

# **BYE LAW 14**

## **INVESTMENT BUSINESS REGULATIONS**

### **INVESTMENT BUSINESS RULES AND REGULATIONS**

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## **INTERPRETATION AND APPLICATION OF REGULATIONS**

### **CHAPTER 1**

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## 1. STATUS OF GUIDANCE, OBJECTIVES AND EXPLANATIONS

### Scope of Regulations

In all cases the Investment Intermediaries Act 1995 (as amended) takes precedence over the regulations

### Guidance

1.01 Guidance is intended to assist Members in interpreting the Regulations and in judging whether any particular course of conduct meets the standards called for by the Institute. Where a Member believes that relevant Guidance is appropriate to its circumstances and follows that Guidance, and in so doing has reasonable grounds to believe that it is acting in compliance with the Regulations, then the Member shall be taken to have acted in conformity with the Regulations.

The Guidance set out is not to be taken as the only way of complying with the Regulations. Other procedures or conduct may be equally or more appropriate in the circumstances and the Member is obliged to determine how it can best comply with the Regulations.

### Objectives and Explanations

1.02 Text headed "Objective" or "Explanation" is not part of the Regulations and neither affects the interpretation of the Regulations nor constitutes Guidance for the purpose of Regulation 1.01. Text headed "Objective" is inserted in order to help the reader focus on the result that the relevant Regulation(s) is seeking to achieve. Text headed "Explanation" comments on matters which are relevant to, but are not part of, the Regulations.

## 2. INTERPRETATION

2.01 The definitions and rules on interpretation set out in Appendix 1 to this Chapter 1 shall apply in the interpretation of these Regulations and of the Guidance, Objectives and Explanations.

## 3. APPLICATION OF REGULATIONS

### Entry into Force

3.01 (a) These Regulations come into force on 11<sup>th</sup> June 2015.

### Territorial Scope

3.02 The Regulations apply only to the conduct of Investment Business by an Authorised Firm, which is either carried on from

- (a) the firm's permanent place of business in the Republic of Ireland for clients in the Republic of Ireland or elsewhere.
- (b) a permanent place of business in the United Kingdom with clients in the Republic of Ireland.

#### 4. CATEGORIES OF AUTHORISATION

4.01 A Member Firm may be authorised to carry on Investment Business in one of five Authorization Categories. The Category of Authorisation, of a Member Firm determines the type of Investment Business, which the Member Firm is permitted to undertake. The Categories and the activities permitted are:-

##### **Category 1**

Authorisation in this category will cover:

- (a) Advising on the availability, attributes and potential suitability of broad types of investment but not of any particular investment (generic advice).
- (b) Arranging transactions in investments where:
  - the transaction is confined to introducing a client of the firm to another firm or to an authorised third party (which is an independent intermediary) for the purpose of general or specific investment business;
  - the arrangements are made under the terms of a written agreement between the firm and the other firm or authorised third party in which the other firm or authorised third party confirms that it will take on full responsibility for compliance and provide the relevant service directly to the client under an agreement between them;
  - the firm has not given any advice except for advice falling within paragraphs (a) above; and
  - the firm introduces the client, and gives no further advice or comment, not even on the advice given or the arrangements proposed or made by the other firm or authorised third party.
- (c) Custodial operations involving the safekeeping and administration of investment instruments in relation to the activities set out in (a) and (b) above, to the extent that the certified firm holds at their principal place of business on behalf of clients, share certificates in private limited companies owned by those clients where the firm holds the share certificates only in order to facilitate the orderly management of the private limited company's records, where the holding of the share certificates arises from the provision of professional services by the firm to the client.
- (d) Commenting on investment advice given by another firm or an authorised third party to a client, but not giving any alternative advice unless that advice falls within paragraphs (a) or (b).
- (e) Acting as a Deposit Agent or Deposit Broker.

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- (f) Passing on, as a disclosed agent for a client, that client's instructions to another firm or authorised third party regarding advice given by that other firm or authorised third party about investments.
- (g) Advising on and receiving and transmitting orders to a product producer from which they hold an appointment, on the products relevant to that appointment.

A firm authorised under Category 1 is not authorised to receive and hold Investment Business Clients' money or Custodial Investment.

This does not preclude the holding of a Premium Handling Account in accordance with the Premium Handling Requirements as detailed in Appendix 3 to this chapter.

#### **Category 1A - Referral Only**

Authorisation in this category will only cover activities a) and b) of Category 1.

Authorised firms in this category 1A will not be subject to the Central Bank's Minimum Competency Code 2011 as amended from time to time. A firm authorised under Category 1A is not authorised to receive and hold Investment Business Clients' money or Custodial Investment.

#### **Capital and Monitoring Requirements**

Certified persons providing investment business services with Category 1 and 1A authorisation will be required to have positive financial assets and will be subject to a six year monitoring cycle.

An annual statement of solvency must be included in the Annual Return submitted to the Institute.

#### **Category 2 (1)**

As well as authorisation to carry on activities as outlined in (a) to (g) authorisation includes activities as outlined in (h) to (o) below.

- (h) Advising on and arranging transactions in shares or debentures of private companies for existing shareholders or in the case of a family run business family members (other than advising on or arranging transactions within paragraphs (a) or (b) above), unless this service is provided in an incidental manner in the course of normal professional activities.
- (i) Advising on and arranging transactions in shares in or debentures of private companies which are or are to be the subject of an offer to the public (other than advising on or arranging transactions within paragraphs (a) or (b) above).
- (j) Advising on investments;
  - which are part of a privatisation or rights issue and where no arrangements in relation to any dealing in those investments are made by the firm; or
  - where the arrangements for dealing in those investments are made by another firm, or authorised third party which is an independent

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intermediary, who has an agreement with the client acknowledged in writing between the firm and the other firm or authorised third party.

- (k) Advising on and arranging other investments and deposits.
- (l) Commenting on advice given to a client by another firm or authorised third party about investments, and offering or giving alternative advice and arranging transactions on the basis of that alternative advice.
- (m) Providing Advice on Tax Efficient Investment Schemes, for example, BES, Film Investments under Section 481 Taxes Consolidation Act 1997, etc.
- (n) Promoting Tax Efficient Investment Schemes, for example, BES, Film Investments under Section 481 Taxes Consolidation Act 1997, etc.
- (o) Portfolio review.  
A firm authorised under Category 2(1) is not authorised to receive and hold Investment Business Clients' money or Custodial Investment This does not preclude the holding of a Premium Handling Account in accordance with the Premium Handling Requirements as detailed in Appendix 3 to this chapter.

#### Capital and Monitoring Requirement

Certified persons providing investment business services with Category 2.1 authorisation will be subject to the following minimum capital requirement.

Sole Trader	€5,000
Partnership	€10,000

They will be subject to a six year monitoring cycle.

A self certified statement of Assets and Liabilities must be submitted with the Annual Return to the Institute.

#### Category 2 (2)

As well as authorisation to carry on activities as outlined in (a) to (o) authorisation includes (p) below.

- (p) Custodial operations involving safekeeping and administration in relation to the activities set out in paragraphs (d) – (m) above.

A firm authorised under Category 2(2) is authorised to receive and hold Investment Business Clients' money or Custodial Investment

#### Capital and Monitoring Requirements

Certified persons authorised to hold client funds or investment instruments will be subject to a minimum capital requirement of

Sole Trader	€30,000
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Partnership €50,000

They will be subject to a two year monitoring cycle.

A self certified statement of Assets and Liabilities must be submitted with the Annual Return to the Institute.

### **Category 3**

As well as authorisation to carry on activities as outlined in (a) to (p) authorisation includes activities as outlined in (q) to (s) below.

- (q) Discretionary management of a portfolio.
- (r) Acting as a fund manager.
- (s) Discretionary trust management where the principal objective of the trust is to provide investment services to members of the public.

A firm authorised under Category 3 is authorised to receive and hold Investment Business Clients' money or Custodial Investment

### **Capital and Monitoring Requirements**

Certified persons in this category will be required to have a minimum capital requirement of €125,000 and will be subject to an annual monitoring cycle.

The reporting requirements for firms authorised in Category 3 are detailed in 4.5(1).

- 1.07 Subject to Client Money Regulations (Chapter 4)  
A Member Firm shall not carry on Investment Business outside the limits applicable to his category of Authorisation and any limits resulting from restrictions or conditions in his certificate or as decided by the Registration Committee; provided that the Registration Committee shall have power to grant dispensation either generally or in individual cases for a period not exceeding ninety days.
- 1.08 A Member Firm is not Authorised to carry on the following types of Investment Business:
- (a) market making in Investments;
  - (b) acting as principal in any transaction relating to an investment. This limitation does not apply to any transaction for the firm's own account or for the account of an associate as long as those transactions:
    - are not with a client; and
    - are carried out through an authorised Investment Business Firm
  - (c) speculative foreign exchange dealings
  - (d) acting in any way with a view to stabilising the market price of any Investment;

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- (e) establishing, operating or acting as a Trustee of an Authorised Unit Trust Scheme or other Regulated Collective Investment Scheme.

