FINANCIAL REGULATOR
Rialtóir Airgeadais

Client Asset Requirements

Under S.I No.60 of 2007

European Communities (Markets in Financial Instruments) Regulations 2007

Instructions Paper | November 2007

1 Contents

2 Introduction

Having consulted with the European Commission and with the consent of the Minister for Finance, these Requirements are imposed by the **Financial Regulator** under Regulation 79 of the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. 60 of 2007) ("**the Regulations**") on **investment firm**s that hold **client assets**.

In addition, these Requirements are imposed by the **Financial Regulator** under Section 52 of the Investment Intermediaries Act, 1995, as amended, ("**the IIA**") on **investment business firms** authorised to hold **client assets**.

Provisions of these Requirements that are shaded restate obligations of the **Regulations** that apply to **investment firms**. These provisions are imposed on **investment business firms** under Section 52 of the **IIA**.

The use of the term **firm** or **firms** throughout these Requirements is intended to refer to all **investment firms** as defined in the **Regulations** and all **investment business firms** as defined in the **IIA**.

2.1 Scope of the Requirements

2.1.1 **Client funds** consist of funds which, in the course of carrying on investment services, **a firm** receives or holds for or on behalf of **client**s. Funds, in turn, includes cash, cheques or other payable orders together with units in a **qualifying money market fund** and current and deposit accounts maintained with **eligible credit institution**s or **relevant parties**.

2.1.2 **Client financial instruments** consist of **financial instrument**s which, in the course of carrying on **investment services a firm** receives or holds for, or on behalf of, **client**s.

2.1.3 **A firm**, which receives or holds **client funds** or **client financial instruments** must do so only in accordance with these requirements.

2.1.4 The following paragraphs may provide guidance as to the circumstances in which a **firm** will, or will not, be deemed to receive or hold **client assets**.

2.1.5 Examples of circumstances in which a **firm** will be deemed to receive or hold **client funds**:

(a) A **firm** will be deemed to hold **client funds** where **funds** have been lodged to an account opened by the **firm held** in the name of the firm or any nominee of the firm with a central bank**, qualifying money market fund, eligible credit institution** or **relevant party** on behalf of a **client** pending investment or reinvestment or being returned to the **client**, and the **firm** has the capacity to effect transactions on that account. The **funds** will cease to be **client funds** upon the investment or reinvestment or return to the **client** of the **funds**.

(b) Endorsed cheques will be considered to be **client funds** from the time of receipt by the **firm** except where (b) below applies.

2.1.6 Examples of circumstances in which a **firm** will not be deemed to hold **client funds**:

(a) Where a **client,** in line with community legislation and in particular Directive 2002/47/EC on financial collateral arrangements, transfers full ownership of **financial instruments** or **funds** to a **firm** for the purpose of securing or otherwise covering a required margin such **financial instruments** or **funds** should no longer be regarded as belonging to the **client**[1].

[1] Where a **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**. However where a **firm** takes a charge or security interest

(b) A **firm** which receives a cheque, or other payable order made payable to a **firm**, **eligible credit institution** or **relevant party** (for example a **product producer**) and which transmits that cheque or other payable order to that party will not be deemed to hold **client funds.**

---

over money held in a **client** account that money would still be **client** money as there would be no absolute transfer of title to the **firm**.
The **firm** should ensure that **client** documentation clearly outlines the approach adopted by the **firm.** Any **financial instruments** or **client funds** held by the **firm** in excess of the required margin should be treated as **financial instruments** or **client funds** and treated in accordance with Requirement 4.10.

3 General Principles

3.1 Safeguarding Clients' Rights Relative to Financial Instruments

3.1.1 [2]A firm shall

(a) When holding **financial instruments** belonging to **client**s, make adequate arrangements to

(i) Safeguard **client**s' ownership rights, especially in the event of the firm's insolvency, and

(ii) Prevent the use of a **client's** instruments on own account, except with the **client**'s express consent,

(b) When holding funds belonging to **client**s, make adequate arrangements to safeguard the **client**s' rights and, except in the case of **credit institutions**, prevent the use of **client funds** for the firm's own account.

3.1.2 [3]For the purposes of safeguarding **client**s' rights in relation to **financial instruments** and funds belonging to them, **firm**s shall comply with the following requirements:

(a) they must keep such **records** and accounts as are necessary to enable them at any time and without delay to distinguish assets held for one **client** from assets held for any other **client** and from their own assets;

(b) they must maintain their **records** and accounts in such a way that ensures their accuracy, and in particular their correspondence to the **financial instruments** and **funds** held for **client**s;

[2] *Regulation 33(h) & 33(i)*
[3] *Regulation 160(2) & 160(3)*

(c) they must conduct, on a regular basis, reconciliations between their internal accounts and **records** and those of any third parties by whom those assets are held**;**

(d) they must take the necessary steps to ensure that any **client financial instruments** deposited with a third party in accordance with Requirement 6.1 are identifiable separately from the **financial instruments** belonging to the **firm** and from **financial instruments** belonging to that third party by means of

(i) differently titled accounts on the books of the third party, or

(ii) other equivalent measures that achieve the same level of protection;

(e) they take the necessary steps to ensure that **client funds** deposited in accordance with Requirement 5.1.3 in a central bank, **a credit institution** or bank authorised in a third country or a **qualifying money market fund** are held in an account or accounts identified separately from any accounts used to hold funds belonging to the **firm**;

(f) they must introduce adequate organisational arrangements to minimise the risk of the loss or diminution of **client assets** or of rights in connection with those assets as a result of misuse of the assets, fraud, poor administration, inadequate record-keeping or negligence.

3.1.3 **Client assets** received, held or paid out by the **firm** are to be regarded as held by the **firm** on behalf of, and for the benefit of the relevant **client**/**clients**.

3.1.4 All **client funds** must be promptly lodged to a **client account**.

3.1.5 [4]When providing **investment services o**r where appropriate ancillary services to its **client** a **firm** shall act honestly, fairly and professionally in accordance with the best interest of its **client**s.

3.1.6 One **client's** assets must not be used to fund another **client's** transactions or positions. This does not preclude **securities financing** carried out in accordance with Section 7.

3.1.7 Differences, other than timing differences, that are material or recurrent in nature identified during the reconciliation process must be promptly notified to the **Financial Regulator** in writing.

3.1.8 A **firm** is obliged to ensure that it maintains satisfactory systems of control and keeps proper accounting records in relation to **client funds** and **client financial instruments**. In particular, it must ensure that it has proper systems of internal control designed to ensure that:

(a) the balance on **client accounts** is not less than the amount it should be holding on behalf of **clients**; and

(b) the amount and type **of client financial instruments** held by the **firm** or lodged with **relevant parties** or **eligible custodians** is not less than the amount and type of **client financial instruments** that the **firm** should be holding on behalf of **clients**.

3.1.9 A **firm** must arrange for the prompt registration of a **client**'s registrable **client financial instruments** in the name of the **client**, except in the circumstances outlined in Requirement 6.4.

3.1.10 The receipt of **funds** from a **client** by way of cheque or other payable order becomes **client funds** upon receipt of the cheque or other payable order by the **firm**. **Funds** sent to a **client** by way of cheque or other payable order does not cease to be

[4] *Regulation 76(1)(a)*

client funds until the cheque or other payable order is presented and paid by the **eligible credit institution.**

4 General Requirements

4.1 Financial Instruments and Funds

4.1.1 A **firm** must treat all **funds** and **financial instruments** received, held or paid out by it, for or on account of a **client,** in the course of carrying on its activities with or for that **client** as **client assets**, except in the circumstances covered by Requirement 4.7.

