CLIENT ASSET REQUIREMENTS

Interpretation

1. In this Part –

"assurance report" has the meaning provided in Regulation 20(1);

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

"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 management plan" means the plan created pursuant to Regulation 19(4) for the purpose of safeguarding client assets;

"Client Assets Key Information Document" has the meaning given in Regulation 15(2);

"client financial instrument" means a financial instrument as defined in [Regulation X of the European Union (Markets in Financial Instruments) Regulations 2017 (S.I No [TBC] of 2017)] or 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 funds requirement" means the total amount of client funds that an investment firm owes to its clients;

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

"collateral" means, with respect to a client:

(i) client funds, or

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

"eligible 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;

"eligible nominee" means:

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

(b) a nominee company of an investment firm;

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

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

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

"Financial Instruments Facilities Agreement" has the meaning provided in Regulation 8(2).

"Funds Facilities Agreement" has the meaning provided in Regulation 8(1);

"Head of Client Asset Oversight" has the meaning given in Regulation X of SI XXX 2017 transposing Article 7 Commission Delegated Directive (EU) 2017/593;

"investment agreement" means a statement of the terms and conditions under which the investment firm provides financial services to clients;

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

(a) Regulation X of the European Union (Markets in Financial Instruments) Regulations 2017 (S.I No [TBC] of 2017) [insert regulation transposing Article 5 of the Markets in Financial Instruments Directive 2014 (2014/65/EU)]; or

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

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

(d) the European Union (Alternative Investment Fund Managers) Regulations 2013 (S.I. No. 257 of 2013) as an alternative investment fund manager which is authorised to conduct services pursuant to Regulation 7(4) of the S.I. No. 257 of 2013 and in respect of those services only

but shall not include the following:

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

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

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

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

(iii) a person authorised pursuant to section 10 of the Investment Intermediaries Act 1995 to solely carry out custodial operations involving the safekeeping and administration of investment instruments;

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

(v) a person authorised pursuant to section 10 of the Investment Intermediaries Act 1995 to solely carry out the administration of collective investment schemes or fund accounting services or acting as a transfer agent or registration agent for such schemes;

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

"MiFID II Directive" means Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firm and defined terms for the purposes of that Directive;

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

"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;

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

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

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

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

"25 April Commission Delegated Regulation" means Commission Delegated Regulation (EU) 2017/565 of 25.4.2016 supplementing the MiFID II Directive;

"7 April Commission Delegated Directive" means Commission Delegated Directive (EU) 2017/593 of 7.4.2016 supplementing the MiFID II Directive.

Chapter 1

General Requirements

Segregation

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

(2) An investment firm shall not place in a third party client asset account any asset other than a client asset except in accordance with Regulations 3(5), 3(6) or Regulation 13(3).

(3) Without prejudice to Regulations 2(2), 3(5) and 3(6), an investment firm is not required to pay into a third party client asset account such client assets that it receives on behalf of a client where to do so would result in the investment firm breaching any law or order of any court of competent jurisdiction.

(4) 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, prior to or at the time of transfer, by a member of staff other than the staff member who is conducting the transfer.

Holding client funds

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

(2) 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 third party client asset account with any one of the entities listed in Regulation X transposing Article 4(1) of the Commission Delegated Directive EU 2017/593 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 third party client asset account.

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

(4) 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.

(5) Where an investment firm receives from or on behalf of a client, money that is comprised of a mixture of client funds and other money, the investment firm shall first pay all of that money into a third party client asset account of that firm and thereafter shall, without delay, transfer out of or withdraw from the third party client asset account such money as is not client funds.

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

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

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

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

(7) Where clients funds are deposited with any of the entities listed in Regulation X transposing Article 4(1) of the Commission Delegated Directive (EU) 2017/593, 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 X transposing Article 4(2) of the Commission Delegated Directive (EU) 2017/593.

Holding client financial instruments

4. (1) All financial instruments received from a client, or on behalf of a client, shall be held as client financial instruments in accordance with these Regulations.

(2) 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.

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

(4) 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 X transposing Article 3(1) and (2) of the Commission Delegated Directive (EU) 2017/593.

Treatment of client financial instruments

5. (1) 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.

(2) 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 third party client asset account subject to the investment firm maintaining the capacity to effect transactions on the account in question.

(3) 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.

(4) Where 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.

Registration of client financial instruments

6. 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, or

(b) an eligible custodian or relevant party outside the State, but only where it is not feasible to do otherwise due to the nature of the law or market practice of the relevant jurisdiction outside the State.

Designation

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

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

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

Funds facilities agreement and financial instruments agreement

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

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

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

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

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

(e) the third party will provide the investment firm with a statement as often as is required to enable the investment firm comply with Regulations 12(1) and 12(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 third party client asset account other than by instruction received from a designated person of the investment firm.