## 5. WAIVER

5.01 The Institute may (as regards Members authorised by that Institute) alter the requirements of the Regulations so as to adapt them to the circumstances of a particular Member, or group of Members, or Members generally, or to any particular kind or kinds of business carried on or to be carried on by a particular Member or group of Members or Members generally if the Institute considers that:

- (a) compliance with the requirements in question would be unduly burdensome for the Member or Members having regard to the benefit which compliance would confer on investors; and
- (b) the exercise of this power will not result in any undue risk to investors.

The power conferred by this Regulation may be exercised conditionally or unconditionally.

All such alterations must be subject to the prior approval of the Central Bank.

## 6. LIABILITY OF THE INSTITUTE

6.01 Neither the Institute, its officers, staff, members of its Council or Committees or any agent or delegate by way of them shall be liable for anything done or not done in carrying out its or their functions under, or as contemplated in these Regulations, or any other rules and regulations referred to herein, unless they act, or omit to act, in bad faith.

## APPENDIX 1 TO CHAPTER 1

### DEFINITIONS AND INTERPRETATION

1. In these Regulations, unless the context otherwise requires, the following expressions have the meaning assigned to them:

“Act”	The Investment Intermediaries Act 1995 (as amended) <i>as from time to time re-enacted or amended.</i>
“Accounting Reference Date”	The date notified to the Secretary of the Registration Committee as the date to which an Authorised Firm prepares his annual accounts.
Advertisement	Means any commercial communication in respect of an Authorised Firm which is addressed to the consumer public or a section of it, the purpose being to advertise the authorised firm excluding name plaques, sponsorship material and a prospectus drawn up in accordance with the Prospectus Directive (2003/71/EC).



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“Approved Professional Body”	Has a meaning specified under Section 55 of the Act
“Associate”	<p>In relation to a person, means:</p> <ul style="list-style-type: none"><li>(a) an undertaking in the same Group as that person;</li><li>(b) any other person whose business, private or familial relationship with the first person or its Associate might reasonably be expected to give rise to a community of interest between them which may involve a conflict of interest in dealings with third parties; and</li><li>(c) any other persons whose business, private or familial relationship (other than as arises solely because that person is a client of the firm) with the first person is such that he or she has influence over that person’s judgement as to how to invest his property or exercise any rights attaching to his investments.</li></ul>
“Associated Undertaking”	means an associated undertaking within the meaning of Regulation 34 of the European Communities (Companies: Group Accounts) Regulations, 1992 (S.I. 201 of 1992);
“Authorisation”	Certification under S63 of the Act by the Institute of Certified Public Accountants in Ireland and “Authorise”, “Authorised” and “Authorising” shall be construed accordingly.
"Authorised Firm"	A firm that is registered by the Institute in accordance with Byelaw 13 and that is authorised by the Institute as a Certified Person in accordance with Section 63 of the Act.
“BES”	Business Expansion Scheme as referred to in S.489 (Part 16) of the Taxes Consolidation Act 1997.
"Body Corporate”	Includes a body corporate constituted under the law of a country or territory outside Ireland.
“Business Day”	Means any day except Saturday, Sunday, bank holidays and public holidays
Bundling	Means the packaging of two or more distinct products into a bundle, where each of these products can be purchased separately from or through the Authorised Firm.



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“Bye-laws”	The bye-laws of the Institute of Certified Public Accountants in Ireland.
Central Bank	Means the Central Bank of Ireland, the single unitary body in Ireland responsible for central banking and financial regulation, created by the Central Bank Reform Act 2010.
“Certificate”	A Certificate of Authorisation issued by the Institute of Certified Public Accountants in Ireland.
“Certified Person”	Has a meaning specified under Section 55 of the Act
“Chinese Walls”	Means an arrangement within the organisation of a firm, or between a firm and any Associate of that firm, which requires information obtained by the firm or, as the case may be, associate in the course of carrying on one part of its business of any kind to be withheld in certain circumstances from persons with whom it deals in the course of carrying on another part of its business of any kind.
“Client”	A person to whom an authorised firm provides investment advice or investment business services.
“Client Bank Account”	An account at a Credit Institution which: <ul style="list-style-type: none"><li>(a) is in the name of the Authorised Firm;</li><li>(b) includes in its title the description “Client Bank Account” or, if with a branch of a Credit Institution outside Ireland, such description in an official language of the country in question as is equivalent to “Client Bank Account”; and</li><li>(c) is a deposit (and not a share) account if the Credit Institution is a Building Society but which otherwise may be a current or a deposit account.</li></ul>
Complaint	refers to an expression of grievance or dissatisfaction by a client either orally or in writing, in connection with: <ul style="list-style-type: none"><li>a) the provision or the offer of the provision of a product or service to a client by an authorised firm; or</li><li>b) the failure or refusal of an authorised firm to provide a product or service to a consumer.</li></ul>

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"Contingent Liability Transaction"	A transaction involving Derivatives under the terms of which the client will or may be liable to make future payments (other than charges and whether or not secured by margin) or deliver non-cash assets or property when the transaction fails to be completed or upon the earlier closing out of his position.
"Council"	The Council of the Institute of Certified Public Accountants in Ireland.
"Counterparty"	The person with whom or through whom an Authorised Firm effects a transaction on behalf of an Investment Business Client.
"Connected Party"	Except where otherwise stated shall be deemed to include a partner, officer, controller, associated undertaking, related undertaking or subsidiary undertaking or employee of the Authorised Firm, including any associate of the person concerned.
Consumer Protection Code	Means the Consumer Protection Code 2012 as amended from time to time.
"Custodial Investments"	Any Bearer Investments and Readily Disposable Investments (including Entitlements) within paragraphs (a) and (b) of the definition of Readily Disposable Investments held for an Investment Business Client by an Authorised Firm or by a nominee company under the control of the Member or by any other person for or to the order, or on the instructions, of the Member, and which are neither the subject of a Discretionary Management agreement nor held in connection with any Personal Appointment, and which the Member is able to sell, or procure the sale of, without any, or any further, signature of the relevant client or of an independent third party.
Credit Institution	Means an undertaking within the meaning of Article 4(1) of EU Directive 2006/48/EC the business of which is to receive deposits or other repayable funds from the public and to grant credits for its own account.

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“Deposit Agent”	Means any person who holds an appointment in writing from a single credit institution enabling him to receive deposits on behalf of that institution and prohibiting him from acting in a similar capacity on behalf of another credit institution;
“Deposit Broker”	Means any person who brings together with credit institutions persons seeking to make deposits in return for a fee, commission or other reward;
“Derivative”	Means an investment the price of which is directly dependent upon the value of one or more investment instruments, equity indices, commodity or any agreed upon pricing agreement or arrangement but shall not include convertible debt or warrant
“Derivative Client Bank Account”	Any investment within sub paragraphs (d) - financial futures, (e) - commodity futures, (f) - forward interest rate agreements, (g) - contracts for differences or (h) - options, of the definition of investment instrument within the Act.
“Disciplinary Committee”	The Committee appointed under the Articles of Association of the Institute of Certified Public Accountants in Ireland.
“Discretionary Management”	Engaging in the activities which fall within paragraph (d) of the definition of “investment business services” in Section 2 of the Act; and “discretionary managing” and “manage on a discretionary basis” shall be construed accordingly.
“Discretionary Trust Management”	An Authorised Firm carries on Discretionary Trust Management in relation to a Personal Appointment if <ul style="list-style-type: none"><li data-bbox="786 1463 1443 1522">(a) the Member or the Appointee carries on Discretionary Management of Investments; and</li><li data-bbox="786 1526 1443 1715">(b) remuneration is payable in respect of such Discretionary Management in addition to the remuneration which the Appointee or the Member is entitled to receive in consideration of discharging the duties of his Personal Appointment.</li></ul> However, a Member does not carry on Discretionary Trust Management if; <ul style="list-style-type: none"><li data-bbox="786 1841 1443 1900">(1) the Appointment is as personal representative of an estate; or</li></ul>

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- (2) the Appointment is as bare trustee or nominee or custodian of assets; or
- (3) the Appointment is as Trustee of a Collective Investment Scheme; or
- (4) substantially all day-to-day decisions relating to the management of Investments are taken by:
  - an Authorised Third Party under the terms of a written agreement with the Trustees; or
  - another Authorised Firm which has agreed to treat the Trustees as its own Investment Business Client and which has or will have with them an agreement for Discretionary Management; or
- (5) substantially all decisions to manage Investment are taken in accordance with advice given by:
  - as referred to in paragraph ( 4 ) above, an Authorised Third Party or another Authorised Firm; or
  - an Authorised Third party under the terms of a written agreement with the Member (where the Member has disclosed that it is acting for the particular Trustees and the Authorised Third Party has agreed to treat the Trustees as its clients for the purposes of giving the relevant advice); or
- (6) (unless all of the Trustees are Employees or Associates of the Member or the Member himself substantially all decisions relating to the management of Investments require the consent of one or more Trustees other than Trustees who are Employees or Associates of the Member or the Member himself or
- (7) the Member performs no functions in relation to the management of Investments other than functions of a purely administrative nature.

