asset account other than by an instruction from an authorised person of the investment firm;*

Guidance

Principle of Designation and Registration

What should an investment firm obtain from a third party in advance of opening a client asset account with a third party in respect of client financial instruments ?

See Guidance in G4 (4) to G4 (5)

Regulations

Principle of Designation and Registration

What should an investment firm obtain from a third party in advance of opening a client asset account with a third party in respect of client financial instruments (cont'd.)?

Regulation 4 (5) (cont'd.)

(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 5(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 client asset accounts.

How should an investment firm maintain the Funds Facilities and Financial Instruments Facilities Letters?

Regulation 4(6) *An investment firm shall:*

(a) arrange for a review of every Funds Facilities Letter and Financial Instruments Facilities Letter, where applicable, by the Head of Client Asset Oversight to ensure that every such letter adheres to the requirements in Regulations 4(4) or 4(5) (as the case may be);

(b) retain evidence of the review provided for in paragraph (a) for 6 years; and

(c) retain every Fund Facilities Letter and Financial Instrument Facilities Letter between the investment firm and a third party for 6 years.

Regulation 4(7) *On commencement of these Regulations, an investment firm shall review existing client asset accounts and shall ensure that the requirements in Regulations 4(4), 4(5) and 4(6) are complied with for those accounts within 3 months of the commencement of these Regulations.*

Guidance

Principle of Designation and Registration

What should an investment firm obtain from a third party in advance of opening a client asset account with a third party in respect of client financial instruments (cont'd.)?

See Guidance in G4 (4) to G4 (5)

How should an investment firm maintain the Funds Facilities and Financial Instruments Facilities Letters?

G4 (6) Where an investment firm may have correspondence on file from a third party that is holding client assets for client asset accounts that existed at the commencement of these Regulations, it should review this correspondence to ensure that the provisions of Regulations 4(4) and 4(5) are contained (refer to Regulation 4(7)). If these provisions are contained on a number of pieces of correspondence from the third party, the investment firm should compile all of this paperwork in one location showing a clear audit trail. Where the investment firm does not have all the provisions of Regulations 4(4) and 4(5), it should obtain this from the relevant third party; in such a case, the Central Bank expects that it would be easier to obtain a new Funds Facilities Letter and Financial Instrument Facilities Letter as applicable containing all of the provisions from the third party.

Regulations

Principle of Designation and Registration

What should an investment firm obtain from a third party prior to or after to the initial deposit of client assets with a third party?

Regulation 4(8) *Prior to or within 3 working days of the initial deposit of client assets in a client asset account, an investment firm shall obtain, in writing from the third party:*

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

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

What should an investment firm do when a client asset account is closed?

Regulation 4(9) *An investment firm shall without delay, obtain confirmation in writing, from the third party with whom the client asset account was opened, when a client asset account is closed and confirmation that it had a nil balance on the date it was closed.*

Guidance

Principle of Designation and Registration

What should an investment firm obtain from a third party prior to or after to the initial deposit of client assets with a third party?

G4 (7) Notwithstanding the Funds Facilities and Financial Instruments Facilities Letter referred to in Regulations 4(4) and 4(5), an investment firm should also obtain a written confirmation from a third party as provided in Regulation 4(8). To clarify, this confirmation may be obtained prior to the initial deposit or after the initial deposit of client assets into a client asset account. Note that, reference to the "*initial deposit of client assets*" is in relation to the initial depositing of client assets into the client asset account and not each time it deposits client assets into that particular client asset account.

Each confirmation should clearly document the applicable client asset bank and safe custody account numbers. Where client asset accounts are opened simultaneously (on the same day), one confirmation may be obtained but the investment firm should ensure that the confirmation from the third party lists all applicable client asset account numbers. This confirmation can be in electronic form. The Central Bank would expect the investment firm to obtain this confirmation without delay and in any event within three working days of the initial deposit of client assets.

What should an investment firm do when a client asset account is closed?

G4 (8) The investment firm should retain this confirmation obtained pursuant to Regulation 4(9) for six years as provided in Regulation 3(23).

Regulations

Principle of Designation and Registration

How should an investment firm hold client financial instruments?

Regulation 4(10) *An investment firm shall hold every 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 any financial instrument that the investment firm may hold that is not a client financial instrument.*

Regulation 4(11) *An investment firm shall hold documents of title to client financial instruments:*

(a) itself, or

(b) with a nominee company of an investment firm, or

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

Regulation 4(12) *An investment firm shall have procedures to record client financial instruments, including procedures to receive, hold and withdraw physical financial instruments and such procedures shall enable the effective monitoring of the movement of such client financial instruments.*

Regulation 4(13) *The procedures referred to in Regulation 4(12) shall be included in the investment firm's client asset management plan.*

Regulation 4(14) *Where an investment firm deposits client funds it holds on behalf of a client with a qualifying money market fund, the units in that money market fund shall be held in accordance with the requirements for holding financial instruments belonging to clients.*

Guidance

Principle of Designation and Registration

How should an investment firm hold client financial instruments?

G4 (9) When assets held on behalf of the investment firm by any nominee company fall to be client assets, an investment firm should accept the same level of responsibility. All the Regulations should be followed by the investment firm in respect of client assets held in this manner.

G4 (10) In the case where an investment firm physically receives client financial instruments (e.g., share certificate), the investment firm should have clear procedures in place to monitor the movement of these physical financial instruments; at a minimum, the Central Bank expects the investment firm to maintain a log to record the movement of the physical instruments as part of the monitoring process. Details of the client financial instrument should be entered onto the log on the day of receipt; the investment firm is not required to record the value of the instruments. The log should be monitored and updated each day the investment firm physically receives or transfers client financial instruments.

The Central Bank expects an investment firm to ensure that the physical arrangements, including access controls, are appropriate to the value and risk of the physical financial instrument entrusted to it for safekeeping and include adequate controls designed to safeguard them from damage, misappropriation or other loss.

G4 (11) Where an investment firm's client assets are held in accordance with Regulation 4(11)(c), the Central Bank would expect the investment firm to arrange for the lodgement of the client financial instruments without delay.

Regulations

Principle of Designation and Registration

How should an investment firm register client financial instruments?

Regulation 4(15) *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:*

(a) an eligible nominee which is:

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

(ii) a nominee company of an investment firm;

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

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

(b) an eligible custodian or relevant party outside the State or the EEA, 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 or the EEA.

Guidance

Principle of Designation and Registration

How should an investment firm register client financial instruments?

No guidance deemed necessary

Regulations

Principle of Designation and Registration

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

Regulation 4(16) *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, an eligible credit institution, relevant party or eligible custodian, shall:*

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

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

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

(b) instruct the eligible credit institution, relevant party or eligible custodian that:

(i) the value of the collateral passed by the investment firm on behalf of clients must be credited to the investment firm's client asset account with that party;

(ii) in the case that the collateral has been passed and the initial margin has been liquidated to satisfy margin requirements, the balance of the sale proceeds must be immediately paid into a client asset account; and

(iii) in the case that the collateral is passed to an exchange or clearing house, the sale proceeds must be dealt with in accordance with the rules of the relevant exchange or clearing house;

(c) ensure that a client's fully paid (non-collateral) financial instruments account and its margin financial instruments account will be held in separate accounts and that no right of set-off will apply.

Guidance

Principle of Designation and Registration

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

No Guidance deemed necessary

Regulations

Principle of Reconciliation

What must an investment firm reconcile?

Regulation 5(1) *In relation to client asset 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.*

Regulation 5(2) *Without prejudice to Regulation 5(1), an investment firm shall reconcile fixed term deposit accounts, 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 3 working days of the date to which the reconciliation relates.*

Regulation 5(3) *An investment firm shall reconcile, at least monthly, the balance of client financial instruments held, as recorded by the investment firm, with the balance of all client financial instruments held, as recorded by third parties as set out in a statement or other form of confirmation from the third party, and such a reconciliation shall be carried out within 10 working days of the date to which the reconciliation relates.*

Regulation 5(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.*

Guidance

Principle of Reconciliation

What must an investment firm reconcile?