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

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

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

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

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

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

(ii) where that client of the investment firm has failed to settle a transaction by its due settlement date,

(e) the third party will specify what the arrangements will be for registering client financial instruments if they will not be registered in the client's name,

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

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

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

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

(h) the third party will provide the investment firm with a statement or similar document as often as is required to enable the investment firm to comply with Regulation 12(3) and such statement shall specify all client financial instruments held and a description and the amount of all client financial instruments held in the third party client asset accounts.

Verification and third party confirmations

9. (1) Prior to, or within one working day of the initial deposit of client assets in a third party client asset account, an investment firm shall verify that the client assets are held in an account which is designated as a third party client asset account and if the third party does not, in its external financial records make a designation in accordance with Regulation 7(1)(b), the investment firm shall withdraw the client assets without delay, and in any event within 3 working days of the carrying out of the verification assessment.

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

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

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

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

Collateral margined transactions

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

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

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

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

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

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

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

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

Securities financing transactions

11. (1) an investment firm shall not enter into arrangements for securities financing transactions in respect of client financial instruments held by the investment firm on behalf of a client, or otherwise use such client financial instruments for its own account or the account of another client of the investment firm, unless the following condition is met:

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

Reconciliation

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

(2) In relation to fixed term deposit accounts, 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.

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

by third parties as set out in a statement or other form of confirmation from the third party, and such a reconciliation shall be carried out within 10 working days of the date to which the reconciliation relates.

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

(5) 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.

(6) 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.

(7) An investment firm shall –

(a) ensure that the reconciliations required pursuant to Regulations 12(1), 12(2) and 12(3) are performed using client asset records that are accurate and the reconciliation itself is performed accurately,

(b) investigate within one working day the cause of any reconciliation difference in the reconciliation required pursuant to Regulations 12(1), 12(2) and 12(3),

(c) identify the cause of any such reconciliation difference identified in Regulation 12(7)(*a*) within 5 working days, and

(d) resolve any reconciliation difference identified in Regulation 12(7)(b) as soon as practicable.

Daily calculation

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

(2) For the purposes of Regulation 13(1), an investment firm shall use values in its own accounting records which may have been reconciled with statements from credit institutions or other third parties rather than values contained in statements received from credit institutions or other third parties.

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

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

(5) 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.

(6) 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.

Chapter 2
Client Disclosure

Information to be provided to clients in the investment firm's investment agreement

14. (1) Prior to first receiving client assets an investment firm shall disclose to clients in the investment firm's investment agreement -

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

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

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

(d) where applicable –

(i) its arrangements in relation to:

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

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

(III) the exercise of conversion and subscription rights,

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

(ii) the exercise of voting rights,

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

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

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

(I) 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;

(II) any additional risks that may arise where assets may be held in a third country

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

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

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

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

Client assets key information document

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

(2) The Client Assets Key Information Document shall cover –

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

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

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

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

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

(3) An investment firm shall -

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

(b) ensure that the information contained therein is accurate and relevant having regard to Regulation 15(2).

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

Information to be provided to a client in an annual statement

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

(a) identification of those client financial instruments registered in the client's name which are held in custody by, or on behalf of, the investment firm separately from those registered in any other name;

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

Chapter 3

Client Consent

Client consent requirements

17. (1) An investment firm shall obtain the prior written consent 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;

(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;

(h) in the case of collateral margined transactions –

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

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

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

Chapter 4

Risk Management and Assurance

Risk management

18. (1) An investment firm shall ensure that the Head of Client Asset Oversight shall have the necessary resources, including staff that are adequately trained with sufficient skill and expertise, to carry out the responsibilities listed in Regulation 18(2) having regard to the nature, scale and complexity of the business of the entity.

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

(a) reviewing every Funds Facilities Agreement and Financial Instruments Agreement to ensure they adhere to the requirements in Regulations 8(1) or 8(2) (as the case may be);

(b) ensuring that any other agreement entered into between the investment firm and a third party does not contradict the terms of the Fund Facilities Agreement or the Financial Instruments Agreement;

(c) providing approval, in writing, of the reviews referred to in Regulations 3(7) and 4(4);

(d) ensuring that the client asset management plan referred to in Regulation 19(1) is produced, maintained, reviewed and updated as the information upon which the client asset management plan is based, changes;

(e) 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;

(f) ensuring that the Bank is notified, using Online Reporting System, of any breaches of these Regulations without delay;

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

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

(i) ensuring that the persons performing the daily calculations as required under Regulation 13(1) and the reconciliations required under Regulations 12(1) to 12(3) are adequately trained and have sufficient skill and expertise to perform those functions;

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

(k) ensuring that the Client Asset Examination as required by Regulation 20 is completed and the assurance report is submitted to the Bank in accordance with the timeframes set out in Regulation 23(3);

(l) ensuring that every Funds Facilities Agreement and Financial Instruments Facilities Agreement is obtained and maintained;

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

Client asset management plan

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

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

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

(b) in any event, at least once a year, in order to ensure that the information contained therein is accurate.