4.1.2 Where a **firm** passes **client funds** or **client financial instruments** to another person[5] in the course of carrying on its activities, the **firm** must inform that person that the funds are **client funds** and/or that the **financial instruments** are **client financial instruments**.

4.1.3 The **firm**'s internal controls must require that all instructions to **qualifying money market funds**, **eligible credit institution**s, **relevant parties** or **eligible custodian**s to pass **client funds** or **financial instrument**s to another person must be validated by a second member of staff with appropriate level of authority.

4.2 Segregation

4.2.1 A **firm** must, except to the extent permitted in these Requirements, physically hold, or arrange for the holding of, **client assets** by a central bank, **qualifying money market funds**, **eligible credit institution**s, **relevant parties** or **eligible custodian**s, separate from the **firm**'s own assets and maintain accounting segregation as between **firm** and **client assets**. **See also Requirement 4.12.4**

[5] This does not apply where **client** assets are due in settlement of a transaction or being returned to the **client**.

4.2.2 In the context of the designation[6] of **client account**s in the **firm's** records, a **firm** authorised under the **Investment Intermediaries Act** is required to designate each account as a "Section 52 Account" in all of its financial records. In the same context, in the case of a **firm** authorised under the **Regulations,** the Financial Regulator will regard the designation of each **client account** as a "Client Asset Account" in all financial records as meeting the requirements of Regulation 160 (2) (a), (d) and (e). Attention is drawn to the relevant provisions of **the Regulations**, including Regulations 160(2) and 188 and to Section 52(6) of the **Investment Intermediaries Act, 1995** as applicable**.**

4.2.3 A **firm** must notify a **client** where it proposes to pool that **client**'s **funds** or **financial instruments** with those of one or more **client**s and, in the case of **retail client**s, provide a prominent warning of the resulting risks which clearly explain the meaning and implications of pooling[7]. Each **retail client** must consent, in writing, to the holding of his/her funds or **financial instruments** in such a manner. The consents, and disclosures referred to in this requirement and elsewhere in these Requirements (including Requirements 4.3, 4.10, 6.3 and 6.4) shall be obtained and made before providing the first service either in the **terms of business** or **investment management agreement** as appropriate.

4.2.4 A **firm** should only pool a **retail client**'s **funds or financial instruments** in the absence of the necessary consent where it can demonstrate that it has made every effort to procure such consent prior to the pooling of that **client**'s **funds** or **financial instruments** and has issued its standard notification stating

---

[6] Firms should ensure that all new accounts opened post 1 November 2007 are designated immediately in accordance with the requirements. The designation for accounts that were opened prior to 1 November 2007 should be amended to satisfy the requirements by no later than 30 April 2008.

[7] This does not apply where the **client** is investing in a pooled investment such as a collective investment scheme.

that the notification will apply to the **client** relationship unless the **firm** hears to the contrary.

4.2.5 Where a **firm** holds **client assets** in a **pooled client account**, accounting segregation must be maintained (that is, the **firm** must maintain detailed records identifying the balance in the account belonging to each individual **client** and movements in that balance).

4.2.6 A **firm** must not use for the account of one **client** the assets of another **client** except where such use is in accordance with a legally enforceable agreement such as a **set-off** agreement (see below) or a **securities financing** arrangement (see Section 7).

4.2.7 [8]A **firm** shall inform the **client**:

(a) about the existence and the terms of any security interest or lien which the **firm** has or may have over the **client**'s **financial instruments** or **funds**,

(b) about any right of set-off the **firm** holds in relation to those **instruments** or **funds**; and

(c) if applicable, about the fact, if any, that a depository may have a security interest or lien over, or right of set-off in relation to those **instruments** or **funds**.

4.2.8 The following criteria must be fulfilled[9] where it is sought to apply a **set-off** for the purpose of a **client funds** calculation

A. Three Party Set-off

(a) The **three party set-off** must:

(i) be agreed in writing between the **set-off client creditor** and the **firm** and enforceable by the **firm**

[8] *Regulation 90*

[9] In the case of ***three party set-off*** the criteria must be fulfilled regardless of the nature of, or relationship between, the ***set-off client creditor*** and the set-off **client** debtor. This includes where the ***set-off client creditor*** and the set-off **client** debtor are married or related or are a natural person and a **body corporate** in which the natural person has an interest of any kind.

without notice to the **set-off client creditor** or any other action;

(ii) be supported by a guarantee/indemnity from the **set-off client creditor** (as primary obligor) to the **firm** in respect of the obligations of the **set-off client** debtor to the **firm** in respect of which the **set-off** is sought to be effected; and

(iii) effect a **set-off** between the obligations of the **set-off client creditor** to the **firm** under the guarantee/indemnity and the obligations of the **firm** to the **set-off client creditor** in respect of any credit balance on its account with the **firm**.

(b) The guarantee/indemnity referred to in (a)(ii) must be executed as a deed.

B. Bilateral Set-Off

The **bilateral set-off** must be adequately documented and enforceable by the **firm** without notice to the **client** or any other action.

C. All Set-Offs

(a) Each **set-off** effected[10] must be written up in the ledger accounts of the **set-off client(s)** on the date on which it is effected.

(b) The **firm** must maintain, in accordance with the Books and Records Requirements issued by the **Financial Regulator** under Section 19 of the Investment Intermediaries Act, 1995 or in accordance with the Retention of Records Requirements set out in Regulation 40 of the **Regulations** and, as applicable all documents relating to the set off arrangements.

(c) The **firm** must ensure that:

[10] This includes where it is treated as effected for the purposes of any ***client money reconciliation***.

(i) the **set-off client creditor** in the case of the **three party set-off** and the relevant **client** in the case of **bilateral set-off** (the creditor) has the required capacity and authority to enter into the set off arrangements;

(ii) all documentation relating to the set off arrangements is duly executed on behalf of the creditor;

(iii) where the creditor is a **body corporate**, there is (if required under applicable law) corporate benefit accruing to it from the set off arrangements;

and where necessary should obtain an opinion or opinions from its legal advisers on the issues set out at Requirements 4.2.8(c) (i) and (ii).

(d) The **firm** must obtain an opinion or opinions from its legal advisers that the set off arrangements are legally well-founded in all relevant jurisdictions and would be enforceable in all circumstances including, without limitation, any default of the **set-off client(s)** and any insolvency, bankruptcy, liquidation, reorganisation, moratorium, examinership of the **set-off client creditor**, the **set-off client(s)** or the **firm**.

(e) The **Financial Regulator** expects that all opinions referred to above will be provided by independent external sources of advice of appropriate professional standing. The **Financial Regulator** may, at any time require that such advisers provide a confirmation to it that in the case of **three party set-off** the criteria set out at A (a) and (b), and C (c) (i) and (ii) and (d) have been complied with and in the case of **bilateral set-off** that the criteria set out at B and C(c)(i) and (ii) and (d) have been complied with. The **Financial Regulator** may also require copies of the relevant opinions and/or the documentation relating to the set off arrangements.

4.3 Assets to be held in a Client Account

4.3.1 A **firm** must ensure that **client assets** are held in a **qualifying money market fund,** a **client account** with a central bank or one or more **eligible credit institution**s, **relevant parties** or **eligible custodian**s which the **firm** considers to be safe repositories for **client assets**. **Client assets** may only be passed to other persons on the **written instructions** of the **client** concerned. In this regard, 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 **written instruction** from the **client** to pay the **client assets** into a **qualifying money market fund**, or an account opened with a central bank, an **eligible credit institution, relevant party** or **eligible custodian**.