G5 (1) In order to carry out the reconciliations an investment firm should, where applicable, reconcile:

(a) the balance on each client asset bank account as recorded by the investment firm with the balance on that account as set out in the statement or other form of confirmation or similar document[7] issued by the relevant third party with which those client asset accounts are held currency by currency. Dormant accounts should also be included;

(b) an investment firm's client asset safe custody records of client dematerialised financial instruments with statements or similar documents obtained from the relevant third party. In the case of dematerialised financial instruments not held through an eligible custodian, statements should be obtained from the person who maintains the record of legal entitlement;

(c) an investment firm's records of cash collateral held in respect of clients' margined transactions with the statement or similar document issued by the person with whom the collateral is maintained; and

(d) client financial instruments physically held by an investment firm. An investment firm should count at least monthly all client financial instruments physically held by it, or any nominee of the investment firm, and reconcile the results of this count to its record of the client financial instruments held in its physical possession. This reconciliation should be carried out within ten working days of the date to which the reconciliation relates.

The above is not an exhaustive list; an investment firm should reconcile all accounts that hold client assets. An investment firm should ensure that the reconciliations are performed using client asset records that are accurate, complied in a timely manner and the reconciliation itself is performed accurately.

[7] This statement or similar document may be provided on-line on condition that the investment firm retains a copy, either in electronic or hard copy format and can be reproduced without delay

Regulations

Principle of Reconciliation

This page purposely left blank

Guidance

Principle of Reconciliation

What must an investment firm reconcile (cont'd.)?

G5 (2) For the avoidance of doubt, Regulation 5(2) makes provision for fixed term deposit accounts to be reconciled on a monthly basis; note all other client asset bank accounts containing client funds should be reconciled on a daily basis in accordance with Regulation 5(1). An investment firm should have procedures in place in order to monitor when transactions are processed through its client asset bank accounts.

G5 (3) In the case of securities financing, in order to complete a reconciliation, an investment firm should ensure that the records of the investment firm include:

(a) details of the client on whose instructions the use of the client financial instruments has been effected; and

(b) the number of client financial instruments used belonging to each client who has given consent, so as to enable the correct allocation of any loss or gain.

Regulations

Principle of Reconciliation

How and who in an investment firm should carry out the reconciliation and what records should be maintained?

Regulation 5(5) *An investment firm shall keep a record of:*

(a) each reconciliation required by these Regulations;

(b) the information upon which the reconciliation is based;

(c) the person who carried out such reconciliation; and

(d) the person who reviewed such reconciliation.

Regulation 5(6) *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.*

Regulation 5(7) *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.*

Regulation 5(8) *If an investment firm outsources the performance of the reconciliation to a third party, the investment firm shall take reasonable steps to ensure that the third party has appropriate processes, systems and controls in place to ensure continuity in the effective performance of the outsourced activity.*

Guidance

Principle of Reconciliation

How and who in an investment firm should carry out the reconciliation and what records should be maintained?

G5 (4) An investment firm should be in a position to demonstrate, upon request, the date upon which a reconciliation was prepared; this evidence can be maintained in electronic form.

G5 (5) An investment firm may maintain the reconciliation electronically provided it can be reproduced without delay (refer to Regulation 3(24)). An investment firm should ensure that each reconciliation has relevant supporting backup material to facilitate the verification of figures in the reconciliation; the backup material should include statements received from third parties. Such statements may be provided online, provided that an investment firm maintains a copy and can produce these statements without delay.

G5 (6) Where an investment firm outsources the performance of reconciliations, it should have appropriate oversight of the process to ensure that the third party has appropriate processes, systems and controls for the performance of this activity. This would also apply where the outsourced provider is part of the same group. The manner in which the investment firm exercises oversight should be documented in the investment firm's CAMP. The investment firm should maintain a record to evidence the oversight of the process.

Regulations

Principle of Reconciliation

What should an investment firm do if it has failed to perform the reconciliation?

Regulation 5(9) *An investment firm shall inform the Bank when the investment firm has failed to carry out any reconciliation referred to in Regulations 5(1), 5(2) and 5(3) together with the reasons for such a failure. The investment firm shall provide this information to the Bank without delay and in any event within one working day of the date on which the reconciliation should have been performed.*

What should an investment firm do if there are reconciliation differences arising from the reconciliation?

Regulation 5(10) *An investment firm shall:*

(a) investigate within one working day the cause of any reconciliation difference in the reconciliation required pursuant to Regulations 5(1), 5(2) and 5(3);

(b) identify the cause of any such reconciliation difference identified in Regulation 5(10)(a) within 5 working days; and

(c) resolve any reconciliation difference identified in Regulation 5(10)(b) as soon as practicable.

Guidance

Principle of Reconciliation

What should an investment firm do if it has failed to perform the reconciliation?

G5 (7) Without prejudice to any subsequent regulatory action that may be taken, where an investment firm has failed to perform the reconciliation, the investment firm should notify the Central Bank as provided for in Regulation 5(9). For example, if on Tuesday, an investment firm fails to perform a daily reconciliation for the close of business Monday, it has until the close of business on Wednesday to notify the Central Bank of its failure together with the reasons thereof. The relevant reconciliation should be carried out without delay. All notifications in this respect should be provided by the investment firm to the Central Bank through the ONR.

What should an investment firm do if there are reconciliation differences arising from the reconciliation?

G5 (8) The Central Bank expects an investment firm to take a pro-active approach investigating and resolving reconciliation differences without delay thereby ensuring that the number of reconciliation differences remaining on a reconciliation are minimised. Refer to subsequent section which details when an investment firm is required to report to the Central Bank in respect of reconciliation differences.

In effect, where an investment firm performs a reconciliation on a Tuesday for close of business the previous day (Monday), Regulation 5(10) requires an investment firm to commence investigating reconciliation differences by close of business Wednesday followed by the process of identification and resolution.

While not an exhaustive list, in general reconciliation differences may arise as a result of:

Timing differences: Differences in timing between when an investment firm recognises a transaction and when a third party recognises the same transaction. Such differences are referred to as timing differences and will automatically correct themselves over a short period of time once both parties have recognised the transaction. Timing differences are best illustrated when an investment firm issues a cheque.

Regulations

Principle of Reconciliation

This page purposely left blank

Guidance

Principle of Reconciliation

What should an investment firm do if there are reconciliation differences arising from the reconciliation (cont'd.)?

At the time of issuing a cheque, an investment firm will recognise the transaction and remove the funds from their client asset bank account. The bank (the third party in this example) will only recognise the payment of the funds on presentation of the cheque by the payee. On recognition of the transaction by the bank, this transaction will no longer appear as a reconciliation difference.

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

Errors on the part of an investment firm: Reconciliation differences may appear due to errors on the part of an investment firm which have not been corrected at the time of completing the reconciliation. An investment firm may process an amount incorrectly leading to a reconciliation difference arising between its own records and that of a third party.

Regulations

Principle of Reconciliation

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

Regulation 5(11) *Without prejudice to Regulation 3(25), an investment firm shall report such matters pertaining to these Regulations as may be determined by the Bank from time to time.*

Guidance

Principle of Reconciliation

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

G5 (9) The Central Bank does not require an investment firm to report all reconciliation differences but rather expects an investment firm to report material reconciliation differences with the level of materiality determined by the investment firm. All material reconciliation differences should be reported to the Central Bank immediately via the ONR. In considering its determination of materiality, the Central Bank draws attention to the guidance provided by the Central Bank in G5 (10) and G5 (11) and in particular to the guideline timeframe provided by the Central Bank in G5 (12) under the reconciliation categories of timing differences, errors on the part of a third party and errors on the part of an investment firm. The basis and criteria for determining materiality should be recorded in the investment firm's CAMP. The Central Bank where necessary may engage with an investment firm to discuss how its material reconciliation differences have been determined and assess if other factors need to be considered.

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

G5 (10) When considering whether a reconciliation difference is material, the Central Bank expects the following considerations to be taken into account by investment firms:

a) the amount of the reconciliation difference;
b) the number of reconciliation differences appearing within reconciliations over time;
c) the length of time that a reconciliation difference remains outstanding; and
d) the nature of the reconciliation difference.

Regulations

Principle of Reconciliation

This page purposely left blank

Guidance

Principle of Reconciliation

When is an investment firm required to notify the Central Bank of reconciliation differences in the client asset reconciliation (cont'd.)?