An Authorised Firm shall be taken to carry on Discretionary Trust Management only in relation to those Investments or classes of Investment comprised in the relevant Personal Appointment to which this definition applies.

Durable medium

Means any instrument that enables a recipient to store information addressed personally to the recipient in a

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way that renders it accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored.

“EEA”	The European Economic Area, being a Treaty between the EU and the European Free Trade Association.
“Employee”	Means a person employed under a contract of service or a person otherwise employed by an Authorised Firm such that he is held out as an employee or consultant of the firm.
“EU”	The European Union
“Execution-only Client”	An Investment Business client with or for whom the relevant transaction is effected in circumstances in which the Member can reasonably assume that the Client is not relying upon the Member to advise him on, or to exercise any judgement on his behalf as to the merits of, or the suitability for him of, that transaction.
“Explanation”	Material of that nature referred to in Regulation 1.02.
“Futures”	Means any rights under a contract for the sale of investment instruments or foreign currency under which delivery is to be made at a future date and at a price agreed upon when the contract is made
“General Client Bank Account”	An account whose characteristics are as follows: (a) the account holds the money of one or more Investment Business Clients; (b) the account is held by the Member with an Credit Institution; and (c) interest is payable on the money held in the account, in accordance with these Regulations.
“Guidance”	Material of the nature referred to in Regulation 1.01.
“Incidental Manner”	See Appendix 2 to Chapter 1
“Independent Accountant”	A statutory auditor as provided for by the European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010 (S.I. No. 220 of 2010).
“Inducements”	Payment or benefit offered which is designed to motivate or influence the outcome of specific events.

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“the Institute”	The Institute of Certified Public Accountants in Ireland.
“Institutional Investor”	means a client of an authorised investment business firm which is a product producer or an insurance undertaking or an undertaking for collective investment in transferable securities or a pension fund or a collective investment undertaking the manager of which is an authorised investment business firm;
Insurance Undertaking	Has the meaning assigned to it by the Insurance Act 1989.
“Investment Advice”	<p>means the giving, or offering or agreeing to give, to any person, advice on the purchasing, selling, subscribing for or underwriting of an investment instrument or on the making of a deposit or on the exercising of any right conferred by an investment instrument to acquire, dispose of, underwrite or convert an investment instrument or deposit or the giving, or offering or agreeing to give, to any person, advice on choice of a person providing investment business services, but does not include any of the following:</p> <ul style="list-style-type: none"><li>(a) advice given in a newspaper, journal, magazine or other publication, including electronic publications, where the principal purpose of the publication taken as a whole is not to lead persons to invest in any particular investment instrument or deposit or to deal with any particular provider of investment business services,</li><li>(b) advice given in a lecture, seminar or similar event or series of such events, where the principal purpose of the event or events taken as a whole is not to lead persons to invest in any particular investment instrument or deposit or to deal with any particular provider of investment business services and where persons engaged in the organisation or presentation of such events will earn no remuneration, commission, fee or other reward as a result of any particular decision, by a person attending such event and arising out of such attendance, in relation to investment instruments or deposits or in relation to the choice of a person providing investment business services,</li><li>(c) advice given in sound or television broadcasts where the principal purpose of such broadcasts</li></ul>

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taken as a whole is not to lead persons to invest in any particular investment instrument or deposit or to deal with any particular provider of investment business services,

- (d) advice to undertakings on capital structure, industrial strategy and related matters and advice relating to mergers and the purchase or sale of undertakings,
- (e) advice given by persons in the course of the carrying on of any profession or business not otherwise constituting the business of an investment business firm, where the giving of such advice arises from other advice or services given in the course of carrying on that profession or business, and where the giving of investment advice is not remunerated or rewarded separately from such other advice or services;

“Investment”

An asset, right or interest falling within any subparagraph of the definition of investment instrument in Section 2 of the Act, as amended by Section 52 of the Investor Compensation Act, 1998.

“Investment Business”

The business of engaging in one or more of the activities which fall within the definition of “investment business services” (including where appropriate “investment advice”)

“Investment Business Firm”

means any person, other than a member firm within the meaning of the Stock Exchange Act, 1995, who provides one or more investment business services or investment advice to third parties on a professional basis and for this purpose where an individual provides an investment business service and where that service is carried on solely for the account of and under the full and unconditional responsibility of an investment business firm or an insurance undertaking or a credit institution or member firm (within the meaning of the Stock Exchange Act, 1995) that activity shall be regarded as the activity of the investment business firm, insurance undertaking or credit institution or member firm (within the meaning of the Stock Exchange Act, 1995) itself;

“Investment Business Services”

includes all or any of the following services:

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- (a) receiving and transmitting, on behalf of investors, of orders in relation to one or more investment instrument;
- (b) execution of orders in relation to one or more investment instrument, other than for own account;
- (c) dealing in one or more investment instrument for own account;
- (d) managing portfolios of investment instruments or deposits in accordance with mandates given by investors on a discretionary client-by-client basis where such portfolios include one or more investment instrument or one or more deposit;
- (e) underwriting in respect of issues of one or more investment instrument or the placing of such issues or both;
- (f) acting as a deposit agent or deposit broker;
- (g) the administration of collective investment schemes, including the performance of valuation services or fund accounting services or acting as transfer agents or registration agents for such funds;
- (h) custodial operations involving the safekeeping and administration of investment instruments;
- (i) acting as a manager of a designated investment fund within the meaning of the Designated Investment Funds Act, 1985;

Investment Compensation Fund As provided for under the Investor Compensation Act, 1998.

"Investment instruments" includes—

- (a) transferable securities including shares, warrants, debentures including debenture stock, loan stock, bonds, certificates of deposits and other instruments: creating or acknowledging indebtedness issued by or on behalf of any body corporate or mutual body, government and public securities, including loan stock, bonds and other

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instruments creating or acknowledging indebtedness issued by or on behalf of a government, local authority or public authority, bonds or other instruments creating or acknowledging indebtedness, certificates representing securities, money market instruments,

- (b) non-transferable securities creating or acknowledging indebtedness issued by or on behalf of a government, local authority or public authority,
- (c) units or shares in undertakings for collective investments in transferable securities within the meaning of European Communities (Undertakings for Collective Investments in Transferable Securities) Regulations, 1989 (S.I. No. 78 of 1989), and any subsequent amendments thereto, units in a unit trust, shares in an investment company, capital contributions to an investment limited partnership,
- (d) financial futures contracts, including currency futures, interest rate futures, bond futures, share index futures and comparable contracts,
- (e) commodity futures contracts,
- (f) forward interest rate agreements,
- (g) agreements to exchange payments based on movements in interest rates, currency exchange rates, commodities, share indices and other investment instruments,
- (h) sale and repurchase and reverse repurchase agreements involving transferable securities,
- (i) agreements for the borrowing and lending of transferable securities,
- (j) certificates or other instruments which confer all or any of the following rights, namely—

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- (i) property rights in respect of any investment instrument referred to in *paragraph (a)* of this definition; or
- (ii) any right to acquire, dispose of, underwrite or convert an investment instrument, being a right to which the holder would be entitled if he held any such investment to which the certificate or instrument relates; or
- (iii) a contractual right (other than an option) to acquire any such investment instrument otherwise than by subscription,
- (k) a rolling spot foreign exchange contract,
- (l) options including—
  - (i) options in any instrument in *paragraphs (a) to (jj)* of this definition, or
  - (ii) currency, interest rate, commodity and stock options including index option contracts,
- (m) a tracker bond or similar instrument,
- (n) hybrid instruments involving two or more investment instruments,-
- (o) insurance policies
- (p) Personal retirement savings accounts

and includes any investment instrument in dematerialised form,

but this definition shall not be construed as applying to—

- (i) any instrument acknowledging or creating indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services; or
- (ii) a cheque or other similar bill of exchange, a banker's draft or a letter of credit; or

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- (iii) a banknote, a statement showing a balance in a current, deposit or savings account or (by reason of any financial obligation contained in it) to a lease or other disposition of property.

and the Minister, may by regulation, having consulted the supervisory authority, amend this definition from time to time by adding to the list of instruments in this definition any other instruments which, in the opinion of the Minister, have characteristics similar to the instruments listed in this definition;

“Investment Business Activities”

One or more of the services listed in Regulation 1.06.