4.3.2 Where a **firm** deposits funds it holds on behalf of a **client** with a **qualifying money market fund,** the units in that money market fund should be held in accordance with the requirements for holding **financial instruments** belonging to **client**s.

These requirements are set out in this section and Section 6.

4.3.3 Subject to Requirements 5.1.5 and 6.1 in deciding whether or not an **eligible credit institution**, **a qualifying money market fund**, **relevant party** or **eligible custodian** is a safe repository for **client assets** the **firm** will be required to undertake an appropriate and continuing risk assessment. The name of the **qualifying money market fund**, **eligible credit institution**, **relevant party** or **eligible custodian** with whom a **client**'s **assets** are placed must be provided to the **client** where the **qualifying money market fund**, **eligible credit institution**, **relevant party** or **eligible custodian** is part of a

group of which the **firm** is a member and in all other cases on request from the **client**.

4.3.4 Where a **client** has indicated that he does not wish his assets to be held with a particular **eligible credit institution**, **relevant party** or **eligible custodian** the **firm** must return the assets to, or to the order of, the **client** as soon as possible.

4.3.5 [11]**Firms** shall not place funds of a **client** in a **qualifying money market fund** where that **client** objects to such placement**.**

4.3.6 A **client account** with a central bank, a **qualifying money market fund**, an **eligible credit institution**, **relevant party** or **eligible custodian** must be designated in such a way as to make it clear that the **client assets** do not belong to the **firm** and are subject to the **Regulations** and Section 52 of the **Investment Intermediaries Act, 1995**, as appropriate[12]. In the case of non-Irish **eligible credit institution**s, **relevant parties** or **eligible custodian**s it will be sufficient for the title of the account to sufficiently distinguish the account from any account containing assets that belong to the **firm**.

4.3.7 Before **client assets** are lodged to a **client account** with a central bank, a **qualifying money market fund**, an **eligible credit institution**, **relevant party** or **eligible custodian**, that institution must have agreed in writing that it will deliver to the **firm** a statement or similar document[13] daily[14] in the case of **client funds** and at least once a month in the case of **client**

---

[11] *Regulation 161(7)*

[12] The Financial Regulator would expect firms to request such wording as outlined in Requirement 4.2.2. Firms should ensure that all new accounts opened post 1 November 2007 are designated immediately in accordance with the requirements. The designation for accounts that were opened prior to 1 November 2007 should be amended to satisfy the requirements by no later than 30 April 2008.

[13] This statement or similar document may be provided on-line on condition that the **firm** retains a copy, either in electronic or hard-copy format for audit trail purposes, and that a written version is available upon request by the **firm**.

[14] In the case of fixed term deposits the **firm** must obtain a statement or other form of confirmation or similar document from the ***eligible credit institution*** at the commencement and conclusion of the fixed term. During the term of the deposit it will be sufficient for the **firm** to perform the daily reconciliation on the basis of a statement or other form of confirmation or similar document received from the ***eligible credit institution*** on at least a monthly basis.

financial instruments specifying all **client assets** held and a description and the amount of all the **financial instruments** held in **client account**s.

4.3.8 [15]A **firm** shall

(a) Inform the **client** or potential **client** if accounts that contain **financial instruments** or **funds** belonging to that **client** or potential **client** are or will be subject to the law of a jurisdiction other than the State, and

(b) Indicate that the rights of the **client** or potential **client** relating to those **financial instruments** or **funds** may differ accordingly.

4.3.9 A **firm** must not hold **client assets** in a **client account** opened with a central bank, a **qualifying money market fund**, an **eligible credit institution**, **relevant party** or **eligible custodian**[16] outside Ireland unless the **firm** has previously disclosed to the **client** in writing:

(a) that the legal regime applying to the central bank, **qualifying money market fund**, **eligible credit institution, relevant party** or **eligible custodian** with whom the **client account** is held may be different to that of Ireland;

(b) 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 Ireland; and

(c) that the regulatory regime applying to the central bank, **qualifying money market fund**, **eligible credit**

[15] *Regulation 89*
[16] This includes situations where an Irish ***eligible custodian*** passes ***client assets*** to an ***eligible custodian*** outside Ireland.

institution, **relevant party** or **eligible custodian** with whom the **client account** is held may be different to that of Ireland.

4.3.10 In the case of a **retail client** the firm must obtain the written consent of the **client** before the assets are passed to a central bank, **qualifying money market fund**, **eligible credit institution**, **relevant party** or **eligible custodian** outside Ireland. A firm should only hold **client assets** in a **client account** with a central bank, **qualifying money market fund**, e**ligible credit institution**, **relevant party** or **eligible custodian** outside Ireland in the absence of the necessary consent where it can demonstrate that it has made every effort to procure such consent prior to the placing of that **client's assets** with such a third party outside Ireland and has issued its standard notification stating that the notification will apply to the **client** relationship unless the **firm** hears to the contrary.

4.4 Default of a Qualifying Money Market Fund, Eligible Credit Institution, Relevant Party or Eligible Custodian

4.4.1 The **firm**'s terms of business or **investment management agreement**, as appropriate, should clearly state the extent of the **firm**'s liability in the event of the default of **a qualifying money market fund**, an **eligible credit institution**, **relevant party** or **eligible custodian** with whom **client assets** are held.

4.4.2 A **firm** must notify the **Financial Regulator** as soon as it becomes aware of the **default** of any party with whom **client assets** are held stating:

(a) whether the **firm** intends to make good any shortfall that has arisen or may arise; and

(b) the amounts involved.

4.5 Reconciliations

4.5.1 A **firm** must, as often as necessary to ensure the accuracy of its records, reconcile all **client assets** in accordance with Requirement 4.5.2. This **reconciliation** must be performed:

(a) daily in the case of **client funds** by the end of the following **business day**; and

(b) at least monthly in the case of **client financial instruments** and within ten **business day**s of the date to which the **reconciliation** relates.

Where such **reconciliation**s are carried out electronically the **firm** should retain a hard copy of the **reconciliation**.

4.5.2 In order to carry out the **reconciliation**s the **firm** must, where applicable, reconcile:

(a) the balance on each **client account** as recorded by the **firm** with the balance on that account as set out in the statement[17] or other form of confirmation or similar document issued by the central bank, **qualifying money market fund**, **eligible credit institution** or **relevant party** currency by currency;

(b) the **firm**'s records of **client financial instruments** which it does not physically hold with statements or similar document[18] obtained from **qualifying money market**

[17] In the case of fixed term deposits the **firm** must obtain a statement or other form of confirmation or similar document from the ***eligible credit institution*** at the commencement and conclusion of the fixed term. During the term of the deposit it will be sufficient for the **firm** to perform the daily reconciliation on the basis of a statement or other form of confirmation or similar document received from the ***eligible credit institution*** on at least a monthly basis.

[18] This statement or similar document may be provided on-line on condition that the **firm** retains a copy, either in electronic or hard copy format for audit trail purposes and that a written version is available upon request by the **firm**.

funds or **eligible custodian**s and, in the case of dematerialised **financial instruments** not held through an **eligible custodian**, statements from the **person** who maintains the record of legal entitlement; and

(c) its records of cash **collateral** held in respect of **client**s' **margined transaction**s with the statement or similar document issued by the **person** with whom that **collateral** is located.

In addition, the **firm** must count all **client financial instruments** physically held by it, or any **nominee company** wholly owned by the **firm**, and reconcile the results of this count to its record of the **client financial instruments** in its physical possession.

4.5.3 The **firm** should retain a hard copy of all differences corrected unless they arise solely as a result of identified differences in timing.

4.5.4 Where differences, other than timing differences, are identified on any of the **reconciliation**s above, these must be corrected as soon as possible following the identification of these differences. The **firm** is required to notify the **Financial Regulator** in writing within one **business day** of the completion of the **reconciliation** of any differences which are material or **recurrent** in nature.