G5 (11) Taking the quantum of the reconciliation difference into account alone when seeking to establish whether an amount is material may result in a number of low value reconciling differences being ignored when in aggregate these issues may prove to be material to a firm. Low value differences by virtue of their nature, age or number of occurrences may be indicative of significant underlying issues within an investment firm which should be reported to the Central Bank. If the Central Bank sets a threshold for reporting reconciliation differences based on quantum alone, a risk may arise that client asset accounts with balances under the materiality threshold, as communicated by the Central Bank, may not be subject to reconciliation by the investment firm on the assumption that, if the Central Bank considers these amounts immaterial for its own purposes, the investment firm may do the same.

Failure to reconcile any client asset account regardless of the balance is considered by the Central Bank to be a breakdown in controls.

- **When could a reconciliation difference be considered material?**

G5 (12) Materiality could be based on the nature of that difference after taking into account the period it remains outstanding rather than on quantum of that difference alone. The Central Bank expects an investment firm to determine when a reconciliation difference is material under the following categories of reconciliation differences taking into account the considerations as noted in G5 (10). Under the categories below, in the ordinary course of business, the Central Bank has provided a guideline timeframe in which a reconciliation difference would be regarded as material and if unresolved should be reported to the Central Bank. If an investment firm concludes that a lesser time or a longer time period is material for its business model, the investment firm should document the period and its reasons in its CAMP, engaging with the Client Asset Specialist Team (CAST) to discuss this assessment.

Regulations

Principle of Reconciliation

This page purposely left blank

Guidance

Principle of Reconciliation

When is an investment firm required to notify the Central Bank of reconciliation differences in the client asset reconciliation (cont'd.)?

Timing differences*:* By their nature timing reconciling differences, other than unpresented cheques, should clear within a relatively short space of time. Therefore, the Central Bank expects, in the ordinary course of business, any reconciliation timing difference that has not cleared within ten (10) working days would be considered material and should be reported to the Central Bank as provided for in G5 (9).

Errors on the part of a third party*:* It is an investment firm's responsibility to contact the third party in order to resolve any errors which it identifies. Therefore, the Central Bank expects, in the ordinary course of business, errors which remain un-reconciled in excess of fifteen (15) working days would be reported to the Central Bank as provided for in G5 (9).

Errors on the part of the investment firm*:* Errors identified in the investment firm's records which result in the investment firm having to lodge firm money into the client asset bank account should be reported to the Central Bank without delay. Therefore, the Central Bank expects, in the ordinary course of business, all other errors would be reported to the Central Bank if they remain un-reconciled in excess of fifteen (15) working days as provided for in G5 (9).

Regulations

Principle of Daily Calculation

What is the daily calculation for an Investment Firm?

Regulation 6(1) *An investment firm shall, each working day, ensure that its client money resource as at the close of business on the previous day is equal to its client money requirement.*

Regulation 6(2) *For the purposes of Regulation 6(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.*

Guidance

Principle of Daily Calculation

What is the daily calculation for an Investment Firm?

- **What is the client money requirement for an Investment Firm?**

G6 (1) The client money requirement represents all client funds held on behalf of clients or validly due to clients as of the date of the calculation, that should be recorded in the books and records of the investment firm, appropriately adjusted for reconciliation items on the client asset bank reconciliation. For example, client funds are validly due to the client if the client has delivered an asset but the client has not been credited with the proceeds, or funds have been returned to the client but the funds have not been cleared in the client asset bank account of the investment firm (e.g., uncashed cheques) or unallocated funds. Where applicable, an investment firm should ensure that it takes account of dividends and any stock lending fees earned by the client. In effect, the client money requirement may be more commonly referred to as an investment firm's client creditors' ledger appropriately adjusted for reconciliation items on the client asset bank reconciliation. An investment firm's client debtors should not be included unless a client is one of the same or there is a legally enforceable agreement in place between clients.

An investment firm writing margin transactions should also include:

a) any excess margin due to clients and

b) the amount an investment firm would be liable to pay to clients in respect of their margined transactions, if each client's open position was liquidated and the account was closed.

Less

c) the net amount an investment firm would receive in respect of an investment firm's margined transactions for clients with counterparties, if each such open position was liquidated and the investment firm's account with the counterparty was closed. Negative balances should be deducted from positive balances; if negative balances are greater than positive balances, this figure should be treated as zero for the purpose of calculating the client money requirement.

G6 (2) When calculating the client money requirement, an investment firm should ensure the provisions of Regulation 3(4) are adhered to.

Regulations

Principle of Daily Calculation

This page purposely left blank

Guidance

Principle of Daily Calculation

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

G6 (3) The client money resource represents all of the investment firm's client asset bank balances that should be recorded in the books and records of an investment firm, appropriately adjusted by reconciliation items on the client asset bank reconciliation. Any funds held in foreign currency may be included in the individual foreign currencies or may be converted to the base currency using the Central Bank rate for that day or any other established automatic rate feed. In effect, the client money resource may be more commonly referred to as an investment firm's client asset bank ledger appropriately adjusted by reconciliation items on the client asset bank reconciliation. In the event of an investment firm having an overdrawn bank balance in a particular client asset bank account, it should include this overdrawn balance in the client money resource for the purpose of the daily calculation in order to provide a true client money resource position.

Regulations

Principle of Daily Calculation

What should an investment firm do if its client money resource is not equal to its client money requirement?

Regulation 6(3) *In the event of a shortfall of client funds, an investment firm shall deposit into a 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 its client money resource is equal to its client money requirement.*

Regulation 6(4) *In the event of an excess of client funds, an investment firm shall withdraw from a 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 client asset account as is necessary to ensure that its client money resource is equal to its client money requirement.*

When is an investment firm required to notify the Central Bank of an excess or shortfall in completing its daily calculation?

Regulation 6(5) *Without prejudice to Regulation 3(25), an investment firm shall report such matters pertaining to these Regulations as may be determined by the Bank from time to time.*

Guidance

Principle of Daily Calculation

What should an investment firm do if its client money resource is not equal to its client money requirement?

G6 (4) A shortfall occurs when an investment firm's client money resource is less than its client money requirement. An excess occurs when an investment firm's client money resource is greater than its client money requirement. An investment firm should ensure that the Daily Calculation is completed in adequate time to enable an investment firm to fund a shortfall or transfer an excess within the permitted industry banking cut off times; cut-off times may vary depending on currency type.

When is an investment firm required to notify the Central Bank of an excess or shortfall in completing its daily calculation?

G6 (5) The level of funding required as a result of a shortfall in client funds for each investment firm will vary and whether this level of funding is material will also differ for each investment firm. Likewise, the size of the withdrawal required as a result of a surplus will also differ for each investment firm. As a result, the Central Bank will require each investment firm to assess what level of shortfall or surplus is considered material and record this rationale in its CAMP.

The Central Bank expects an investment firm to immediately notify the Central Bank via the ONR when the level of money it lodges or withdraws from its client asset bank account is material and to explain in the notification the reasons for this transfer. The Central Bank where necessary may engage with an investment firm to discuss its funding and its rationale.

Regulations

Principle of Daily Calculation

How and who in an investment firm should carry out the daily calculation and what records should be kept?

Regulation 6(6) *An investment firm shall keep a record of:*

(a) each calculation required by these Regulations;

(b) the information upon which the daily calculation is based;

(c) the person who carried out such calculation; and

(d) the person who reviewed such calculation.

Regulation 6(7) *The daily calculation shall be carried out by a person who is independent of the production and maintenance of the records used for the purpose of carrying out the daily calculation.*

Regulation 6(8) *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.*

Regulation 6(9) *If an investment firm outsources the performance of the daily calculation to a third party, the investment firm shall take reasonable steps to ensure that the third party has appropriate processes, systems and controls in place to ensure continuity in the effective performance of the outsourced activity.*

What shall an investment firm do if it has failed to perform any or all aspects of the daily calculation?

Regulation 6(10). *An investment firm shall inform the Bank when the investment firm has failed to carry out the daily calculation referred to in Regulation 6(1) together with the reasons for such a failure. The investment firm shall provide this information to the Bank without delay and in any event within one working day of the date on which the calculation should have been performed.*

Guidance

Principle of Daily Calculation

How and who in an investment firm should carry out the daily calculation and what records should be kept?

G6 (6) An investment firm should be in a position to demonstrate upon request, the date upon which a calculation was prepared; this evidence can be maintained in electronic form.

G6 (7) An investment firm may perform its daily calculations electronically provided that the daily calculations can be reproduced without delay (refer to Regulation 3(24)).