“Investment Business Client”

Any person to whom the Authorised Firm provides Investment Business Services, but (for the avoidance of doubt and without limitation):

- (a) shall not include any shareholder in, or officer of, a Body Corporate which is an Investment Business Client unless they are separately an Investment Business Client of the Authorised Firm; and
- (b) where services are provided in respect of an estate, trust or pension scheme, shall not include any persons interested or potentially interested in such estate, trust or pension scheme unless they are separately an Investment Business Client of the Authorised Firm. In relation to such estate, the personal representatives, and in relation to such trust or pension scheme, the Trustees shall, in their capacity as such, be regarded as the Investment Business Client for all purposes.

“Investment Business Clients’ Money”

Money relating to Investment Business as defined in the Investment Business Clients’ Money Regulations.

“Investment Business Clients’ Money Regulations”

The regulations reproduced in Schedule 1 to Chapter 4.

“Large Company”

As defined in **Section 8 Companies (Amendment) Act 1986**, as amended by **Regulation 4 European Communities (Accounts) Regulations 1993** and **European Union (Accounts) Regulations 2012** refers

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"Long Position"	In relation to a person and an investment of a particular description (including Futures and Options) at a particular time, means the amount by which the number of units of that investment which that person holds at that time or which under commitments at that time he/she is, or will afterwards be, obliged to acquire exceeds the number of units of that investment which under commitments at that time he/she is, will or may afterwards become entitled or obliged to deliver.
"Market Value"	For the purposes of the monetary limits imposed under Chapters 1 and 4 of these Regulations means: <ul style="list-style-type: none"><li data-bbox="786 762 1443 919">(a) in respect of an Investment listed or traded on a Recognised Regulated Market the mid-market price at close of business on the date concerned as shown in the Daily official list of the [Dublin] Stock Exchange.</li><li data-bbox="786 926 1443 1045">(b) in respect of a unit in a Regulation Collective Investment scheme: the bid price published in the [Financial Times] or other appropriate source on the first publication date after the date concerned;</li><li data-bbox="786 1052 1443 1171">(c) in respect of other Investments: their acquisition cost, unless there is another value which the Member deems more appropriate and which it can reasonably substantiate.</li></ul>
"Member"	See: Authorised Firm.
"Mixed Portfolio"	Means a managed portfolio, which is primarily comprised of investments in securities or collective investment schemes other than futures and options
"Month"	means a calendar month;
"Multi Agency Intermediary"	A specific type of investment business firm that may receive and transmit orders in retail investment instruments, i.e. those investment instruments set out in Section 25 and 26 (1)(a) of the Investment Intermediaries Act 1995, and provide advice on retail investment instruments only on behalf of product producers from whom it holds an appointment in writing and that can act as a deposit agent or deposit broker.
"Non-Investment Business Client"	A person who is a client of the Authorised Firm for non-Investment Business services or who it is reasonable for the Authorised Firm to assume is familiar with the Authorised Firm through the Authorised Firm's

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	provision of services to other persons with whom he is connected.
“Non-Readily Disposable Investment”	(a) Freehold or leasehold property and (b) any other asset which is not a Readily Disposable Investment.
“Objective”	Material of that nature referred to in Regulation 1.02.
“Open Position”	In relation to a person and an investment of a particular description at a particular time, means that person’s Long Position or, as the case may be, Short Position in relation to that investment at that time.
“Options”	See investment instruments
“Order”	Means the Statutory Instrument No. 28 of 1996 - Investment Intermediaries Act, 1995 (Commencement) (No 2) Order, 1996 and all subsequent commencement orders.
“Overseas Person”	A person who carries on investment business (as defined in the Act) but who does not do so from a permanent place of business maintained by him in Ireland.
Private client	Means a client that is not a professional client
“Professional Client”	Means:  (a) An institutional investor, or  (b) A product producer; or  (c) A large company; or  (d) An incorporated body having an annual turnover of greater than €3 million which the firm can show has sufficient and appropriate expertise in investment instruments to be so categorised and which has acknowledged in writing being made aware of the consequences of being categorised as a professional client.
“Partner”	A person who has been admitted to a partnership which is an Investment Business Firm



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“PII Bye-laws”	The Professional Indemnity Insurance Bye-laws of the Institute of Certified Public Accountants in Ireland.
“Portfolio Review”	The review for a Client of the Investments constituting shares, debentures, government and public securities, instruments entitling to shares and securities, certificates representing securities, units in Collective Investment Schemes owned from time to time by that client, advising (either periodically or at the Authorised Firm’s initiative) on changes thereto and, following receipt of the Client’s instructions in response to such advice, giving effect to the Client’s instructions .
“Power”	A power of attorney.
“Principal”	A person in sole practice.
“Product Producer”	Means any regulated entity that produces, manufactures or packages a product of a financial or investment nature, and is not limited to a product producer as defined in the Investment Intermediaries Act 1995
“Readily Disposable”	(a) An Investment which is a listed or traded Investment on or under the rules of a recognised investment exchange or which is likely at all times to be easily capable of sale; and (b) a unit in an Authorised Unit Trust scheme or other Regulated Collective Investment Scheme; and (c) any other asset which is capable of sale easily or by mere delivery.
“Registration Committee”	The Registration Committee of the Institute of Certified Public Accountants in Ireland or any sub-Committee of that committee appointed under Regulation 2.1.
“Registration Appeals Committee”	The Registration Appeals Committee of the Institute of Certified Public Accountants in Ireland or any sub-Committee of that committee appointed under Regulation 2.2.
Regulated activities	Are the provision of products or services that are provided in this state by a regulated entity and which are subject to the regulation of the Central Bank and a “regulated activity” is the provision of any one such product or service.
Regulated entity	Means a financial services provider authorised, registered or licensed by the Central Bank or other EU or

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EEA Member State that is providing regulated activities in the state.

“Relevant Bank”	The Credit Institution with which is held the Investment Business Clients’ Money in respect of which the obligation to pay interest arises.
“Relevant Date”	In relation to an Investment Business Client, means the date on which the Authorised Firm first receives or holds Investment Business Clients’ Money for the Client in question; provided that where a period of at least twelve months has passed from an Authorised Firm ceasing to hold Investment Business Clients’ Money for that client, the date on which the Member next receives Investment Business Clients’ Money for the client shall be the relevant date.
“Relevant Period”	The period from the Relevant Date to the next Interest Accounting Date and each period thereafter between successive Interest Accounting Dates.
“Related Undertakings”	<ul style="list-style-type: none"><li>(a) companies related within the meaning of section 140 (5) of the Companies Act, 1990, and subsequent amendments thereto, or</li><li>(b) undertakings where the business of those undertakings has been so carried on that the separate business of each undertaking, or a substantial part thereof, is not readily identifiable, or</li><li>(c) undertakings where the decision as to how and by whom each shall be managed can be made either by the same person or by the same group of persons acting in concert.</li></ul>
“Secretariat”	The persons employed by an Institute for the purpose of carrying out its functions whether as an Approved Professional Body or otherwise.
“Soft Commission Agreement”	Means any agreement, under which an Authorised Firm receives goods or services, in return for which it agrees to direct business through or in way of another person.
“Short Position”	In relation to a person and an investment of a particular description (including Futures and Options) at a particular time, means the amount by which the number of units of that investment which, under commitments at that time, that person is, or will afterwards become, entitled or obliged to deliver exceeds the number of the units of that investment which he/she holds at that time

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or which under commitments at that time he/she is, will or may afterwards become entitled or obliged to acquire.

“Small Company”	As defined in <b>Section 8 Companies (Amendment) Act 1986</b> , as <b>amended</b> by <b>Regulation 4 European Communities (Accounts) Regulations 1993</b> and <b>European Union (Accounts) Regulations 2012</b> refers
“Subsidiary”	means a subsidiary undertaking within the meaning of Regulation 4 of the European Communities (Companies: Group Accounts) Regulations, 1992 (S.I. No. 201 of 1992);
“Title Documents”	Documents of title and certificate evidencing title to Investments falling within the definition of “investment instrument”- in section 2 of the Act.
“Transaction”	(i) the purchase or sale by an Investment Business Firm of an investment instrument.  (ii) the subscription for an investment instrument.
“Uncovered Open Position”	In relation to a person and an investment of a particular description at a particular time, means that person’s Open Position in relation to such investment at that time, to the extent that such person’s portfolio (or, as the case may be, the portions of such a portfolio for which the firm is responsible) does not at such time contain assets in any appropriate form which are or will be available and adequate to meet the commitment or liability represented by such Open Position.
“Unit Trust Scheme”	A Collective Investment scheme under which the property in question is held on trust for the participants in accordance with the Unit Trust Act 1989.
“Unsolicited call”	Means a personal visit or oral communication made without express invitation.
“Valuation Date”	Means the date as of which the total value of a portfolio has been valued.
Vulnerable person	Means a natural person who: a) has the capacity to make his or her own decisions but who, because of individual circumstances, may require assistance to do so (for example, hearing impaired or visually impaired persons); and/or

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- b) has limited capacity to make his or her own decisions and who requires assistance to do so (for example, persons with intellectual disabilities or mental health difficulties).