4.6 Failure to perform reconciliations

4.6.1 A **firm** must notify the **Financial Regulator** immediately, and confirm in writing, where it has been unable or has failed to perform any of the **reconciliation**s required by Requirement 4.5 within the timeframe permitted.

4.7 When Assets Cease to be Client Assets

4.7.1 **Funds** do not cease to be **client funds** until the cheque or other payable order is presented and paid by the **eligible credit institution**.

4.7.2 Assets cease to be **client assets** where:

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

(b) they are paid, or transferred, to a third party on the **written instructions**[19] of the **client** and are no longer under the control of the **firm**. In addition, acting in accordance with the terms of an **investment management agreement** or the completion of an **order** or application form will be considered to be a request from the **client** to pay the **client assets** to the relevant third party;

(c) **funds** are due and payable to the **firm** itself, in accordance with the provisions detailed below;

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

4.7.3 A **firm** may treat **funds** as due and payable where:

(a) the amount has been accurately calculated and is in accordance with a formula or basis previously disclosed to the **client** by the **firm**; or

(b) ten **business days** have elapsed since a statement showing the amount of fees and commissions has been

[19] ***Written instructions*** are not required where ***client assets*** are passed for settlement within CREST or other settlement system.

issued to the **client**, and the **client** has not raised any queries; or

(c) the precise amount of fees or commissions has been agreed by the **client** in writing, or has been finally determined by a court, arbitrator or arbiter.

4.8 Client Statements

4.8.1	[20]A **firm** that holds **client financial instruments** or **client funds** shall at least once a year, send to each **client** for whom the **firm** holds **financial instruments** or **funds,** a statement in a durable medium of those **financial instruments** or **funds** unless such a statement has been provided in any other periodic statement[21].
	Requirement 4.8.1 does not apply to a **credit institution** authorised under Directive 2006/48/EC in respect of deposits within the meaning of that Directive held by that institution.
4.8.2	[22]This statement referred to in Requirement 4.8.1 shall include the following information:
	a) details of all the **financial instruments** or **funds** held by the **firm** for the **client** at the end of the period covered by the statement; b) the extent to which any **client financial instruments** or **client funds** 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; and

[20] *Regulation 96(18)& 96(19)*

[21] A **firm** which holds **financial instruments** or **funds** and carries out the service of portfolio management for a **client** may include statement referred to in this Requirement in the periodic statement it provides to that **client** under Regulation 96 Paragraph 9 of the **Regulations** – Regulation 96(22)

[22] *Regulation 96(20)*

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

4.8.3 [23]Where the portfolio of a **client** includes the proceeds of one or more unsettled transactions, the information referred to in Requirement 4.8.2(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 the statement.

4.8.4 The statement referred to in Requirement 4.8.1 must also identify any **client financial instruments** registered in the **client**'s own name, which are physically held in custody by, or on behalf of, the **firm** separately from those registered in any other name and show the market value of any **collateral** held as at the date of the statement.

4.9 Auditor's Report

4.9.1 The **firm** is required to ensure that its external auditors:

(a) examine the books and records of the **firm** in relation to **client assets**;

(b) review the systems and procedures employed by the **firm** in relation to the safe-keeping of, and accounting for, **client assets;** and

(c) examine compliance by the **firm** with these Requirements

on an annual basis, or more frequently as required by the **Financial Regulator**, and report in a format acceptable to the **Financial Regulator** stating whether, in their opinion, these Requirements have been complied with.

Note: A **firm** acting in compliance with this requirement will be considered to be acting in compliance with Regulation 144(1) of the **Regulations**.

[23] *Regulation 96(21)*

4.10 Transactions involving collateral margined transactions[24]

4.10.1 Before a **margin account** is opened by the **firm**, with an **eligible credit institution, relevant party** or **eligible custodian**, on behalf of a **client** or **client**s, the **firm** must comply with the procedures laid down in Requirement 4.3.

4.10.2 The **firm** is required to ensure that a **client**'s **assets** held in respect of **margin account transaction**s are kept in a separate account to other assets held on behalf of that **client**.

4.10.3 Before the **firm** deposits the **collateral** with, **pledge**s, **charge**s or grants a security arrangement over the **collateral** to, an **eligible credit institution, relevant party** or **eligible custodian**, it must:

(a) obtain the **client**'s prior written consent;

(b) obtain the **client**'s consents referred to in Requirement 4.10.4 below, where applicable;

(c) undertake an appropriate and continuing risk assessment of the **eligible credit institution, relevant party** or **eligible custodian** with whom the **firm** proposes to deposit the **collateral**, or **pledge** or charge or grant a security arrangement over the **collateral**;

(d) notify the **eligible credit institution**, **relevant party** or **eligible custodian** that the **firm** is under an obligation to keep this **collateral** separate from the **firm**'s **collateral**;

---

[24] In accordance with Recital 27 of Directive 2004/39/EC, where a **client** in line with community legislation and in particular with Directive 2004/47/EC on financial collateral arrangements, transfers full ownership of financial instruments or funds to a firm for the purpose of securing or otherwise covering a required margin such **financial instruments** or **client funds** should no longer be treated as belonging to the **client.**
The **firm** should ensure that **client** documentation clearly outlines the approach adopted by the **firm.** Any **financial instruments** or **client funds** held by the **firm** in excess of the required margin should be treated as **financial instruments** or **client funds** and treated in accordance with Requirement 4.10.

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

(i) the value of that **collateral** passed by the **firm** on behalf of **client**s is to be credited to the **firm**'s **client** transaction account with that party; and

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

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

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

(g) notify the **client** that the **collateral** will not be registered in the **client**'s name, if this is the case;

(h) notify the **client** of the procedure which will apply in the event of the **client**'s **default** where the proceeds of the sale of the **collateral** exceeds the amount owed by the **client** to the **firm**;

(i) notify any **eligible credit institution, relevant party** or **eligible custodian** holding the **collateral** that; –

(i) the **collateral** does not belong to the **firm**; and

(ii) 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**.

4.10.4 The **firm** must have prior written consent from its **client** if it proposes to return to the **client**, **collateral** other than the original **collateral**, or original type of **collateral**. This does not preclude the **firm** from returning the cash equivalent where the **collateral** matures.

4.10.5 The **firm** must not

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

(b) use **collateral** in the form of a **client's funds** as security for the **firm**'s own obligations.

(c) use a **client**'s **collateral** as security for the obligations of another **client** or another person unless the criteria set down in Requirement 4.2 regarding Set-Off agreements are fulfilled in full.

4.10.6 A **firm** need not obtain written consent from a **professional client** under Requirements 4.10.3 to 4.10.5 if prior written notice has been given by the **firm**.

4.11 General Information for Clients

4.11.1 [25]**Firm**s shall provide retail **client**s or potential retail **client**s with the following general information where relevant:

(a) If the **firm** holds **financial instruments** or **client funds,** a summary description of the steps which the **firm** takes to ensure their protection, including summary details of any relevant investor compensation scheme which applies to the **firm** by virtue of its activities in the State.