G6 (8) An investment firm should ensure that each daily calculation has the relevant supporting backup material for each calculation to enable the verification of figures in the daily calculation.

G6 (9) Where an investment firm outsources the performance of the daily calculation, it should have adequate oversight of the process to ensure that the third party has appropriate processes, systems and controls for the performance of this activity. This would also apply where the outsourced provider is part of the same group. The manner in which the investment firm oversees this activity should be documented in the investment firm's CAMP. The investment firm should maintain a record to evidence the oversight of the process.

What shall an investment firm do if it has failed to perform any or all aspects of the daily calculation?

G6 (10) Without prejudice to any subsequent regulatory action which may be taken, where an investment firm has failed to perform the daily calculation, the investment firm should notify the Central Bank as provided in Regulation 6(10). For example, if on Tuesday, an investment firm fails to perform a daily calculation for the close of business Monday, it has until the close of business on Wednesday to notify the Central Bank of its failure together with the reasons thereof. The relevant daily calculation should be performed without delay. All notifications in this respect should be provided by the investment firm to the Central Bank using the ONR.

Regulations

Principle of Client Disclosure and Consent

Disclosure of information by an investment firm to its clients

Regulation 7(1) *An investment firm shall ensure that any information provided to its clients shall:*

(a) be clear and concise and that key information shall be brought to the attention of the client;

(b) be maintained up to date;

(c) not disguise, diminish or obscure important information.

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

Regulation 7(2) *Prior to first receiving client assets an investment firm shall:*

(a) disclose to clients in writing its arrangements relating to the receipt of client funds;

(b) provide to clients a statement detailing its exchange rate policy, if applicable, in its terms of business or investment agreement as appropriate; and

(c) disclose to clients in writing, in its terms of business or investment agreement, as appropriate, whether interest is payable in respect of the client's funds and the terms on which such interest is payable.

Regulation 7(3) *Where applicable, prior to first receiving client assets or first receiving collateral from clients, an investment firm shall notify the client in writing, of the arrangements in relation to:*

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

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

(c) the exercise of conversion and subscription rights;

(d) dealing with take-overs and capital re-organisations; and

(e) the exercise of voting rights.

Regulation 7(4) *Where client assets are to be held in a pooled account, prior to first receiving client assets an investment firm shall explain to the client in writing the nature of a pooled account and the risks of client assets being held in a pooled account.*

Guidance

Principle of Client Disclosure and Consent

Disclosure of information by an investment firm to its clients

No guidance deemed necessary.

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

G7 (1) The Central Bank expects the information in respect of Regulations 7(2) to 7(4) will be disclosed in an investment firm's term of business or investment agreement. An investment firm should ensure this information is clearly documented.

Note, "*prior to first receiving client assets*" refers to the initial receiving of client assets from the client and not to each time an investment firm receives client assets from the same client. Additional disclosures may be required if there is a change in a service offered to the client or type of asset received, e.g., securities financing.

Regulations

Principle of Client Disclosure and Consent

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

Regulation 7(5) *Prior to first receiving client assets, an investment firm shall inform the client in writing of the following information:*

- *(a) the trading name, registered address and internet address of any third party with whom the client assets are to be held;*
- *(b) if the third party is a related party, the trading name, registered address and internet address of that related party;*
- *(c) the extent of the investment firm's liability in the event of default of the third party with whom the client assets are held;*
- *(d) the measures taken by the investment firm to ensure the protection of client assets;*
- *(e) any relevant investor compensation scheme applicable to the investment firm by virtue of its activities carried out in the State.*

Regulation 7(6) *Where an investment firm has considered the factors set out in Regulation 3(17) and where it is not possible under the law of the jurisdiction in which client financial instruments are held with a third party to be held in a manner in which they can be separately identifiable from the proprietary financial instruments of the third party or the investment firm, the investment firm shall:*

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

Guidance

Principle of Client Disclosure and Consent

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

G7 (2) The Central Bank expects the information in respect of Regulations 7(5) to 7(6) will be disclosed in an investment firm's term of business or investment agreement. An investment firm should ensure it keeps the client informed of any changes to this information, e.g., if the client assets are deposited with a third party which differs to that previously disclosed to the client.

Regulations

Principle of Client Disclosure and Consent

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

Regulation 7(7) *Prior to first receiving any client assets, an investment firm shall inform the client in writing of:*

(a) *the terms of any security interest or lien which the investment firm may have over the client's assets;*

(b) *any right of set-off the investment firm holds in relation to those client assets; and*

(c) *where applicable, the fact that a depository may have a security interest or lien over, or right of set-off in relation to, those client assets.*

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

Regulation 7(8) *Prior to depositing client assets outside of the State or the EEA, the investment firm shall provide a statement in writing to the client, before taking any action in relation to the client assets concerned, which contains the following information:*

(a) *that the client assets will be subject to the law of a jurisdiction other than the State or the EEA;*

(b) *that the legal and regulatory regime applying to the central bank, qualifying money market fund, eligible credit institution, relevant party or eligible custodian with whom the client asset account is held may be different to that of the State or the EEA and that the rights of the client relating to those client assets may differ accordingly; and*

(c) *that in the event of a default of such an institution those assets may be treated differently from the position which would apply if the assets were held in a central bank, qualifying money market fund, eligible credit institution, relevant party or eligible custodian in the State or the EEA.*

Guidance

Principle of Client Disclosure and Consent

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

No guidance deemed necessary

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

G7 (3) The Central Bank expects that, in the ordinary course of business, an investment firm will provide this information in its terms of business or investment agreement.

Regulations

Principle of Client Disclosure and Consent

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

Regulation 7(9) *In the case of collateral margined transactions, before an investment firm deposits collateral with, pledges, charges or grants a security arrangement over the collateral to, an eligible credit institution, relevant party or eligible custodian, it shall notify the client in writing:*

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

(b) 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.

Regulation 7(10) *Without prejudice to any other provision in these Regulations requiring the consent of a client, an investment firm shall obtain the prior written consent of the client in the case of collateral margined transactions:*

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

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

Regulation 7(11) *Prior to entering into the following arrangement, an investment firm shall clearly explain to its clients the circumstances in which the investment firm shall use a client's financial instruments in this manner and shall not:*

(a) use collateral in the form of a client's financial instruments as security for the investment firm's own obligations, without the prior written consent of the client,

(b) use collateral in the form of a client's funds as security for the investment firm's own obligations, without the prior written consent of the client, or

(c) use 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.

Guidance

Principle of Client Disclosure and Consent

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

G7 (4) The Central Bank expects that, in the ordinary course of business, an investment firm will provide this information in its terms of business or investment agreement.

Regulations

Principle of Client Disclosure and Consent

What information should be provided to clients regarding securities collateral?

Regulation 7(12) *Without prejudice to the generality of Regulation 3(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 conditions are met:*

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

Guidance

Principle of Client Disclosure and Consent

What information should be provided to clients regarding securities collateral?

G7 (5) Any cash or other collateral held in favour of a client as collateral for securities lending should be held in accordance with the Regulations. The Central Bank expects that, in the ordinary course of business, an investment firm will provide the information required in Regulation 7(12) to its clients in its terms of business or investment agreement.

Regulations

Principle of Client Disclosure and Consent

What information should be provided to clients regarding securities collateral (cont'd.)?

Regulation 7(13) *An investment firm shall not:*

(a) enter into arrangements for securities financing transactions in respect of client financial instruments which are held on behalf of a client in a pooled account; or

(b) use client financial instruments held in such a client asset account for the investment firm's own account or the account of another client;

unless in addition to the conditions set out in Regulation 7(12)(a) at least one of the following conditions is met:

(i) each client whose client financial instruments are held together in a pooled account must have given prior written consent in accordance with Regulation 7(12)(a);

(ii) the investment firm must have in place systems and controls which ensure that only client financial instruments belonging to clients who have given prior written consent in accordance with Regulation 7(12)(a) are so used.

Regulation 7(14) *Prior to entering into securities financing transactions in relation to client financial instruments held by the investment firm on behalf of a client or using client financial instruments for its own account or for the account of another client, an investment firm shall, before the use of those client financial instruments, provide to the client a statement, in a durable medium, containing the following information:*

(a) the obligations and responsibilities of the investment firm with respect to the use of those client financial instruments;

(b) the terms for their restitution;

(c) the risks involved.