These regulations mean The Institute of Certified Public Accountants' Investment Intermediary Act Regulations as amended from time to time.

Any reference to a statutory provision shall include where the context permits the subordinate legislation made from time to time under that provision and any reference to a statutory provision shall include that provision as from time to time modified or re-enacted so far as such modification or re-enactment applies or is capable of applying to such reference.

### **Interpretation**

In these Regulations, unless the context otherwise requires, words importing the singular number shall only include the plural number and vice versa; and words importing the masculine gender shall include the feminine. Headings are for convenience only, and shall not affect the interpretation of the Regulations. The Regulations shall be governed by and construed in accordance with Irish Law.

All reference in these Regulations to "pounds" and to "£" are to Irish pounds and to "€" are to Euro

## APPENDIX 2 TO CHAPTER 1

### INCIDENTAL MANNER

#### Guidance

The Act refers to the provision of investment services 'in an incidental manner' and defines that as 'in the course of and in conjunction with but subordinate to a professional activity other than the provision of any investment business service.'

The language in the Act is derived from the Investment Services Directive which exempts from the scope of the directive, 'persons providing an investment business service where that service is provided in an incidental manner in the course of a professional activity . . . ' (Article 2.2(c))

The Investment Services Directive was promoted in order to require the proper authorisation of persons who provide investment business services. The directive applies to the regulation of investment business firms. The significance of this emphasis is that the exclusion in article 2.2(c) is also directed to 'persons' (firms) rather than to transactions. The Investment Services Directive does not exclude incidental transactions.' It excludes persons who provide investment services, where the provision of that service is incidental to the provision of other professional services.

The focus is therefore on the relationship of the investment service to the professional activity from the standpoint of the authorised member. Thus it is the sum of the individual transactions which is the 'service' which falls to be assessed, and the relationship of that whole service to the professional activity (again taken as a whole) of the authorised member.

In order for a authorised member to qualify as providing investment business services 'in an incidental manner in the course of a professional activity... other than the provision of an investment business service', it will be necessary to be satisfied that

- (a) the main activities of the authorised member are the provision of professional services other than investment business; and
- (b) the provision of the investment services is not isolated from the other activities of the authorised member so that it is in effect a separate business, (this would however not exclude a authorised member operating specialist departments).

The test in (a) above is measurable in quantitative terms. The Financial Regulator has indicated that if less than 20% of total turnover on an annual basis comes from investment business, the quantitative test is satisfied.

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However, the test in (b) is not quantitative but relates to the manner in which the services are presented. This is not as easily measured but can be assessed by reference to various indicators. Such indicators include:

1. Does the authorised member fully accept that its provision of investment business service is within the scope of the general ethical code or rules governing the profession?
2. Are the investment services normally provided in conjunction with the main professional activities of the authorised member?
3. Is it the policy of the authorised member to endeavour to provide its full range of services to his clients, where these services are appropriate?
4. In terms of the way the investment services are managed by the authorised member, is it clear that this activity does not act on a stand-alone basis separate from the main activities of the authorised member?
5. Is the provision of investment services managed on a day-to-day basis by persons who are members of an approved professional body?
6. When advertising investment services is it clear to a potential client that the authorised member operates an accountancy practice (or legal firm) which also provides investment services?
7. Are the offices dealing with investment business in the same locations as the offices from which the main professional services are provided?

It would be too simplistic to suggest that a failure against each one (singly) of the above tests would mean that an authorised member's provision of its investment business services could not be in an incidental manner.

Each individual authorised member would require to be assessed by the Approved Professional Body in order to satisfy the body that both legs of the requirement outlined in (a) and (b) above are satisfied. Such Authorised Members would also be governed in the conduct of their investment business by the ethical code of that Professional Body which is applied to professional practice as a whole.

## CHAPTER 2

### Authorisation, Enforcement and Disciplinary Arrangements

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The Council of the Institute of Certified Public Accountants in Ireland, in exercise of the powers conferred on it by Article 42 of the Institute's Memorandum and Articles and all other powers enabling it, hereby makes the following regulations:

## **2.1 Registration Committee**

### **(1) Constitution**

As per Bye Law 13.

### **(2) Responsibilities**

As per Bye Law 13.

### **(3) Powers**

- (a) For the purposes of discharging its responsibilities under these regulations, the Registration Committee (references to which, to the extent it delegates all or any of its responsibilities pursuant to these regulations, shall in these regulations be deemed to include the person or body of persons to whom it so delegates its responsibilities) shall have power to:
- (i) require any Authorised Firm to produce, at a time and place to be fixed by the Registration Committee, the accounting and other records of the Authorised Firm and any other necessary documents and to supply any other information and explanations;
  - (ii) enter the business premises of any Authorised Firm on such notice (if any), at all reasonable times, as the Registration Committee may think appropriate in the public interest;
  - (iii) secure for later inspection any premises or any part of a premises in which books, records or other documents are kept or there are reasonable grounds for believing that such books, records or other documents are kept;
  - (iv) inspect and take copies of or extracts from, or, subject to a warrant being issued for that purpose by a judge of the District Court, remove for a reasonable period for further examination, any books, records or other documents which the officer finds in the course of inspection;
  - (v) interview any Authorised Firm or officer or employee of an Authorised Firm;
  - (vi) require the attendance at specified premises, upon reasonable notice, of any Authorised Firm or any officer or employee of an Authorised Firm at a date, time and place to be specified by the Registration Committee in writing.

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- (b) Every requirement made by the Registration Committee under this regulation shall be made in writing and sent by registered post or the recorded delivery service to the Authorised Firm at his address and, when so made and sent, shall be deemed to have been received by the Authorised Firm within 48 hours (excluding Saturdays, Sundays and Bank Holidays) after the time of posting.

In exceptional circumstances no notice period shall be given to the authorised firm prior to an inspection by the Registration Committee or to its representatives.

- (c) All records and other documents required to be produced under this Regulation 2.1(3) (a) shall be treated as confidential and may be disclosed by the Registration Committee to any delegate or other committee of the Institute or any person outside the Institute only in connection with procedures relating to the granting, renewing, amending, suspending or withdrawing of Authorisation as a Certified Person and with disciplinary proceedings brought under the Articles, Bye-Laws or these or other regulations governing the conduct of accountants, and on the basis that the recipient treats the information on the same confidential basis. Nothing in this section shall restrict access to records or documents by the Irish Auditing and Accounting Supervisory Authority during the course of its supervisory functions.
- (d) The Registration Committee may co-operate, by the sharing of information or otherwise, with the Secretary of the Department of Jobs, Enterprise and Innovation, The Irish Auditing and Accounting Supervisory Authority and the Central Bank.
- (e) The Registration Committee may delegate any or all of its responsibilities referred to in Regulation 2.1(2) to any person or body or persons subject to agreement of the Central Bank.

## **2.2 REGISTRATION APPEALS COMMITTEE**

### **(1) Constitution**

As per Bye Law 13.

### **(2) Responsibilities**

The Registration Appeals Committee shall be responsible for hearing and determining appeals from the decisions of the Registration Committee in accordance with these regulations.

### **(3) Powers**

The Registration Appeals Committee shall have all the powers of the Registration Committee in discharging its responsibilities under these regulations. Its powers shall include the power to affirm, vary or rescind any decision of the Registration Committee.

## **2.3 APPLICATION FOR AUTHORISATION AS A CERTIFIED PERSON**

### **(1) Form of application**

- (a) An applicant must apply in writing in such form, giving such undertakings and accompanied by such fees, as may be prescribed from time to time by Council.
- (b) It shall be for an Applicant to satisfy the Registration Committee that he is eligible in accordance with these regulations for Authorisation as a Certified Person applied for.
- (c) The Registration Committee shall as part of the assessment of an applicant's eligibility for authorisation as a Certified Person satisfy itself as to:
  - i. Probity.
  - ii. A declaration of fit and proper status
  - iii. Competence and compliance with CPE regulations of the Institute and the Minimum Competency Code 2011 as amended from time to time.
  - iv. A completed declaration by the member of agreement to comply with and be bound by the Institute's Investment Intermediary rules and regulations.