[25] *Regulation 82(g)*

4.12 [26] Information about Financial Instruments belonging to Retail Clients

4.12.1	Where a **firm** holds **financial instruments** or **funds** belonging to a **retail client**, or potential **retail client**, the **firm** shall provide them with such of the information specified in this Requirement and in Requirement 4.2.7, 4.3.8 and 7.3 as is relevant.
4.12.2	Where the **financial instruments** or **funds** may be held by a third party on behalf of the **firm**, the **firm** shall inform the **retail client** or potential **retail client** of the responsibility of the **firm**, under the applicable national law for
	(a) any acts or omissions of the third party, and (b) the consequences for the **client** of the insolvency, if any, of the third party.
4.12.3	Where **the financial instruments** of a **retail client** or potential **retail client** may, if permitted by national law, be held in an omnibus account by a third party, a **firm** shall
	(a) inform the **client** of this fact, and (b) provide a prominent warning of the resulting risks.
4.12.4	Where it is not possible under national law for **client financial instruments** held with a third party to be held separately identifiable from the proprietary **financial instruments** of that third party or of a **firm**, the **firm** shall
	(a) inform the **retail client** or potential **retail client**, and (b) provide a prominent warning of the resulting risks.

[26] *Regulation 88*

5 Client Funds

The requirements in this section are in addition to the General Requirements set out in Section 4.

5.1 Payment of Client Funds into a Client Account with a Central Bank, an Eligible Credit Institution, Relevant Party or Qualifying money market fund

5.1.1 The receipt of funds from a **client** by way of cheque or other payable order becomes **client funds** upon receipt of that cheque or other payable order by the **firm**. Where possible, funds should be received in the form of an automated transfer rather than in the form of a cheque or other payable order.

5.1.2 The **firm** is required to issue the **client** with a receipt in all cases where funds are received in the form of cash. The **firm** is also required to issue a receipt where funds are received by way of cheque or other payable order, except where the funds are received in settlement of a specific contract note or invoice issued by the **firm** to the **client** and the two amounts match.

5.1.3 [27]A **firm**, on receiving any **client funds**, shall without delay deposit those funds into one or more accounts opened with any of the following:

(a) a central bank;

(b) a **credit institution** authorised in accordance with Directive 2006/48/EC;

[27] *Regulation 161(4) & 161(5)*

(c) a bank authorised in a third country; or

(d) a **qualifying money market fund**.

Requirement 5.1.3 does not apply to a credit institution authorised under Directive 2006/48/EC in relation to deposits within the meaning of that Directive held by that institution.

5.1.4 Subject to Requirements 5.1.6 and 5.1.7 below, where a **firm** receives **client funds**, it must lodge it to the appropriate **client account** as soon as possible, but no later than one **business day** following receipt, or return it to the **client**. The **funds** must be lodged in the currency of receipt unless the **firm** has no **client account** denominated in that currency and it would be unduly burdensome for it to open such an account, in which case the **firm** may convert the **funds** and hold them in a **client account** in a different currency. Details of such arrangements and a general statement relating to exchange risk must be set out in the **firm**'s **terms of business** or **investment management agreement** as appropriate.

5.1.5 [28]Where **firm**s do not deposit **client funds** with a central bank, the **firm**s shall exercise all due skill, care and diligence in the

(a) selection, appointment and periodic review of the **credit institution**, bank or money market fund in which the funds are deposited, and

(b) the arrangements for the holding of those **funds**,

taking into account the expertise and market reputation of the **eligible credit institution** or money market fund, with a view to ensuring the protection of **client**s' rights, as well as any

(a) legal or regulatory requirements, or

(b) market practices

related to the holding of **client funds** that could adversely affect **client**s' rights.

[28] *Regulation 161(6)*

5.1.6 Where **client funds** are likely to be received by the **firm** in the form of an automated transfer, the **firm** should advise all **client**s, in advance in writing, of the account number into which **client funds** should be lodged. In the event that the **funds are** received directly to the **firm**'s own account, the **firm** must within one **business day** pay the **funds** into a **client account** in accordance with these requirements.

5.1.7 Where a **firm** receives a **mixed remittance** or is liable to pay **funds** to a **client** (including interest on **client funds**) it must, within one **business day,** lodge the full sum into a **client account** in accordance with Requirement 5.1.4 of this section.

5.1.8 A **firm** shall pay its own funds into a **client account** if required to do so by the **Financial Regulator.**

5.2 Written Confirmations

5.2.1 Before **client funds** are lodged to a **client account** with a central bank or an **eligible credit institution** or an **eligible custodian** the **firm** is required to have received written confirmation[29] from the institution concerned:

(a) that all **client funds** are held by the **firm** as **trustee** and that the central bank or **eligible credit institution** is not entitled to combine the account with any other account or to exercise any right of **set-off** or counterclaim against **funds** in that account in respect of any sum owed to it by any **person;**

(b) that the central bank or **eligible credit institution**, will designate the account in its records in such a way as to make it clear that the **client funds** do not belong to the **firm** and are subject to the provisions of the **Regulations** and Section 52 of the **Investment Intermediaries Act,**

[29] Firms should ensure such confirmations are received immediately for all new accounts opened post 1 November 2007 in accordance with the requirements. The confirmation for accounts that were opened prior to 1 November 2007 should be obtained to satisfy the requirements by no later than 30 April 2008.

1995 as appropriate. In the case of non-Irish central banks or **eligible credit institution**s it will be sufficient for the acknowledgement to confirm that the title of the account sufficiently distinguishes the account from any account containing funds that belong to the **firm;** and

(c) of the procedures and authorities for the giving and receiving of instructions.

A copy of this written confirmation shall be retained by the **firm**.

5.3 Daily Calculation

5.3.1 Every **business day** a **firm** must ensure that its client money resource, i.e. the aggregate value of **client funds** held in accordance with Regulations 160 and 161 of the Regulations or Section 52 of the **Investment Intermediaries Act, 1995** as appropriate [30], for example in its cash book, (namely A) is at least equal to the amount it should be holding for **client**s, its client money requirement, (namely B). This calculation must be carried out, and any necessary funding (arising where A is less than B) deposited, by the close of business on the **business day** following the **business day** to which it relates.

5.3.2 (B) shall be the sum of (C) and (D) calculated as set out below:

5.3.3 (C) shall be the aggregate of the following amounts calculated for each **client**[31]where the aggregate is positive**:**

(i) that **client**'s cash balance as per the **firm**'s own records;

(ii) the balance on that **client**'s transaction account with the **firm** including:

(a) balances in respect of sale proceeds due to the **client** where the **client** has delivered the securities and the

[30] For the avoidance of doubt this includes ***funds*** held on call or fixed term deposit.
[31] This does not prevent netting but ensures that one ***client's assets*** are not used to fund another ***client***'s ***transaction***s.

proceeds of the sale have not yet been credited to the client account;

(b) balances in respect of the cost of purchases paid for by the client where the **transaction** has not yet settled;

(c) the balance on that **client**'s **margin account**;

(d) dividends or interest due to the **client;**

(e) any other relevant amounts; and

(iii) the value of that **client**'s **collateral** that takes the form of cash.

5.3.4 (D) shall be calculated in accordance with Requirement 5.3.5.

5.3.5 **Firm**s will be required to maintain in the **client account**, in addition to the amount of (C) calculated in accordance with Requirement 5.3.3, an amount equivalent to 8% of the average level of **settled debtors** over the preceding five **business day**s which amount shall be called (D)**.**

5.3.6 Where a **firm** deems it prudent in the interests of the protection of **client**s it must deposit its own **funds** into a **client account.**

5.3.7 A **firm** must immediately notify the **Financial Regulator** of any deposits under this requirement that exceeds 0.5 per cent of (C) as calculated in accordance with the above together with the reason for such deposit.

5.4 Failure to Perform Calculations

5.4.1 A **firm** must notify the **Financial Regulator** immediately, and confirm in writing, where it has been unable or has failed to perform any or all aspects of the calculation required by Requirement 5.2 within the timeframe permitted by that requirement.

(i) The purpose for which the **funds** were received or paid out.