Guidance

Principle of Client Disclosure and Consent

What information should be provided to clients regarding securities collateral (cont'd.)?

No Guidance deemed necessary

Regulations

Principle of Client Disclosure and Consent

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

Regulation 7(15) *An investment firm shall, at least annually, send to each client for whom it holds client assets, a written statement in a durable medium and such a statement shall cover the following information:*

(a) *details of all the client financial instruments held by the investment firm for the client at the end of the period covered by the statement;*

(b) *the extent to which any client assets have been the subject of securities financing transactions;*

(c) *the extent of any benefit that has accrued to the client by virtue of participation in any securities financing transactions and the basis on which that benefit has accrued;*

(d) *the amount of cash balances (which may be shown on a separate statement) held by the investment firm as of the statement date;*

(e) *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*

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

Guidance

Principle of Client Disclosure and Consent

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

G7 (6) Where the portfolio of a client includes the proceeds of one or more unsettled transactions, the information referred to in Regulation 7(15)(a) may be based on either the trade date or the settlement date provided that the same basis is applied consistently to all such information in each statement.

G7 (7) An investment firm needs to be able to demonstrate that the copy of the statement maintained can be provided when required and that it is an exact copy of the statement issued to the client. While Regulation 7(15) requires an investment firm to issue a statement at least annually, if a client requests a statement on a more frequent basis or a more detailed statement, the Central Bank expects a firm to facilitate this client request.

Regulations

Principle of Client Disclosure and Consent

When should an investment firm obtain consent in writing from its clients?

Regulation 7(16) *Where applicable, prior to first receiving client assets and without prejudice to any other provision in these Regulations requiring the consent of a client, an investment firm shall obtain the consent in writing of the client in any of the following circumstances:*

(a) where granting to any third party a lien, security interest and/or right of set-off over the client's 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 or the EEA;

(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;

(f) where interest earned on client funds is to be retained by the investment firm; and

(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.

Regulation 7(17) *On commencement of these Regulations, an investment firm shall review the consents relating to each existing client as of the date of such commencement and shall ensure that consents are obtained for the circumstances outlined in Regulation 7(16) in respect of those accounts within 3 months of the commencement of these Regulations.*

Guidance

Principle of Client Disclosure and Consent

When should an investment firm obtain consent in writing from its clients?

G7 (8) The Central Bank does not specify how an investment firm should obtain the necessary prior written consent but expects that this may be included in an investment firm's terms of business or investment agreement. The Central Bank expects an investment firm to maintain evidence of the required clients' prior written consent.

For existing clients (a client of the investment firm as at the date of commencement of the Regulations), a firm should review the prior written consents on file against the provisions of Regulation 7(16) and where such consents do not exist for existing clients, it should obtain them within three months of the commencement of the Regulations as provided for in Regulation 7(17).

Regulations

Principle of Client Disclosure and Consent

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

Regulation 7(18) *Prior to a retail client signing a terms of business or investment agreement as appropriate to open an account with an investment firm, an investment firm shall provide the retail client with a Client Assets Key Information Document and ensure that the document 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.

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

Regulation 7(19) *The Client Assets Key Information Document shall cover:*

(a) an explanation of the key features of these Regulations;

(b) an explanation of what constitutes client assets under these Regulations;

(c) the circumstances in which these Regulations apply and do not apply;

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

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

Regulation 7(20) *An investment firm shall, within 3 months of the commencement of these Regulations, make available to each existing retail client as of the date of such commencement, the Client Assets Key Information Document as outlined in Regulation 7(19).*

Guidance

Principle of Client Disclosure and Consent

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

G7 (9) An investment firm should document in its CAMP, the medium it will use to provide the Client Assets Key Information Document ("CAKID") to its retail clients. An investment firm should be able to demonstrate, when requested to do so, evidence that it provided the CAKID to its retail clients.

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

G7 (10) For the avoidance of doubt, Regulation 7(19) applies to all new retail clients; for existing retail clients (a retail client of the investment firm as at the date of commencement of the Regulations), Regulation 7(20) applies. For the purpose of Regulation 7(20), an investment firm may provide this document on its website. An investment firm should include in its annual statement to such retail clients, a notice that the CAKID is on its website.

G7 (11) The CAKID should at least contain the following where applicable:

a) <u>An explanation of the Regulations</u>

An investment firm should refer to the Regulations outlining what the Regulations mean. The investment firm should also refer the retail client to the Guidance explaining the purpose of such Guidance. A link to the Regulations and Guidance on the Central Bank's website should also be provided.

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

Regulations

Principle of Client Disclosure and Consent

This page purposely left blank

Guidance

Principle of Client Disclosure and Consent

What information is an investment firm required to include in the Client Assets Key Information Document (cont'd.)?

b) An explanation of what constitutes clients assets under the Regulations

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

c) The circumstances in which the Regulations apply and do not apply

An investment firm should state the circumstances where the client asset regime applies and explain any limitations (e.g., the client asset regime will not apply in respect of funds received for an activity that is not a regulated financial service).

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

An investment firm should explain which financial instruments held by the investment firm are subject to the client asset regime and which are not (e.g., when the asset held is in respect of an activity that is not a regulated financial service and therefore not subject to the client asset regime). An investment firm should explain any unique circumstances where the client asset regime may/may not apply. For example, the investment firm should set out that the client asset regime will not apply when a cheque or payable order is made out by the retail client in the name of another investment firm, eligible credit institution or relevant party and the investment firm transmits that cheque or other payable order to that party.

Regulations

Principle of Client Disclosure and Consent

This page purposely left blank

Guidance

Principle of Client Disclosure and Consent

What information is an investment firm required to include in the Client Assets Key Information Document (cont'd.)?

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

An investment firm should disclose to the retail client the circumstances under which it will:

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

An investment firm should set out the circumstances under which client assets may be held under any of these options. Where the client assets are held outside the State, the investment firm should set out what investor compensation scheme applies. Where client assets are held by a third party on behalf of an investment firm, the investment firm should set out what regulations that entity is subject to, or whether other similar requirements apply and any applicable risks or limitations. The investment firm should also set out the basis on which the third party was chosen to hold the client assets and whether it is a related or independent party of the investment firm. The above information would form part of an investment firm's considerations when deciding on where to deposit its client assets and assessing the consequences, if any, of deciding on a particular third party.

Regulations

Principle of Client Disclosure and Consent

This page purposely left blank

Guidance

Principle of Client Disclosure and Consent

What information is an investment firm required to include in the Client Assets Key Information Document (cont'd.)?

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

An investment firm should set out and explain:

- its arrangements in regard to the holding of client assets;
- the possible risks involved; and
- the controls in place to mitigate these possible risks.

An investment firm should draft their own responses under the headings in a) to e) above tailored to suit their particular business. It is essential that the investment firm drafts this document in a comprehensible manner, in order to ensure that retail clients can fully understand how their assets will be held and can consequently make informed decisions. As each document will be tailored to suit the business model of the investment firm and the services offered to its retail clients, the Central Bank does not intend to provide a CAKID template.

Regulations

Principle of Client Disclosure and Consent

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

Regulation 7(21) *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 7(19).

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

Regulation 7(22) *An investment firm shall inform all retail clients of any material changes to the Client Assets Key Information Document in a durable medium within one month of such changes having been issued.*

Guidance

Principle of Client Disclosure and Consent

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

No guidance deemed necessary

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

G7 (12) An investment firm should document in its CAMP how it will notify retail clients of any material change to the CAKID. For clarity, the CAKID may be provided to existing retail clients on an investment firm's website. However, for any subsequent changes to the CAKID arising from Regulation 7(21), the investment firm has to provide such notification in a durable medium. A website is not a durable medium for this purpose. Note, it is only the subsequent changes that are required to be provided and not the complete CAKID document.

Regulations

Principle of Risk Management

This page purposely left blank

Guidance

Principle of Risk Management

What is meant by Risk Management for client assets and how can an investment firm demonstrate risk management for client assets?

G8 (1) The Central Bank expects an investment firm to have appropriate risk management processes and systems in place to identify risks to the investment firm's objectives, processes and policies in respect of holding client assets. While the risk management policy for client assets is distinct, it may be incorporated as part of the investment firm's governance framework.

G8 (2) An investment firm is expected to consider and document in its CAMP how its business model may contribute to the risks associated with safeguarding client assets and the controls it has in place to mitigate these risks.