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

(a) on an annual basis,

(b) when material changes are made, or

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

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

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

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

(c) the range of investment services carried out;

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

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

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

(g) the procedures that an investment firm follows with respect to the due diligence requirements referred to in Regulation X transposing Article 3(1) & (2) and 4(2) of the Commission Delegated Directive (EU) 2017/593;

(h) the procedures that an investment firm follows with respect to the handling of money that is comprised of a mixture of client funds and other money to ensure compliance with Regulation 3(5);

(i) the steps that an investment firm will follow to identify the client in the circumstances covered by Regulation 3(6);

(j) the procedures an investment firm will follow to carry out the reviews referred to in Regulations 3(7) and 4(4);

(k) the procedures referred to in Regulation 5(3);

(l) where in accordance with Regulation 21, an investment firm outsources to a third party, the performance of the reconciliation or the daily calculation, the manner in which an investment firm will exercise oversight over the outsourced activity;

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

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

(n) the basis and criteria that will be used by an investment firm to determine materiality for the purposes of Regulation 23(1)(e) and (f);

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

Client asset examination

20. (1) An investment firm shall shall arrange for the external auditor appointed in accordance with Regulation X transposing Article 8 of the 7 April Commission Delegated Directive to prepare a report as part of, or in addition to, the report required under Regulation Article 8 of the 7 April Commission Delegated Directive (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.

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

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

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

(c) provides an assurance report as to whether -

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

(ii) the investment firm was compliant with the Regulations as at the period end date,

(iii) 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

(iv) 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,

(d) provides the assurance report referred to in subparagraph (c) in a timely manner.

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

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

(5) 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 in any event, in good time to enable the investment firm to comply with its reporting obligations under Regulation 69.

Chapter 5

Outsourcing, Record Keeping and Reporting Requirements

Outsourcing requirements

21. (1) If an investment firm outsources to a third party, the performance of the reconciliation referred to in Regulation 12 or the daily calculation referred to Regulation 13, it 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.

Records – general requirements

22. (1) An investment firm shall keep the records required under Regulation X transposing Article 2(1)(a)-(b) of Commission Delegated Directive (EU) 2017/593 separate from records relating to transactions which are not related to the third party client asset account.

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

(a) a record of the verification referred to in Regulation 9(1);

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

(c) a record of the date upon which –

(i) the reconciliation referred to in Regulation 12(5) was prepared, and

(ii) the calculation, referred to in Regulation 13(5) was prepared;

(d) a record to evidence the review process referred to in Regulations 12(6) and 13(6);

(e) evidence of the review referred to in Regulation 18(2)(a);

(f) a record of each reconciliation required by these Regulations including –

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

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

(iii) the person who reviewed such reconciliation;

(g) a record of each calculation required by these Regulations including –

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

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

(iii) the person who reviewed such calculation;

(h) a record of the client asset management plan review referred to in Regulation 19(2);

(i) all records required to demonstrate compliance with these Regulations.

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

Reporting requirements

23. (1) An investment firm shall submit the following to the Bank in accordance with these Regulations and using the Bank's Online Reporting System:

(a) a notification when the investment firm has failed to carry out the reconciliation referred to in Regulations 12(1), 12(2) and 12(3);

(b) a notification when the investment firm has failed to carry out the daily calculation referred to in Regulation 13(1);

(c) the assurance report referred to in Regulation 20(2)(c);

(d) the report referred to in Regulation 20(7);

(e) a notification of all material reconciliation differences identified by an investment firm in accordance with the process referred to in Regulation 12(7);

(f) a notification of all material lodgements or withdrawals by an investment firm from the client asset bank account;

(g) a notification of any breaches of these Regulations.

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

(3) The reports referred to in paragraphs 1(c) and (d) shall be submitted no later than 4 months after calendar year end.

(4) The notifications referred to in paragraphs 1(e), (f) and (g) shall be submitted together with the reasons for such differences, transfers, or breaches as applicable and immediately upon identification by an investment firm.

Chapter 6
Miscellaneous

Application of provisions

24. The following provisions shall apply to firms authorised by the Bank pursuant to section 10 of the Investment Intermediaries Act 1995 which are investment firms for the purposes of these Regulations;

(a) [Regulations [INSERT] transposing Articles 16 (8) – (10) of MiFID II Directive;Regulations [INSERT] transposing Articles 2, 3, 4, 5, 6, 7 & 8 of the 7 April Commission Delegated Directive;

(i) Insofar as they relate to the provision of information to clients or reporting to clients on the safeguarding of client assets, Articles 46, 47, 49 & 63 of 25 April Commission Delegated Regulation.

(ii) Insofar as they relate to the retention of records in relation to the safeguarding of client assets, Articles 72(2) and annex I of Commission Delegated Regulation 25.4.2016.