**(2) Procedure**

- (a) Applications for Authorisation as a Certified Person shall be considered by the Registration Committee. Any time after receiving an Application and before finally deciding upon it, the Registration Committee may require the Applicant to furnish additional information.
- (b) Any information furnished by the Applicant shall, if the Registration Committee so requires, be verified in such manner as the Registration Committee may specify.
- (c)
  - (i) The Registration Committee may additionally take into account any other information which it considers appropriate in relation to the Applicant, provided such information is disclosed to the Applicant where such disclosure does not constitute a breach by the Registration Committee of any duty to any other person.
  - (ii) The Applicant may within a reasonable time after service of such other information serve on the Registration Committee any additional information and/or written comments or submissions for the Committee's consideration.
- (d) Where the Registration Committee deems it appropriate to have regard to the finding of any other body in its consideration of an Applicant, any such finding which has not been set aside on the appeal or otherwise shall be regarded as conclusive proof of the fact that it has been made and shall not be re-opened before the Registration Committee unless the Registration Committee in its absolute discretion otherwise determines.
- (e) After consideration of the information provided by the Applicant and/or the Applicant's comments or submissions, the Registration Committee shall make a decision on the Application.

**(3) The Registration Committee's decision**

- (a) The Registration Committee may:
  - (i) grant the Application;
  - (ii) refuse the Application;
  - (iii) grant the Application subject to such condition(s) as it considers appropriate.
- (b) Where the Registration Committee refuses the Application or grants it subject to conditions, the Applicant shall be notified in writing of the decision and the reasons for it. The Applicant shall be informed that he may serve a notice of appeal on the Secretary of the Institute no later than 21 calendar days after receipt of the decision

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of the Registration Committee. If no such notice is served, the decision of the Registration Committee shall be final. If such a notice is served, the appeal shall be conducted in accordance with the procedure stipulated by Regulation 2.5 herein.

- (c) Where the Registration Committee grants an Authorisation subject to conditions, it may vary or withdraw such conditions at any time.

**(4) Applications granted**

When an Application is granted, or granted subject to conditions, the Applicant shall be issued with the Authorisation as a Certified Person applied for or, as the case may be, shall be issued with such a certificate once any conditions attaching to the grant of Application have been satisfied or shall be issued with such a certificate with such conditions noted on the certificate, as appropriate.

**(5) Administration charge**

If an Application is withdrawn the Council may charge the Applicant such sum as seems reasonable to it to defray or contribute to the cost of processing the Application between its receipt by the Council and its withdrawal by the Applicant but, subject to this, shall return any fee tendered with the Application.

## 2.4 WITHDRAWAL OF AUTHORISATION AS A CERTIFIED PERSON

### (1) Discretionary grounds

The Registration Committee may, if in its absolute discretion it thinks fit or on request from the Central Bank, or the Courts, withdraw or suspend authorisation or impose conditions upon a Certified Person if:

- (a) the Authorised Firm concerned so requests;
- (b) it appears that in relation to the Authorised Firm any false, inaccurate or misleading information has been supplied to the Institute.
- (c) the Authorised Firm has failed to submit a properly completed form as required by Regulation 2.8 (annual renewal) or fails to comply with a request for information or otherwise co-operate with the Registration Committee in the exercise of its powers under these regulations.
- (d) the Authorised Firm fails to comply with any condition imposed by the Institute pursuant to Regulation 2.3(3) (a) (iii) herein;
- (e) The Institute has received and investigated one or more complaints against the authorised firm in accordance with Bye 6 and the investigation upholds the complaint.
- (f) The authorised firm commits a number of minor breaches of the regulations in the authorisation period.
- (g) The authorised firm has not engaged in Investment Business Services in the 12 months immediately prior to their application for renewal of their authorisation as a Certified Person.
- (h) The authorised firm failed to maintain its probity and competence.
- (i) The authorised firm has not evidenced to the satisfaction of the Registration Committee that it complies with Bye-Law 9 in respect of Professional Indemnity.
- (j) The Authorised Firm has not paid any fees/charges that are due under this Byelaw 14 within 30 days of the serving the notice requiring payment of same.

### (2) Suspension

The suspension of Authorisation as a Certified Person pursuant to Regulation 2.4 (1) herein shall be for a specified period or until the occurrence of a specified event or until

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specified conditions are complied with and while the Authorisation as a Certified Person is suspended it shall be deemed not to be held by the Authorised Firm concerned.

(3) **Conditions**

Conditions may be imposed of a type and for so long as the Registration Committee considers appropriate or desirable.

(4) **Withdrawal**

The Registration Committee shall withdraw Authorisation of a Certified Person if it is notified or becomes aware that the Authorised Firm holding the relevant Authorisation as a Certified Person has ceased to be, or never was, eligible to be issued with such status.

(5) **Notification**

Any decision as to the withdrawing or suspending of Authorisation of a Certified Person shall be communicated by the Registration Committee to the Authorised Firm concerned forthwith and in writing. The Registration Committee will inform the Central Bank, on expiry of the appeals period of notice, and no such appeal notice having been received by the Secretary of the Institute from the authorised firm, of any decision as to the withdrawing or suspending of Authorisation of a Certified Person.

## 2.5 APPEALS

(1) **Procedure**

- (a) An Authorised Firm (“the Applicant”) aggrieved by any decision of the Registration Committee notified to him or made pursuant to Regulations 2.3(3) or 2.4 herein may appeal to the Registration Appeals Committee within 21 days of receiving the notice or the decision by giving notice to the Secretary of the Institute and lodging with the Secretary;
  - (i) a written statement (a “Statement”) setting out the circumstances in which the appeal is made and the matter or fact relied upon by the Appellant, the decision or request to which the Appellant objects and the order which the Appellant wishes the Registration Appeals Committee to make; and
  - (ii) a statutory declaration verifying the facts set out in the Statement and copies of any notices served on the Appellant under these regulations.

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- (b) The appeals shall be without oral hearing unless either the Appellant or the Registration Committee requests that it be by oral hearing, such request to be made by either party by written notice served on the other within 21 days of the lodging of the Statement. Following such request the Registration Appeals Committee shall determine the date of the hearing and shall give the Appellant at least 21 days prior written notice of such date.
  - (c) The appeal shall be determined or heard within 3 months from the date of the lodging of the Statement, if possible.
  - (d) If the appeal is determined without oral hearing, the Registration Appeals Committee may determine the appeal on the basis of the documents before it and can require further documentation to be produced. Prior to determining the appeal the Registration Appeals Committee shall send copies of relevant documentation to the individual concerned and request his comments thereon. Any information required by the Registration Appeals Committee will be copied to the appellant for his comments before a final decision is taken.
  - (e) If the appeal is by oral hearing, the Appellant and the Institute Registration Committee may appear at the hearing in person or may be represented by solicitor, counsel or other representative. Each party shall notify the other at least 14 days prior to the hearing how each proposes to appear.
  - (f) The Registration Appeals Committee may make such order as it sees fit in respect of the appeal, including the costs of the appeal, and shall give the Appellant a written statement of its reasons for the making of such order.
  - (g) Any such order shall be signed by the Chairman of the Registration Appeals Committee and shall be filed with the Institute. The Institute shall forthwith on the filing of the order take all steps as may be necessary to give effect to the said order.
  - (h) The procedure to be adopted in relation to any appeal shall, subject to the foregoing paragraphs of this Regulation 2.5(1), be such as the Registration Appeals Committee shall in its absolute discretion determine.
- (2) **Powers to suspend operation of decision pending appeal:**
- (a) The Registration Committee or Registration Appeals Committee in their absolute discretion shall have the power to defer the operation of any decision made under these regulations, pending the hearing and determination of any appeal.

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- (b) Where the operation of a decision of the Institute is deferred pending appeal and that decision is confirmed on appeal, then it shall take effect on the making of the order on the appeal.

(3) **Publication of decisions**

The Council, after due consultation with the Central Bank, may give public notice of any decision pursuant to Regulation 2.3, 2.4 or 2.5 herein, provided any appeal against such decision has been concluded or abandoned or the time limit for making any such appeal in accordance with these regulations has expired.

**2.6 NOTIFICATION**

(1) **Notification 28 days in advance**

An Authorised Firm which holds Authorisation as a Certified Person shall notify the Institute in writing of the following changes not less than 28 days before the change is implemented;

- (i) a change in the name of the Authorised Firm.
- (ii) a change in the address of the Authorised Firm, or if different, the address of the place for service of notices or documents.
- (iii) the opening or closure of a branch office of the Authorised Firm;
- (iv) the disposal of an Authorised Firm's practice.