G8 (3) An investment firm is required to carry out the following:

a) appoint an individual to the role of 'Head of Client Asset Oversight' ("HCAO"), which is a Pre-Approved Controlled Function ("PCF")[8] (refer to Regulation 8(1)); and

b) document and maintain a CAMP (refer to Regulation 8(3)).

G8 (4) An investment firm is not limited to Regulations 8(1) and 8(3); it may adopt additional risk management processes to fully safeguard client assets appropriate to the nature, scale and complexity of its business model. The responsibilities of the HCAO and the content of the CAMP should be tailored to the business model of the investment firm.

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

Regulations

Principle of Risk Management

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

Regulation 8(1) *A investment firm shall have an individual with a client asset oversight role in order to ensure the safeguarding of client assets (in these Regulations referred to as the "Head of Client Asset Oversight") and shall ensure that the Head of Client Asset Oversight shall perform relevant duties including but not limited to the following:*

(a) *ensuring that the client asset management plan referred to in Regulation 8(3) is produced, maintained, reviewed and updated as the information upon which the client asset management plan is based, changes;*

(b) *ensuring that any potential or actual breaches of these Regulations 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;*

(c) *ensuring that the Bank is notified of any breaches of these Regulations without delay;*

(d) *approving any returns that are required by these Regulations to be submitted to the Bank in relation to client assets;*

(e) *report 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;*

(f) *ensuring that the persons performing the daily calculations as required under Regulation 6(1) and the reconciliations required under Regulations 5(1) to 5(3) are adequately trained and have sufficient skill and expertise to perform those functions;*

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

(h) *ensuring that the Client Asset Examination as required by Regulation 9 is completed and the assurance report is submitted within the agreed time;*

(i) *ensuring that every Funds Facilities Letter and Financial Instruments Facilities Letter is obtained and maintained;*

(j) *reviewing at least on an annual basis the provisions of every Funds Facilities Letter and Financial Instruments Letter to ensure its compliance with these Regulations; and*

(k) *performing the duties specified in Regulations 3(15) and 3(18).*

Guidance

Principle of Risk Management

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

G8 (5) The Board is ultimately responsible for safeguarding client assets; the requirement to have a HCAO does not detract from this. In most cases, the Central Bank expects a director to be nominated for the HCAO position. Where an investment firm proposes to appoint an individual who is not a director (e.g., in a large investment firm), the individual should be a senior manager at the investment firm who has direct access to the Board in respect of that function.

G8 (6) The Board should ensure that the individual undertaking the HCAO can demonstrate that he/she is free from any conflicts of interest in this area. In this regard, the HCAO should be sufficiently removed from the performance of day to day operational functions relating to the administration of client assets.

G8 (7) The HCAO is required to comply with the Central Bank's current Fitness and Probity Standards and any subsequent updates or amendments.

G8 (8) The Board should ensure that sufficient due diligence has been undertaken to support the nomination of the individual to the HCAO, monitor the on-going suitability as required by the Fitness and Probity Regulations and provide an appropriate level of resources for the HCAO to carry out the role effectively.

G8 (9) It is expected that the HCAO's role is filled at all times; where the HCAO may be absent from the investment firm for a very short period (e.g., annual leave), the Board and the HCAO should ensure that an appropriate Control Function ("CF") is available to provide cover to make submissions to the Central Bank.

G8 (10) An investment firm should report to the Central Bank's using the ONR in respect of Regulation 8(1)(c).

Regulations

Principle of Risk Management

What should the responsibilities of the Head of Client Asset Oversight include (cont'd.)?

Regulation 8(2) *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 8(1) having regard to the nature, scale and complexity of the business of the entity.*

What is the purpose of the CAMP?

Regulation 8(3) *An investment firm shall have a client asset management plan in order to safeguard client assets and shall have produced the plan within 3 months of the commencement of these Regulations.*

Guidance

Principle of Risk Management

What should the responsibilities of the Head of Client Asset Oversight include (cont'd.)?

No guidance deemed necessary

What is the purpose of the CAMP?

G8 (11) The CAMP has the following key purposes:

a) to document an investment firm's business model and related risks in respect of the safeguarding of client assets and the controls in place to mitigate these;

b) to demonstrate how an investment firm's systems and controls meet the principles of the client assets regime;

c) to enable the Board to document and monitor material changes to an investment firm's business model, changes to controls and processes and therefore the changes in the associated risks to safeguarding client assets; and

d) to make information readily available to assist in the prompt distribution of client assets particularly in the event of the investment firm's insolvency.

G8 (12) The CAMP should be regarded as a master document and not all material referred to in the CAMP needs to be contained within the document; however it should record the location of where the information is readily available. Note: Regulation 3(24) provides that, where information is held electronically, an investment firm shall ensure that it can produce such records without delay.

Regulations

Principle of Risk Management

When should the CAMP be approved and by whom?

Regulation 8(4) *A client asset management plan shall be reviewed:*

(a) at least once a year; and

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

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

Regulation 8(5) *An investment firm shall approve the client asset management plan on an annual basis or sooner if there is any change to the investment firm's business model which affects the manner by which client assets are held.*

Guidance

Principle of Risk Management

When should the CAMP be approved and by whom?

G8 (13) Regulations 8(4) and 8(5) set out when the CAMP should be approved and by whom. Material changes to the CAMP should be notified to the Board and discussed; this should include any significant changes to the investment firm's business or arrangements or any errors, omissions or control weaknesses highlighted from the regular monitoring, including the external auditors review (refer to Client Asset Examination section), to ensure the CAMP remains current. Any changes to the CAMP should be documented and reported to the Board and an updated CAMP should be prepared and approved by the Board.

G8 (14) An investment firm should define and document its materiality threshold levels in its CAMP. The rationale for these thresholds and related triggers should be set for dealing with breaches of its controls, processes and procedures. These thresholds and related triggers should be approved by the Board and take into account both quantitative and qualitative factors, e.g., the level of client assets; the complexity of client assets; the type of clients; and prior history of breaches relating to client assets.

G8 (15) An investment firm should specify and document a quantitative level of materiality, taking into account the amount of client assets held but also considering the investment firm's own net assets. Furthermore, a breach may be quantitatively immaterial but indicative of a qualitative issue which may indicate a risk to effectively safeguarding client assets. An investment firm should document in its CAMP the basis for its judgment in this area. Staff within the investment firm that are assigned to tasks relating to obligations under the Regulations should be sufficiently qualified, knowledgeable and experienced to identify issues both qualitative and quantitative. The investment firm may have different materiality levels or risk triggers for different processes and controls.

G8 (16) An investment firm should document the materiality threshold level for reporting and escalating matters to the Board in respect of any errors or breaches in its controls to safeguard client assets. In areas of judgement, an investment firm should document its approach and any triggers set.

Regulations

Principle of Risk Management

This page purposely left blank

Guidance

Principle of Risk Management

When should the CAMP be approved and by whom (cont'd.)?

G8 (17) Judgement made by the Board and/or senior management in relation to the following should be documented with the basis for that judgement and the information used to support it at that time:

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

This is not an exhaustive list; in the event circumstances change, the impact on management's judgement should be considered and updated.

G8 (18) On an on-going basis, an investment firm should monitor its materiality threshold level and in particular when there is a change to its business model, the environment or the level of client assets held, amend the materiality threshold level when appropriate. Amendments to the materiality threshold level should be approved by the Board and clearly communicated to the investment firm's staff.

Regulations

Principle of Risk Management

What should be included in the CAMP?

Regulation 8(6) *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;

(d) risks to the safeguarding of client assets;

(e) processes and controls to mitigate those risks; and

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

Guidance

Principle of Risk Management

What should be included in the CAMP?

G8 (19) For the purpose of Regulation 8(6)(a), an investment firm should consider the following where relevant:

a) reporting lines to the Board and/or senior management in relation to client asset management. An investment firm should document the management information provided to the Board to monitor the risks and mitigants associated with the safeguarding of client assets including details of the recipients of this information. This management information should be recorded in the firm's CAMP or, as outlined in G8 (12), record where such information is located;

b) the rationale for holding client assets. As part of this, consideration should be given where there is an outsourcing arrangement in place, with a group company or a third party, for the safeguarding of client assets. The investment firm should clearly document the arrangement, identifying the outsourced company, the rationale for the outsourced arrangement and an explanation as to where the arrangement fits into the overall control process. The statement should also specify what is excluded from the outsourcing arrangement. The investment firm should document how the effectiveness of the outsourced arrangement is overseen and monitored, including identifying whom within the investment firm is responsible for oversight of each outsourced arrangement;

c) a record of how an investment firm is able to differentiate, monitor and control the client assets subject to the Regulations from those assets which are not within the scope of the Regulations. The investment firm should document its rationale and judgement when there is ambiguity on concluding where a service or activity is not subject to the Regulations;

d) a record of the particular responsibilities of the HCAO.