5.5 Interest

5.5.1 A **firm** must disclose to a **client** in writing, in its **terms of business** or **investment management agreement**, as appropriate, whether or not interest is payable in respect of that **client**'s funds and on what terms.

6 Client Financial Instruments

6.1 Depositing Client Financial Instruments

6.1.1 [32]A **firm** may deposit **financial instruments** held by them on behalf of their **client**s into an account or accounts opened with a third party provided that the **firm**:

(a) exercises all due skill, care and diligence in the selection, appointment and periodic review of the third party and of the arrangements for holding and safekeeping of those **financial instruments**, and

(b) takes into account the expertise and market reputation of the third party as well as any legal requirements or market practices related to the holding of those **financial instruments** that could adversely affect **client**s' rights.

6.1.2 [33]If the safekeeping of **financial instruments** for the account of another person is subject to specific regulation and supervision in a jurisdiction where the **firm** proposes to deposit **client financial instruments** with a third party, the **firm** must not deposit those **financial instruments** in that jurisdiction with a third party which is not subject to such regulation and supervision.

6.1.3 [34]A **firm** shall not deposit **financial instruments** held on behalf of **client**s with a third party in a third country that does not regulate the holding and safekeeping of **financial**

[32] Regulation 161(1)
[33] Regulation 161(2)
[34] Regulation 161(3)

instruments for the account of another person unless one of the following conditions is met:

(a) the nature of the **financial instruments** or of the **investment services** connected with those instruments requires them to be deposited with a third party in that country; or

(b) where the **financial instruments** are held on behalf of a **professional client**, that **client** requests the **firm** in writing to deposit them with a third party in that third country.

6.2 Safe-Keeping of Client Financial Instruments

6.2.1 A **firm** must hold any documents of title to **client financial instruments** in the case of both registered and **bearer financial instruments**:

(a) in the physical possession of the **firm**; or

(b) with a **relevant party** or an **eligible custodian** in a safe custody account designated as a **client account**. In such cases the **firm** must arrange for the lodgement of **client financial instruments** within one **business day**.

6.2.2 A **firm** must ensure that where it holds any **document**s **of title** the physical arrangements are appropriate to the value and risk of the **financial instruments** entrusted to it for safe-keeping and include adequate controls designed to safeguard them from damage, misappropriation or other loss.

6.2.3 A **firm** must instruct the eligible custodian to hold the **firm**'s **bearer financial instrument**s separately from **client**s' **bearer financial instruments**.

6.3 Client Agreements

6.3.1 Before a **firm** provides safe-keeping of asset facilities to, or receives **collateral** from **client**s, it must notify the **client** in writing (for example in its **terms of business**) of the arrangements applying in respect of:

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

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

(c) exercising conversion and subscription rights;

(d) dealing with take-overs, other offers or capital re-organisations;

(e) exercising voting rights; and

(f) the extent of the **firm**'s liability in the event of a default of an eligible credit institution, relevant party or eligible custodian.

6.3.2 A **firm** must obtain a **client's** prior written consent:

(a) 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; and

(b) before granting to any third party any lien or security interests over that **client**'s **financial instruments**.

6.4 Registration and Recording of Client Financial Instruments

6.4.1 A **firm** must arrange for the registration of registrable **client financial instruments** in the name of the **client**, unless the

client has given prior written consent for the registration of these **financial instruments** in the name of:

(a) an eligible nominee which is -

(i) an individual, nominated in writing by the **client**, who is not a connected party of the **firm**; or

(ii) a **nominee company** wholly owned by the **firm**; or

(iii) a **nominee company** wholly owned by an exchange which is a **regulated market**; or

(iv) a **nominee company** wholly owned by a **relevant party** or **eligible custodian**; or

(c) an **eligible custodian** or **relevant party** but only where due to the nature of the law or market practice of the jurisdiction outside Ireland, it is in the **client**'s best interests or it is not feasible to do otherwise, and the **firm** has previously notified the **client** in writing that his **financial instruments** will be so held.

6.5 Custodian Agreement

6.5.1 Before a **firm** opens an account for **client financial instruments** with **a qualifying money market fund**, **relevant party** or **eligible custodian** either in or outside Ireland it must have notified the institution concerned, in writing, and received an acknowledgement[35], in writing, from the institution:

(a) That all **client financial instruments** are held by the **firm** as trustee and that the **qualifying money market fund, relevant party** or **eligible custodian** is not entitled to combine the account with any other account or to exercise any right of set off or counterclaim against

[35] Firms should ensure such acknowledgements are received immediately for all new accounts opened post 1 November 20007 in accordance with the requirements. Acknowledgements in respect of accounts opened prior to 1 November 2007should be obtained by no later than 30 April 2008 to satisfy the outlined requirements.

financial instruments in that account in respect of any sum owed to it by any **person** except

i. To the extent of any charges relating to the administration or safekeeping of that **client's financial instruments**;

ii. Where that client of the **firm** has failed to settle a transaction by its due settlement date.

(b) that the **qualifying money market fund, relevant party** or **eligible custodian** will designate the account in its records in such a way as to make it clear that the **client financial instruments** do not belong to the **firm** and are subject to the provisions of the **Regulations** and Section 52 of the **Investment Intermediaries Act, 1995** as appropriate. In the case of **qualifying money market funds, relevant parties** or **eligible custodians** it will be sufficient for the acknowledgement to confirm that the title of the account sufficiently distinguishes the account from any account containing financial instruments that belong to the **firm;**

(c) that the **qualifying money market fund**, **relevant party** or **eligible custodian** is not permitted to withdraw any **client financial instruments** from the account otherwise than to the **firm** or on the **firm**'s instructions;

(d) that the **qualifying money market fund, relevant party** or **eligible custodian** will hold and record **client financial instruments** separate from its own **financial instruments**;

(e) that the **qualifying money market fund**, **relevant party** or **eligible custodian** may only claim a lien or security interest over an individual **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** of the **firm** has failed to settle a **transaction** by its due settlement date;

(d) of the extent of the **eligible custodian**'s liability in the event of the loss of **client financial instruments** whether caused by the fraud, wilful **default** or negligence of the **eligible custodian** or otherwise, or an agent appointed by the **eligible custodian**;

(e) of the arrangements for registration of **client financial instruments** if these will not be registered in the **client**'s name;

(f) of the arrangements for claiming and receiving dividends, interest payments and other rights accruing to the **client**;

(g) of the arrangements for exercising conversion and subscription rights;

(h) of the arrangements for dealing with take-overs, other offers or capital re-organisations;

(i) of the arrangements for exercising voting rights; and

(j) of the procedures and authorities for giving and receiving of instructions.

6.5.2 A copy of this written confirmation shall be retained by the **firm**.

7 Securities Financing

7.1 Securities Financing Transactions

7.1.1 [36]A **firm** shall not enter into arrangements for **securities financing** transactions in respect of **financial instruments** held by the **firm** on behalf of a **client**, or otherwise use such **financial instruments** for its own account or the account of another **client** of the **firm** unless the following conditions are met:

(a) the **client** must have given prior express consent to the use of the instruments on specified terms, as evidenced, in the case of a **retail client**, by the **client**'s signature;

(b) the use of the **client**'s **financial instruments** is restricted to the specified terms to which the **client** consents;

(c) the **firm** has received written confirmation from the **client** either of counterparty credit ratings acceptable to him/her or that he/she does not wish to specify such rating; and

(d) the **firm** ensures that

(i) **collateral** is provided by the borrower in favour of that **client**;

(ii) the current realisable value of the **financial instrument** and of the **collateral** is monitored daily; and

(iii) where the current realisable value of the **collateral** falls below that of the **financial instruments** concerned, the **firm** has arrangements in place to provide further **collateral** to make up the difference.