(2) **Notification forthwith**

An Authorised Firm who holds Authorisation as a Certified Person shall give written notice forthwith to the Institute of the occurrence of any of the following, setting out in the notice details of the event in question and any other relevant information;

- (i) the appointment of a receiver, examiner, trustee, judicial factor or sequestrator of the assets of the Authorised Firm (or the happening of any similar or analogous event);
- (ii) the making, or any proposals for the making, of a composition or arrangement with creditors or any one creditor of the Authorised Firm.

(2) **Notification forthwith,**

In the case of a Authorised Firm who is a Sole Practitioner, he has ceased to practice must;

- i. Notify the Institute forthwith;
- ii. Provide at least two months' notice to affected clients to enable them to make alternative arrangements;
- iii. Ensure all outstanding business is properly completed prior to the transfer, merger or cessation of operations or, alternatively in the case of a transfer or merger, inform the client of how the continuity of service will be provided following the transfer or merger; and
- iv. In the case of a merger or transfer of regulated activities, inform the client that their details are being transferred to the other regulated entity, if that is the case.

**(3) Notification forthwith**

An Authorised Firm is required to notify the Institute as soon as practicable, but not later than ten business days after the event, of any matter in relation to the continuing eligibility to hold authorisation in accordance with this Byelaw 14.

**2.7 DISCLOSURE OF INFORMATION, MONITORING AND COMPLIANCE**

**(1) Register of Authorisation of Certified Persons**

Authorised Firms must supply the Institute with all necessary information in accordance with, and to enable the Institute to comply with, any other obligations imposed upon them by the conditions and requirements imposed under section 58 of the Act.

**(2) Co-operation with the Institute**

Authorised Firms shall, and shall ensure (in so far as they are able) that all partners/associates/officials etc. associated with them shall, co-operate with the Institute in its monitoring and enforcement of compliance with these regulations and the Bye-Laws relating to quality assurance. For details of the monitoring and capital adequacy requirements for authorised firms see 1.06.

**2.8 ANNUAL RENEWAL**

**(1) Validity**

Authorisation as a Certified Person shall be valid only from the date of issue to the following 31 March (unless Council otherwise directs).

(2) **Renewal**

Every Authorised Firm wishing to renew Authorisation as a Certified Person held by it must do so in accordance with these Regulations.

(3) **Form of application for renewal**

- (a) An application for the renewal of an Authorisation must be made in such form (including electronic form) and contain such information as the Registration Committee requires.
- (b) An application for the renewal of an Authorisation must be received at least one month prior to the expiry of the existing certificate or as otherwise directed by the Registration Committee.
- (c) It shall be for an Applicant to satisfy the Registration Committee that he is eligible in accordance with these regulations for Authorisation as a Certified Person.
- (c) The Registration Committee shall as part of the assessment of an applicant's eligibility for authorisation as a Certified Person satisfy itself as to:
  - i. Probity.
  - ii. A declaration of fit and proper status
  - iii. Competence and compliance with CPE regulations of the Institute and the Minimum Competency Code 2011 as amended from time to time.
  - iv. A completed declaration by the member of agreement to comply with and be bound by the Institute's Investment Intermediary rules and regulations.

**2.9 CONTINUITY OF PRACTICE**

(1) **Holders of Authorisation as a Certified Person**

In the case of an Authorised Firm who is a Sole Practitioner, he must enter into a written agreement with a member of this Institute, or a member of any other body of auditors recognised by the Minister in accordance with The Companies Act 1990, holding Authorisation as a Certified Person, or firm of practising accountants (the "nominee") which agreement must provide for the nominee, who must hold Authorisation at an equivalent or higher category as a Certified Person, to be responsible for the individual's

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practice in the event of his death or incapacity. A copy of the agreement must be submitted to the Institute.

## **2.10 QUALIFICATIONS**

### **(1) Relevant Qualifications**

The following shall be Relevant Qualifications for an Applicant for Authorisation as a Certified Person.

- (a) Membership of the Institute and holding a valid Practising Certificate and
- (b) Meet the requirements of the Minimum Competency Code 2011 as amended from time to time.

## **2.11 INVESTOR COMPENSATION FUND**

All members making an application to hold Authorisation as a Certified Person must become members of the Investor Compensation Fund as provided for under the Investor Compensation Act, 1998.

## **2.12 CONTINUING OBLIGATIONS**

A member holding Authorisation as a Certified Person must, without prejudice to the general application of the Membership Regulations to members:

- (i) comply with Regulation 2.6 (Notification) herein;
- (ii) continue to comply with Regulation 2.11 (Comp.) herein;
- (iii) comply with Regulation 2.7 (Disclosure of information and compliance) herein;
- (iv) comply with Regulation 2.8 (Annual renewal) herein;
- (v) continue to comply with Regulation 2.9 (Continuity of practice) herein.
- (vi) comply with Bye-Law 9 in respect of Professional Indemnity Insurance.

## **CHAPTER 3**

### **Conduct of Investment Business**

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## INTRODUCTION

### **Objectives**

#### *Specific Objectives*

This Chapter contains the Regulations for the conduct of all Investment Business undertaken by an Authorised Firm for its Client in accordance with the terms agreed in the terms of business with the Client.

In addition, where an Authorised Firm holds Investment Business Clients' Money or Custodial Investments or funds under Discretionary Management on behalf of his Client, Chapter 4 is also relevant.

## 3.1 CONSUMER PROTECTION

### **3.1(1) Consumer Protection Code**

An Authorised Firm must ensure that it complies with the Central Bank's Consumer Protection Code 2012 and all subsequent amendments to same to the extent that it applies to the activities that the firm is authorised to engage in.

The following provisions of the Consumer Protection Code are to be interpreted as follows;

- (k) An Authorised Firm falls within the definition of a "regulated entity" within the Consumer Protection Code.
- (ii) Provision 4.10 from the Consumer Code should be replaced with the requirements of chapter 4, regulation 7.
- (iii) Provision of 4.13(c) should be read so as to require the name of the Institute to be stated rather than the name of the competent authority.
- (iv) Provision 3.11 (a) should be replaced with a requirement to notify the Institute rather than the Central Bank.

### **3.1(2) Minimum Competency Code**

An Authorised Firm must ensure that it complies with the Central Bank's Minimum Competency Code 2011 as amended from time to time. All persons within the firm who fall within the scope of the Minimum Competency Code must comply with the standards set out in the Minimum Competency Code.

## 3.2 GENERAL PRINCIPLES

An Investment Business Firm shall ensure in all transactions that it:

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- (i) acts honestly and fairly in conducting its business activities in the best interests of its clients and the integrity of the market;
- (ii) acts with due skill, care and diligence in the best interests of its clients and the integrity of the market;
- (iii) has and employs effectively the resources and procedures, systems and control checks, including compliance checks, and staff training that are necessary for the proper performance of its business activities;
- (iv) seeks from its clients information regarding their financial situations, investment experience and objectives as regards the services requested;
- (v) makes full disclosure of all relevant material information including all charges/commissions in its dealing with its clients;
- (vi) makes a reasonable effort to avoid conflicts of interests and, when they cannot be avoided, ensures that its clients are fairly treated;
- (vii) complies with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of its clients and the integrity of the market;
- (viii) adheres to both the letter and spirit of this Byelaw and the Consumer Protection Code.
- (ix) corrects errors and handles complaints speedily, efficiently and fairly.
- (x) does not exert undue pressure or undue influence on a client.
- (xi) Where a regulated entity has identified that a client is a vulnerable person, the authorised firm must ensure that they are provided with such reasonable arrangements and/or assistance that may be necessary to facilitate him or her in his dealings with the authorised firm.
- (xii) acts in a timely manner.

### **3.3 USE OF AUTHORISED INVESTMENT BUSINESS FIRMS**

#### **Objective**

Where the services of another Authorised Investment Business Firm is used the duties of each party should be clearly defined and such use should clearly be for the benefit of the Investment

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Business Client. The responsibilities of the Authorised Firm and the other Authorised Investment Business Firm should be clearly understood by the Authorised Firm.

3.3 (1) An authorised Firm shall ensure that either:

- (1) another Authorised Investment Business Firm gives the relevant advice or provides the relevant service directly to the Client, treating the Client as its customer or Client; or
- (2) the Authorised Firm gives to the Client, or acts upon, the advice of another Authorised Investment Business Firm obtained by the Authorised Firm acting as disclosed agent for a named Client and:
  - (a) the terms of business agreed with the Client envisages that the Authorised Firm may obtain the advice of another Authorised Investment Business Firm in this manner and the Authorised Firm informs the Client that he has so acted; and
  - (b) the other Authorised Investment Business Firm has agreed with or confirmed to the Authorised Firm that it will treat the Client as a customer or Client for all purposes.
- (3) that the other Authorised Investment Business Firm is entitled to provide the services referred to it to the client.

