

Mr Kevin Cardiff
Second Secretary
Department of Finance
Merrion Street
Dublin 2

15 June 2007

our ref:MiFID/CMR/ Art4NotJust

Dear Mr Cardiff,

The Irish Financial Services Regulatory Authority (“Irish Financial Regulator”) is the competent authority in the State for the purposes of the Markets in Financial Instruments Directive (“MiFID”). Under the MiFID Member States are required to ensure that investment firms comply with certain organisational requirements when holding financial instruments and funds belonging to clients (Articles 13(7) and 13(8) of the MiFID and Section 3 of the MiFID Implementing Directive – 2006/73/EC). The MiFID directives have been transposed into Irish law by the European Communities (Markets in Financial Instruments) Regulations 2007 – Statutory Instrument Number 60 of 2007 (“the MiFID Regulations”).

Although the Irish Financial Regulator acknowledges that the MiFID is a maximum harmonisation directive, under Article 4 of Directive 2006/73/EC (Implementing Directive), *Member States may retain or impose requirements additional to those in Directive 2006/73/EC in exceptional cases where such requirements are objectively justified and proportionate so as to address specific risks to investor protection or to market integrity that are not adequately addressed by the Directive and provided that the specific risks addressed by the requirements are of particular importance in the circumstances of the market structure of that Member State.* In this regard the European Commission has been previously notified in January 2007, under Article 4 of the Implementing Directive, of the Irish Financial Regulator’s intention to retain the Requirements issued in February 2004 under Section 52 of the Stock Exchange Act, 1995 and the Investment Intermediaries Act, 1995¹ (“the Acts”) regarding Client Money and Client Investment Instruments (“the current Client Money Rules”) imposed on to all investment firms

and stockbrokers; which have an authorisation under the Investment Services Directive (93/22 EC).

While the Irish Financial Regulator in its original submission in January 2007 included all of its current Client Money Rules under the Article 4 Notification the Irish Financial Regulator acknowledges that such notification is not necessary in respect of all of the detailed requirements contained in the Client Money Rules and that certain of the current Client Money Rules may be considered as guidance on the application of the current Client Money Rules and others fall to be maintained under Article 16(2) of the Implementing Directive. It is noted that working document ESC-06-2007 of the European Commission outlines the conditions that must be respected with regard to a notification under Article 4 of Directive 2006/73/EC. In order to ensure that the notification submitted by the Irish Financial Regulator fulfils these conditions please find attached:

- Appendix I - A detailed response to the issues raised in working document ESC-06-2007 of the European Commission;
- Appendix II – A listing of the current Client Money Rules that the Irish Financial Regulator considers to be formally notified under Article 4 of 2006/73/EC together with justification for those Client Money Rules that go beyond the MiFID regime and which the Irish Financial Regulator considers are required to address specific risks to investor protection and market integrity or which the Irish Financial Regulator considers are not specifically addressed by the MiFID regime and therefore required notification under Article 4 of Directive 2006/73/EC;
- Appendix III – For completeness a listing, together with justification, of those specific Client Money Rules that go beyond the MiFID regime for safeguarding client assets where such rules are considered to fall within Article 16(2) of Directive 2006/73/EC and therefore are considered necessary to safeguard client assets for reasons of the applicable law relating to property or insolvency is also provided;

¹ The Acts transpose the provision of the Investment Services Directive (93/22/EC) (“ISD”) into Irish Law. The MiFID will replace the ISD and the Irish Financial Regulator is required to draft new Client Money Rules consistent with the provisions of the MiFID.

- Appendix IV – A detailed mapping of the current Client Money Rules to the proposed new Client Money Rules following the implementation of the MiFID. This mapping identifies -
 - the rules arising from the MiFID Level 1 and Level 2 directives which have been specifically added to the Client Money Rules,
 - those current Client Money Rules which go beyond the MiFID regime and therefore require notification under Article 4 of the Implementing Directive,
 - those current Client Money Rules that are considered necessary to safeguard client assets for reasons of the applicable law relating to property or insolvency and which fall within article 16(2) of the Implementing Directive, and
 - those current Client Money Rules that represent guidance and best practice on the implementation of the rules and are necessary to ensure the smooth implementation thereof.
- Appendix V - Finally a draft copy of the proposed new Client Money Rules to be effective from 1 November 2007, is also enclosed for completeness.

The Irish Financial Regulator requests that the Department of Finance provide this information to the European Commission in order to uphold the notification previously made on behalf of the Irish Financial Regulator regarding its intention to retain the current Client Money Rules. Should you have any queries on the above please do not hesitate to contact Ms Anne Troy or Mr Tom Meade of this department.

Yours sincerely

Anne Troy
Head of Investment Service Providers Supervision

Appendix I

Response to ESC – 06-2007

Appendix II

Justification for Article 4 Notification

Appendix III

Article 16(2) Justification

Appendix IV

Mapping of current Client Money Rules to Proposed Client Money Rules

The attached provides a detailed mapping of the current Client Money Rules to the proposed new Client Money Rules and is structured as follows:

Column 1: Current Client Money Rule

Column 2: Status of current Client Money Rule –i.e. whether it is to be retained, removed or replaced or consists of a new rule arising directly from the MiFID regime.

Column 3: New Client Money Rules – The proposed text of the new Client Money Rules

Column 4: Justification – For each rule to be included in the proposed Client Money Rules whether it has arisen from the

- Article 4 Justification**
- Article 16(2) Justification**
- Best Practice**
- Guidance on application of the Client Money Rules**
- An exact carve out of a MiFID Requirement**
- Restates the spirit of the MiFID Requirement in amended terminology where the exact MiFID Requirement is repeated elsewhere in the document.**

Appendix V

Draft Client Asset Rules following implementation of MiFID