Regulations

Principle of Risk Management

This page purposely left blank

Guidance

Principle of Risk Management

What should be included in the CAMP (cont'd.)?

G8 (20) For the purpose of Regulation 8(6)(c), an investment firm should consider the following where relevant

a) details of the client mandates in place including documenting the variety of investment instruments and services associated with each mandate;

b) approval process for the addition of new products or removal of existing products offered by the investment firm, including a process for assessing whether products fall within the scope of the Regulations.

G8 (21) For the purpose of Regulation 8(6)(d), an investment firm should document the material risks to client assets held. Factors to consider, in doing so, include items such as:

- counterparty risk including jurisdiction and associated legal risks;
- concentration risk;
- contagion risk;
- operational risk including risk of fraud;
- complexity of assets;
- compliance with client mandates;
- outsourcing;
- group arrangements;
- any other relevant issues.

Regulations

Principle of Risk Management

This page purposely left blank

Guidance

Principle of Risk Management

What should be included in the CAMP (cont'd.)?

G8 (22) The Central Bank expects an investment firm to map and align the material risks identified to the relevant controls and processes in place in order to mitigate these risks. When considering these risks, one aspect to consider is the investment and settlement cycle of a transaction in relation to client assets and this should be documented. This should, at a minimum, include the mechanism and control processes in place:

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

The investment and settlement cycle could include but is not limited to flowcharts or illustrative diagrams showing critical interventions particularly in cases where an investment firm carries out manual processing of client assets. The investment firm should record how cash is received and disbursed (e.g., via a pooled account or a segregated individual client asset account). This should include, where applicable, the use of margin (including excess margin) and collateral accounts associated with client financial instruments and the related control processes associated with these. A description of relevant systems should be captured including how access is controlled and segregation of duties is implemented in practice.

Regulations

Principle of Risk Management

This page purposely left blank

Guidance

Principle of Risk Management

What should be included in the CAMP (cont'd.)?

G8 (23) For the purpose of Regulation 8(6)(e) an investment firm should consider the following where relevant:

a) a description and documentation of the processes and controls associated with the safeguarding of ownership or registration of client financial instruments taking into account the nature of the financial instrument, the relevant counterparty and jurisdiction as well as any outsourcing arrangements.

b) a description of the procedures relating to the removal of funds due to the investment firm from a client asset account. For example, where an investment firm receives mixed remittances into a client asset bank account, documenting the control and processes surrounding the removal of funds due to it from the client asset bank account including the nature, frequency and timing of the removal process. An investment firm should be cognisant of Regulation 6(1) when considering this process, as the investment firm is only permitted to maintain the exact amount of client funds in a client asset account as is required to meet its client money requirement.

c) a description of how client financial instruments are held and monitored. For example, where an investment firm physically holds client financial instruments, the process for so doing should be documented; this description should include the business rationale, the extent of the service provided, the controls in place (e.g., the location and access rights to a fire-proof safe) and the monitoring of such controls.

d) a description of how client assets are dealt with where client funds are received but the investment firm is not clear which client has submitted the client funds; or where the investment firm has incomplete documentation on hand for the client to be set up on an investment firm's ledger (refer to Regulation 3(13)).

Regulations

Principle of Risk Management

This page purposely left blank

Guidance

Principle of Risk Management

What should be included in the CAMP (cont'd.)?

G8 (23) (cont'd.)

e) a list of the third parties used by the investment firm to hold client assets. The Central Bank expects an investment firm to have and apply a process to ensure that any amendments to the list of third parties are made only following approval by senior management.

f) counterparty risks and the controls in place to mitigate them should be documented. An investment firm should document its processes in maintaining and updating relevant legal agreements (including liens) associated with the holding of client assets.

g) a description of the systems and controls in relation to the production of information on client assets and submission of such information to a third party. The Central Bank expects an investment firm to have appropriate segregation of duties to ensure documented controls are reviewed by independent and appropriately qualified and knowledgeable staff.

Regulations

Principle of Risk Management

This page purposely left blank

Guidance

Principle of Risk Management

What should be included in the CAMP (cont'd.)?

G8 (24) For the purpose of Regulation 8(6)(f), an investment firm should consider the following where relevant:

a) the list of all third parties holding client funds and client financial instruments, including all account numbers, details of the authorised persons to the client asset accounts and whether such client asset accounts are pooled;

b) all legal agreements between an investment firm and a third party holding client assets and any amendments to such agreements, including arrangements with sub-custodians;

c) any agreements with other institutions such as exchanges or clearing houses;

d) all legal agreements between an investment firm and any nominee which holds client assets on behalf of the investment firm;

e) details of client asset accounts held with a nominee;

f) all Fund Facilities and Financial Instrument Facilities letters from third parties holding client assets confirming their segregation;

g) details of the relevant client asset accounts on the general ledger system recording client asset transactions, including instructions on how to access reports on the system;

h) details of all staff with access to the ledger system;

i) details of how to access or generate any relevant reports from the general ledger system;

j) description of any key reports used to monitor client assets with instructions on how to generate such reports;

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

l) records of where the most recent bank reconciliation is stored and details of how to access previous reconciliations;

m) records of where the most recent financial instrument reconciliations are stored and details of how to access previous reconciliations.

Regulations

Principle of Risk Management

This page purposely left blank

Guidance

Principle of Risk Management

What should be included in the CAMP (cont'd.)?

G8 (25) The CAMP should be sufficiently detailed to enable the insolvency practitioner to understand the business model and controls for safeguarding client assets. An insolvency practitioner needs to know where the assets are and the type and value of client assets. An investment firm should ensure there is sufficient information available to enable the distribution of client assets to take place as quickly as possible with minimum cost to clients. This information could also be required in the event that an investment firm is required to facilitate an orderly transfer of assets to another investment firm.

The above is not an exhaustive list of what should be included in the CAMP. Each investment firm should document in its CAMP what is relevant to its business model and related risks to safeguarding client assets.

Regulations

Principle of Client Asset Examination

What is the Client Asset Examination ("CAE")?

Regulation 9(1) *An investment firm shall arrange for an external auditor to prepare a report (in these Regulations referred to as an "assurance report") in relation to that investment firm's safeguarding of client assets at least on an annual basis and shall ensure that the external auditor appointed for this purpose receives full cooperation in a timely manner in relation to the preparation of the assurance report.*

Regulation 9(2) *The investment firm shall ensure that such an external auditor has the necessary resources and skills relating to the business of the investment firm.*

What is the scope of the CAE?

Regulation 9(3) *The investment firm shall ensure that the external auditor provides an assurance report as to whether:*

(a) *the investment firm has maintained processes and systems adequate to meet the requirements of these Regulations throughout the period of the examination;*

(b) *the investment firm was compliant with the Regulations as at the period end date;*

(c) *any matter has come to the attention of the auditor to suggest that the 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 throughout the period to which the examination relates; and*

(d) *changes made to the client asset management plan since the date of the last report have been drafted in sufficient detail to meet the requirements of these Regulations capturing the risks faced by the entity in holding client assets given the nature and complexity of the business of the entity under examination up to the date of the current report.*

Guidance

Principle of Client Asset Examination

What is the Client Asset Examination ("CAE")?

G9 (1) The CAE may be carried out by the investment firm's statutory auditor or an independent auditor. An investment firm should provide the auditor with all information and explanations that the auditor requires for the purposes of completing the CAE.

What is the scope of the CAE?

G9 (2) The assurance audit report should provide a reasonable assurance[9] opinion in respect of Regulation 9(3)(a) and (b) and a limited assurance opinion in respect of Regulation 9(3)(c) and (d).

G9 (3) In relation to the assessment of the CAMP, an investment firm should ensure that the auditor reviews the process undertaken by the investment firm to assess the on-going appropriateness of the CAMP including evidence of the steps taken by the investment firm to test and maintain the CAMP.