[36] Regulation 162(1)

7.1.2 [37]A **firm** shall not:

(a) enter into arrangements for **securities financing** transactions in respect of **financial instruments** which are held on behalf of a **client** in an omnibus account, or

(b) otherwise use **financial instruments** held in such an account for their own account or the account of another **client**

unless in addition to the conditions set out in Requirement 7.1.1 at least one of the following conditions is met:

(a) each **client** whose **financial instruments** are held together in an omnibus account must have given prior express consent in accordance with Section 7.1.1 (a);

(b) the **firm** must have in place systems and controls which ensure that only **financial instruments** belonging to **client**s who have given prior express consent in accordance with Section 7.1.1 (a) are so used.

7.2 Securities Financing Records

7.2.1 [38]The **firm** shall ensure that the records of the **firm** include:

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

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

[37] Regulation 162(2)
[38] Regulation 162(3)

7.3 Security Financing on behalf of Retail Clients

7.3.1 [39]A **firm**, before entering into **securities financing** transactions in relation to **financial instruments**

(a) held by the **firm** on behalf of a **retail client**, or

(b) otherwise to use the **financial instruments** for its own account or for the account of another **client**

shall in good time before the use of those instruments provide the **retail client**, in a durable medium, with clear, full and accurate information on:

(i) the obligations and responsibilities of the **firm** with respect to the use of those **financial instruments**;

(ii) the terms for their restitution, and

(iii) the risks involved.

7.4 Collateral Held for Securities Lending

7.4.1 Any cash or other assets held in favour of a **client** as **collateral** for securities lending must be held in accordance with these Requirements.

[39] Regulation 91

8 Definitions

"the Bank" means the Central Bank and Financial Services Authority of Ireland;

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

"**bilateral set-off**" means an agreement whereby a **client** authorises a **firm** to use any credit on one or more accounts in his or her name to discharge any debit balance on one or more accounts in his or her name. This would include the **set-off** of sub-accounts within one umbrella account.

"**body corporate**" means a body corporate constituted under the law of Ireland or of a country or territory outside Ireland;

References to "**books**", "**records**" or other "**documents**" or to any of them, shall be construed as including any document or information kept in a non-legible form (whether stored electronically or otherwise) which must be capable of being reproduced in a legible form and all the electronic or other automatic means, if any, by which such document or information is so capable of being reproduced and to which the **firm** has access;

"**business day**" means any day, except Saturday, Sunday, bank holidays and public holidays (not being bank holidays);

"**charges**" means any charges made to the **client** in connection with the provision of **investment advice** or investment services, including in respect of **transaction**s for which the **firm** owes best execution, any

mark-up or mark-down from the price at which best execution would be achieved;

"**clearing house**" means a **clearing house** or system through which **transaction**s on an exchange may be cleared;

"**client**" means any **person** for whom the **firm** has provided or intends to provide **investment services or ancillary services or both** and thus it includes officers and employees of the **firm**;

"**client account**" means –

(a) an account with a central bank, **an eligible credit institution** or a **qualifying money market fund** which
  (i) is in the name of the **firm**; and
  (ii) includes in its title an appropriate description to distinguish the **funds** in the account from the **firm**'s own **funds**; and
  (iii) in the case of an **eligible credit institution** is a current or deposit account;

(b) a money market deposit at an **eligible credit institution** which is identified as being **client funds**; or

(c) an account with a **relevant party** or **eligible custodian** which
  (i) is in the name of the **firm**; and
  (ii) includes in its title an appropriate description to distinguish the assets in that account from the assets of the **firm**.

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

"**client creditor**" means a **client** whose accounts with the **firm** are in a net credit position;

"**client funds**" consists of **money** which, in the course of carrying on an investment business service a **firm** receives, holds, or pays out for or on behalf of **client**s;

"**collateral**" for the purposes of these Requirements means

(a) **funds**; or

(b) a **financial instrument** which has been paid for in full by the **client**

and which is held by the **firm**, as security for amounts which may be due to it by a **client**, other than by way of safe custody, under the terms of a deposit, pledge, charge or other security arrangement;

"**connected party**" except where otherwise stated shall be deemed to include a **partner**, director, controller, associated undertaking, related undertaking or subsidiary undertaking or employee of the **firm**, including any associate of the **person** concerned;

"**counterparty**" means any **person** with or for whom a **firm** intends to carry on investment business services;

"**credit institution**" means the holder of an authorisation issued by the **Bank** or a competent authority of another Member State for the purposes of Directive 2006/48/EC relating to the taking up and pursuit of the business of credit institutions;

"**default**" in relation to a **firm** or an **eligible credit institution** or **relevant party** means the appointment of a liquidator, receiver or examiner, or trustee in bankruptcy, or any equivalent procedure in any foreign jurisdiction;

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

"**eligible custodian**" means -

(a) an institution which satisfies the criteria for inclusion as an **eligible credit institution**; or

(b) an institution whose authorisation under the MiFID includes the safekeeping and administration of financial instruments for the account of **client**s, including

custodianship and related services such as cash/collateral management;

(c) an institution whose authorisation under the ISD includes the provision of safe custody services; or

(d) such other institution as may be agreed with the **Financial Regulator;**

"**financial instruments**" has the meaning specified in Part 2 of the **Regulations** or means **investment instruments**;

"Financial Regulator" means the Irish Financial Services Regulatory Authority;

"**firm**" includes an **investment business firm** and an **investment firm**;

"**funds**" includes cash, cheques or other payable orders together with **client account**s maintained with a central bank, an eligible credit institution or a **qualifying money market fund** and includes current and deposit accounts maintained with **eligible credit institutions**;

"**group**" has the meaning specified in Regulation 2 of the **Regulations**;

"held" an **investment firm or investment business firm** is deemed to hold **client money** where-

(a) the money has been lodged on behalf of a client of the firm to an account with a credit institution or relevant party in name of the firm or any nominee of the firm, and

(b) the **firm** has the capacity to effect transactions on that account.

An investment **firm or investment business firm** is deemed to 'hold' client **financial instruments** where the firm-

(a) has been entrusted by or an 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 firm has the capacity to effect transactions in respect of those **instruments.**

"**IIA**" means the Investment Intermediaries Act, 1995, as amended;

"**initial margin**" means the total amount which under the rules of the relevant exchange or exchanges or **clearing house** or **clearing house**s the **firm** or an **intermediate broker** is required to deposit in cash as a fidelity deposit in respect of all the **client**'s open positions in **margined transaction**s at that time, irrespective of any unrealised profit or loss on such positions, on the assumption that those **transaction**s were the only **transaction**s undertaken under the rules of that exchange or those exchanges or that **clearing house** or those **clearing house**s by the **firm** or the **intermediate broker** at that time;

"Insolvency Event" shall mean any of the following events, namely:

(i) the **firm** becoming insolvent or ceasing to be able to discharge its debts as they fall due; or

(ii) the **firm** stopping making payments generally or declaring a moratorium with respect to all or any part of its debts or entering or proposing to enter into a scheme of arrangement or composition with its creditors or any class thereof; or

(iii) the passing of any resolution for the winding up or the presentation of a petition or the making of any order for the appointment of a liquidator, a provisional liquidator, a receiver, an examiner, an administrative receiver, an administrator, a trustee or similar officer to the **firm** or over all or any material part of the assets of the **firm** or the levying or execution of a distress, execution or other process against all or any material part of such assets or the taking of any action for the winding-up, dissolution or striking off of the **firm** but

shall exclude any winding-up, dissolution, reorganisation or other action in each case carried out on a solvent basis of the **firm**;