G9 (4) In addition to all other procedures which the auditor deems necessary for the completion of the CAE, subject to the considerations as set out within the auditor's technical standard[10] on auditing compliance with the Regulations, the Central Bank expects the investment firm to engage with the auditor to seek at a minimum:

a) third party confirmations (external confirmations) for a representative sample of balances held in respect of client assets both at year-end and also on one other randomly scheduled date during the year;

b) positive confirmation requests[11] from a representative sample of clients, as determined by the auditor, of client asset balances at the randomly selected date during the year, other than the period end date.

[9] International Standard of Assurance of Engagements ("ISAE") 3000

[10] Guidance for Auditors in relation to CAE engagements issued by the Auditors' professional body (equivalent to existing M47 Technical Standard)

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

Regulations

Principle of Client Asset Examination

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

Regulation 9(4) *The investment firm shall:*

(i) ensure that the external auditor provides the assurance report to the investment firm in a timely manner; and

(ii) provide the assurance report to the Bank not later than 4 months after each year end.

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

Regulation 9(5) *The investment firm shall assess the findings of such a report.*

Regulation 9(6) *The investment firm shall ensure that any remedial actions necessary arising from the report is set out in writing and that such remedial actions are carried out without delay.*

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

Regulation 9(7) *If an investment firm, which is permitted to hold client assets, claims not to have held client assets for the period in question, the investment firm shall:*

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

(b) shall ensure that the external auditor provides this report to the investment firm in a timely manner; and

(c) provide the report to the Bank not later than 4 months after each year end.

Guidance

Principle of Client Asset Examination

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

G9 (5) The period covered must not exceed more than 53 weeks after the period of the previous report. In the case of a recently authorised investment firm, this period should not exceed more than 53 weeks from the date of the investment firm's authorisation. This report should be submitted to the Central Bank via the ONR.

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

G9 (6) The report from the auditor should make provision for the investment firm to comment and to set out actions it has taken, or will take, where the report has identified recommendations for remediation. The investment firm should address those findings without delay. The auditor is not required to comment on the appropriateness of the investment firm's proposed remedial actions.

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

No guidance deemed necessary.

Regulations

Revocation of Client Asset Requirements 2007

Regulation 10 *The Client Asset Requirements 2007 are revoked on the coming into operation of these Regulations.*

Regulation 11 *The revocation of the Client Asset Requirements 2007 by these Regulations-*

(a) does not affect any investigation undertaken, or disciplinary or enforcement action undertaken by the Bank or any other person, in respect of any matter in existence at, or before, the time of the revocation, and

(b) does not preclude the taking of any legal proceedings, or undertaking of any investigation, or disciplinary or enforcement action by the Bank or any other person, in respect of any contravention of an enactment (including anything revoked by these Regulations) or any misconduct which may have been committed before the time of the revocation.

When will the Regulations come into operation?

Regulation 12 *These Regulations come into operation on 1 October 2015.*

Guidance

Revocation of Client Asset Requirements 2007

No guidance deemed necessary

Appendix I

Regulation 2 of the Regulations - Definitions

"assurance report" *has the meaning provided in Regulation 9(1);*

"authorised person" *means an employee or an officer of an investment firm who has the authority to commit the investment firm to a binding agreement;*

"Bank" *means the Central Bank of Ireland;*

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

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

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

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

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

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

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

"client asset management plan" *means the plan created pursuant to Regulation 8(3) for the purpose of safeguarding client assets;*

"Client Assets Key Information Document" *has the meaning given in Regulation 7(19);*

"client financial instrument" *means a financial instrument as defined in Regulation 3(1) of the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007) and an investment instrument 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 the 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,

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

but does not include money that an investment firm:

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

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

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

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

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

***"collateral"** means, with respect to a client:*

(i) client funds, or

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

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

"collateral margined transaction"

(a) 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, 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, and

(b) includes, but is not limited to,

(i) futures,

(ii) options,

(iii) rollovers,

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

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

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

"eligible credit institution" *means a credit institution or a credit institution authorised in a third country;*

"eligible custodian" *means:*

(a) a person whose authorisation from the Bank, or equivalent third country regulator, includes the safekeeping and administration of financial instruments on behalf of clients, including custodianship and related services such as cash management or collateral management, or

(b) an eligible credit institution;

"Financial Instruments Facilities Letter" *has the meaning provided in Regulation 4(5).*

"Funds Facilities Letter" *has the meaning provided in Regulation 4(4);*

"Head of Client Asset Oversight" *has the meaning given in Regulation 8(1);*

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

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

(b) 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 certified persons within the meaning of section 55 of the Investment Intermediaries Act 1995 or a person authorised pursuant to section 10 of the Investment Intermediaries Act 1995 to solely carry out:

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

(b) *custodial operations involving the safekeeping and administration of investment instruments.*

"investment services" *means the services of 'investment advice' and/or 'investment services' as defined in Regulation 3(1) of the European Communities (Markets in Financial Instruments) Regulations 2007 (SI No. 60 of 2007) and/or the services of 'investment advice' and/or 'investment business services' as defined in section 2 of the Investment Intermediaries Act 1995;*

"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;*

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

"physical financial instrument" *includes a share certificate;*

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

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

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

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

"related party"*, in relation to 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;*

"retail client" *has the meaning assigned to it by Regulation 3(1) of the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007);*

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

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

"third country" *means any country that is not a Member State of the European Union or the EEA.*

Appendix II

A. Illustrative Format for a Reconciliation

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

B. Daily Calculation Example for an Investment Firm

Daily Calculation example for Client Funds for 31 July 2014 (carried out by firm on 1 August 2014).

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

Step 1

Funds owed to its clients (an investment firm's internal creditors ledger only *) = Client Money Requirement ("A")

Client List@ 31/07/14	**€**	
A Smith	100,000	B
A Jones	70,000	C
J Bloggs	50,000	D
B Murphy	80,000	E
Total Creditors	300,000	B+C+D+E
Unpresented cheques	60,000 **	F
Total Client Money Requirement (A)	360,000	B+C+D+E+F

* If a client on the investment firm's debtor ledger is identical to a creditor on its creditor ledger, a credit can be reduced by the amount of the debit for that specific investor,

or

if there is a legally enforceable set-off agreement in place between clients, a credit can be reduced by the amount of the debit for these specific clients.

** Client funds paid to clients via cheque, but the clients have yet to present for payment; (Note: cheques issued to clients remain client money until cleared by the credit institution).

Note: An investment firm should assess what other adjustments may be required to calculate a firm's total client money requirement (e.g., unidentified client funds, excess margin, net unhedged unrealised gains due to clients etc).

Step 2

Funds in client bank account (an investment firm's internal Bank Ledger) = Client Money Resource ("B")

Bank List @ 31/07/14	**€**	
Pooled client bank account held in Bank A	130,000	W
Pooled client bank account held in Bank B	100,000	X
Segregated client bank account held in Bank C	50,000	Y
Total Client Money Resource (before adjustments)	280,000	W+X+Y
Unpresented cheques	60,000 ***	Z
Total Client Money Resource (B)	340,000	W+X+Y+Z

*** Client funds paid to clients but the clients have yet to present for payment; (Note that any client funds remain client money until cleared by the bank).

Note: An investment firm should assess what other adjustments may be required to calculate an investment firm's total client money resource.

Step 3

Final step in the Daily Calculation to determine if the client money resource ("B") requires funding to meet the client money requirement ("A")

A @ 31/07/14	€360,000
B @ 31/07/14	€340,000
A-B @ 31/07/14	(€20,000) ****

**** In this example, the daily calculation carried out on 1 August 2014 demonstrates that the investment firm does not have sufficient funds to meet its creditors for the close business 31 July 2014. Therefore, the investment firm is required to put €20,000 of its own firm money into the client asset bank account to meet the shortfall. This transfer should be carried out no later than close of business 1 August 2014.

Notes

Notes

Notes

Notes

T +353 1 224 6000 **F** +353 1 671 6561 www.centralbank.ie cast@centralbank.ie

Banc Ceannais na hÉireann
Central Bank of Ireland
Eurosystem

Bosca PO 559, Sráid an Dáma, Baile Átha Cliath 2, Éire
PO. Box No 559, Dame Street, Dublin 2, Ireland