(iv) the making of a determination under Section 31(3) of the Investor Compensation Act, 1998 in respect of the **firm**; or

(v) the making of a ruling as defined in the Investor Compensation Act, 1998 in respect of the **firm**;

"**intermediate broker**" in relation to a **margined transaction**, means any **person** through whom the **firm** undertakes that **transaction**;

"**investment advice**" shall have the meaning assigned to it in Part 2 of the **Regulations** or Section 2 of the **Investment Intermediaries Act, 1995**;

"**investment business firm**" has the meaning specified in Section 2 of the **Investment Intermediaries Act, 1995**;

"**investment business services**" has the meaning specified in Section 2 of the **Investment Intermediaries Act, 1995**;

"**investment firm**" has the meaning specified in Part 2 of the **Regulations**;

"**investment instruments**" has the meaning specified in Section 2 of the **Investment Intermediaries Act, 1995**;

"**investment services**" has the meaning specified in Part 2 of the **Regulations** or means **investment business services**;

all references to the "**Investment Intermediaries Act, 1995**" refer to the Investment Intermediaries, Act 1995 as amended;

"**investment management agreement**" refers to the document in which the respective responsibilities of the **firm** and its discretionary **client**s are set down;

"**ISD**" means Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field;

"**margin**" is the amount of cash or collateral which a **person** is required to deposit at any time as security for an investment position;

a "**margin account**" is an account in which a **client** deposits **margin**;

"**margined transaction**" means a **transaction** effected by a **firm** with or for a **client** relating to an f**inancial instrument** under the terms of which the **client** will, or may, be liable to make a deposit in cash or collateral, either at the outset or subsequently, to secure performance of obligations which the **client** may have to perform when the **transaction** falls to be completed or upon the earlier closing out of his/her position. The term includes but is not limited to futures, options and **rollovers**. It may also include an **option** purchased by a **client** the terms of which provide that the maximum liability of the **client** in respect of that **transaction** will be limited to the amount payable as premium;

"**Member State**" means a Member State of the European Community;

"MiFID" means 2004/39/EC on the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, as amended by the Directive 2006/31/EC of 5 April 2006 as regards certain deadlines and Directive 2006/73/EC of 10 August 2006 as regards organisational requirements and operating conditions for investment **firm**s and defined terms for Directive 2004/39/EC;

"**mixed remittance**" means a remittance from a **client** to a **firm** that includes part **client funds** and part other **money**;

"**money**" includes cash, cheques or other payable orders together with **client account**s maintained with a central bank, an eligible credit

institution or a **qualifying money market fund** and includes current and deposit accounts maintained with **eligible credit institutions**;

"**nominee**" means a person acting on behalf of an investment firm or investment business firm as nominee, custodian, or otherwise, and includes an eligible custodian and a nominee company;

"**order**" in relation to an **order** from a **client**, means -

(a) an **order** to a **firm** from the **client** to effect a **transaction** as agent; or

(b) any other **order** to a **firm** from the customer to effect a **transaction** in circumstances giving rise to similar duties as those arising on an **order** to effect a **transaction** as agent; or

(c) a decision by a **firm** in the exercise of discretion for the **client**;

"**partner**" means a **person** who has been admitted to a partnership of a **firm**;

"**person**" means any partnership, **body corporate**, unincorporated association wherever constituted or established or any individual;

"**pledge**" means to transfer property such as **financial instrument**s to a lender as collateral for an obligation;

"**pooled client account**" is a **client bank account** in which the **funds** or **financial instrument**s of more than one **client** are held;

"**portfolio management**" has the meaning specified in Part 2 of the **Regulations**;

"**private client**" means a **client** of a **firm** who is not a **professional client**;

"**product producer**" has the meaning specified in Section 2 of the **Investment Intermediaries Act, 1995**;

"**professional client**" means a **client** of

(i) an authorised investment **firm** who meets the criteria laid down in Schedule 2 of the **Regulations**; or

(ii) an investment business **firm**

a. who meets the criteria for automatic categorisation as a professional as set down in paragraph 10 of the Annex of the paper published by CESR (The Committee of European Securities Regulators) entitled "A European Regime of Investor Protection – The Professional and the Counterparty Regimes" http://www.europefesco.org/DOCUMENTS/STANDARDS/02-098b.pdf; or

b. who wishes to be treated as a professional and who satisfies both the criteria for treatment as a professional as set down in Part II.1 of that paper and the procedural requirements of Part II.2 of that Paper;

"**property**" means any freehold or leasehold interest in any land or building;

"**qualifying money market fund**" has the meaning specified in Regulation 160(1) of the **Regulations**;

"**reconciliation**" means the identification and explanation of individual items of difference between two sets of records but does not include the resolution of the necessary adjustments;

"recurrent" in relation to differences means individual differences which remain unresolved for a period of five **business days** in the case of **reconciliation**s **client funds** of and 25 **business days** in the case of **reconciliation**s of **client financial instruments**;

"**regulated market**" has the meaning assigned to it in Part 2 of the **Regulations** or means a market which appears on the most recent list of regulated markets as published in the Official Journal;

"**Regulations**" means S.I. No. 60 of 2007, the European Communities (Markets in Financial Instruments) Regulations 2007;

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

"**retail client**" has the meaning specified in Part 2 of the **Regulations**;

"**safe custody account**" means an account in which safe custody financial instruments are lodged for safe-keeping;

"**securities financing transaction**" has the meaning specified in Part 2 of the **Regulations**;

"**set-off**" means an agreement whereby a **client creditor** authorises a stockbroking **firm** to use any credit on his/her account to pay for the **transaction**s of another **client** (known as a **client** debtor) who does not pay the **firm** for his/her **transactions** by settlement day;

"**set-off client(s)**" means in the case of **three party set-off** the **set-off client creditor** and the set-off **client** debtor or either of them as appropriate and in the case of **bilateral set-off** the relevant **client**;

"**settled debtors**" means **client**s of the **firm** who have failed to pay the **firm** for purchase **transaction**s which the **firm** has settled with the market;

"**State**" means the Republic of Ireland;

"**terms of business**" means the document in which the respective responsibilities of the **firm** and its **client**s are set down in circumstances where the **firm** has no discretion to deal outside a **client**'s instructions;

"**third country** " means a country that is not a Member State and includes a state, province region or dependent territory or such a country;

"three party set-off" means an agreement whereby a **client creditor** (known as the **set-off client creditor**) authorises a **firm** to use any credit on his/her account to discharge any guarantee/indemnity obligations of the **set-off client creditor** in respect of any debit balance on the account of another **client** (known as the set-off **client** debtor);

"transaction" includes -

(a) the purchase or sale by a **firm** of an **financial instrument**; or

(b) the subscription for an **financial instrument**; or

(c) the underwriting of an **financial instrument**; or

(d) the placing or withdrawal of a deposit;

"**trustee**" includes a bare trustee but does not include a **person** acting as trustee of an implied, resulting or constructive trust of which the trustee, in its capacity as trustee, is unaware;

"**written instructions**" means instructions issued to the **firm** by the **client** in writing. Such instructions may be issued by e-mail or fax provided that the **firm** has verified that the e-mail or fax actually came from the **client**.

FINANCIAL REGULATOR
Rialtóir Airgeadais

PO Box No 9138
College Green,
Dublin 2, Ireland

T +353 1 410 4000
Consumer help-line
lo call 1890 77 77 77
Register of Financial Service Providers help-line
lo call 1890 20 04 69
F +353 1 410 4900
www.financialregulator.ie
www.itsyourmoney.ie
Information Centre: 6-8 College Green, Dublin 2