### **3.4 TERMS OF BUSINESS**

#### **3.4 (1) Discretionary Management**

Before an Authorised Firm manages a portfolio on a discretionary basis;

- (a) They shall ensure that a copy of the terms of business has been sent to the Client and the Client has returned to the Authorised Firm a copy signed by him or on his behalf.
- (b) Investments within a portfolio managed on a discretionary basis on behalf of a Client shall be restricted to Readily Disposable Investments and to freehold or leasehold property. However, a Client for whom a portfolio is managed on a discretionary basis may give specific authority to an Authorised Firm to include within such portfolio any particular Investment or Investments of a particular kind. The Authorised Firm shall, before conclusion of the agreement for Discretionary Management, warn the Client of the risks involved in the assets which may be subject to Discretionary Management.

3.4.(2) An Authorised Firm shall not be entitled to recommend to, or undertake for a client, any transaction as the Institute may stipulate from time to time. The Institute may from time to time issue guidance on the contents of such statements. Any statement issued by an Authorised Firm in accordance with this paragraph shall explain the risks of the transaction at least as fully as any such guidance.

3.4.(3) Where an Authorised Firm accepts an order subject to any condition he shall maintain a written note of the condition of which the instruction or order is subject.

### **3.5 INDEPENDENCE AND CONFLICTS OF INTEREST**

#### **Objective**

3.5 (1) The Investment Business Client should be entitled to receive the best attentions of the Authorised Firm without any dilution of objectivity stemming from a lack of independence or conflict of interest (and in some circumstances the receipt of commission might raise these issues).

#### **Independence**

3.5(2) An Authorised Firm shall at all times be, and be seen to be, free in any action he undertakes of any interest which might detract from his objectivity. It shall not enter, and shall require it's, Employees and its Associates not to enter, into any association or arrangement with any person which may result in the Authorised Firm being constrained or induced to:

- (a) recommend to an Investment Business Client transactions in some Investment but not others, with some persons but not with others, or through the agency of some persons but not of others, unless so constrained by law;
- (b) refer or introduce any Investment Business Client or Non-Investment Business Client to any person who is not an independent intermediary with a view to that person either:
  - (1) giving any investment advice to that Client; or
  - (2) performing any other Investment Business services for a Client other than the effecting of a particular transaction which the Authorised Firm has recommended in accordance with Regulation 3.1

#### **Clients' Best Advantage**

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- 3.5(3) An Authorised Firm shall take reasonable care in executing transactions with or for his clients to ensure that he deals to the best advantage of his clients.
- 3.5(4) In deciding whether or not an Authorised Firm has taken reasonable care as required in paragraph 3.1 the Institute will have regard to all the relevant circumstances of the transaction including without limitation:
- (a) the size of the order;
  - (b) the nature of the transaction;
  - (c) the nature and extent of enquiries made by the Authorised Firm with other Authorised Firms including, where relevant, market makers in that security;
  - (d) the price and availability of that security or asset, as well as the general condition of the market at that time;
  - (e) the terms of the order given by the client, including the time at which the order was recorded;
  - (f) the services which the Authorised Firm holds himself out as providing; and
  - (g) all charges which will be levied on the investment concerned.
- 3.5(5) An Authorised Firm may be required to justify his actions to the Institute in order to show that he has dealt to the best advantage of his client.
- 3.4(6) Where an Authorised Firm deals to best advantage but does not obtain the best price reasonably available to the client (after exclusion of any charge directly referable to the transaction) he shall disclose in writing such price to the client and explain why a transaction at that price did not represent best advantage.
- 3.5(7) Authorised members are required to record the time and date of dealing for all transactions with or for their clients, and to retain this information in a readily accessible form.
- 3.5(8) Authorised members may aggregate a transaction for a client with transactions for other clients or with own account transaction where it is reasonably unlikely that the aggregation will operate to the disadvantage of any of the clients whose orders have been aggregated and where the Authorised Firm discloses to each client whose order is to be aggregated that the effect of aggregation may work to its disadvantage in relation to a particular order.

### **Client transaction priority**

3.5(9) An Authorised Firm must deal with transactions for his clients, employees and for his own account fairly and, subject to paragraph 3.4(14) to 3.4(18) in the sequence in which they arise.

Where an Authorised Firm has:

- (a) accepted an order from a client; or
- (b) decided to effect a discretionary transaction for a client:

the Authorised Firm must not seek to take advantage for his own account or for a connected party, and subject to paragraphs 3.4(14) to 3.4(18) must ensure that his employees do not deal for their own accounts in the security concerned before the execution or withdrawal of the order or decision.

3.5(10) Nothing in paragraphs 3.4(14) to 3.4(18) should be considered to prevent an Authorised Firm dealing on his own account for the sole or primary purpose of enabling or facilitating a transaction.

3.5(11) An Authorised Firm who permits an employee to deal on his own account shall not be considered to be in breach of paragraphs 3.4(14) to 3.4(18) if, prior to the time of the Authorised Firm accepting the client order or deciding to effect the discretionary transaction referred to in paragraph 3.3(5), the employee has as regards the placing of the order, complied with paragraphs 3.4(14) to 3.4(18) and the dealing consists solely of the completion of that order.

3.5(12) Authorised Firms and their employees are not prohibited from dealing in the manner referred to in paragraphs 3.4(14) to 3.4(18) if the client's transaction cannot be executed owing to a price limit or some other material condition which makes the prior execution of the client's transaction impossible.

3.5(13) Once an Authorised Firm has agreed or decided to enter into a transaction for a client, he must do so as soon as is reasonably practicable in the circumstances.

### **Own Account Dealing**

3.5(14) An Authorised Firm shall not act collectively for a Client or Clients and on his own account. In no circumstances may the Authorised Firm allocate to a Client a bargain originally effected for the Authorised Firm's own account or allocate for the Authorised Firm's own account a bargain originally effected for a Client.

### **Personal account transactions**

- 3.5(15) Authorised Firms shall ensure that they have an effective written procedure for the recording, monitoring and approval of all the personal account transactions of their employees, associates and connected persons. Such procedures shall include a requirement that before approval is given to a personal account transaction the person approving the transaction should consider whether the Authorised Firm should first deal in the same investment instruments on behalf of any discretionary client of the employee seeking approval for the transaction.
- 3.5(16) Each employee shall, as part of their contract of employment be required to sign an undertaking relating to the provisions of Part V of the Companies Act 1990 (Insider Dealing), declaring that the employee has read and understood them and shall as part of their said contract comply with such procedures as may from time to time be introduced for the purpose of ensuring compliance therewith.
- 3.5(17) Authorised Firms shall ensure that where they are involved in the distribution of a newly listed investment instrument, no investment instruments are placed with employees, connected persons or their own account until such time as the Authorised Firm is satisfied, as far as reasonably possible, that his discretionary clients have been given an opportunity to participate in the placing.
- 3.5(18) An employee of an Authorised Firm shall not be entitled to transact any investment services otherwise than through that Authorised Firm for his own personal account, or for the account of an associate without the prior written permission of the Authorised Firm and only then on the basis that copies of all contract notes relating to such transactions shall be supplied to the person giving such permission. Any such authority given under these rules shall be renewed annually.

### **Commission**

- 3.5(19) If the commission to be received by an Associate is disclosed by that Associate in a manner equivalent to this Regulation, additional disclosure by the Authorised Firm will not be required.
- 3.5(20) If commission on any transaction becomes payable at any time to the Authorised Firm or his Associate in an amount which exceeds by more than €127 or one tenth whichever is the lower the amount which was previously disclosed to the Client by the Authorised Firm or his Associate, the Authorised Firm shall use all reasonable efforts to notify the Client of the fact and the increased amount in writing as soon as possible.

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3.5(21) Subject to Regulation 3.4(19), an Authorised Firm shall not give or offer, and shall require his Employees and Associates not to give or offer, any commission, regard or inducement to a third party, not being his own Employee, another Accountant or Authorised Firm under the Act, in return for the introduction of a Client.

### **Excessive Dealing**

3.5(22) Paragraph 3.4(26) shall not apply to a client for whom no service is provided other than the execution of orders.

3.5(23) Unless the investment management agreement provides otherwise, Authorised Firms must send, directly or indirectly, contract notes to their clients in respect of each transaction entered into under the operation of the discretionary account, unless the client has requested, in writing, that he/she does not wish the Authorised Firm to send contract notes.

### **Soft Commissions**

3.5(24) Goods or services supplied under a soft commission agreement must reasonably be expected to and must be used to:

- (a) assist in the provision of investment services to the Authorised Firm's clients by means of:
  - (i) specific advice or dealing in, or on the value of, any investment; or
  - (ii) research or analysis relevant to paragraph (a) above (or about investment generally and matters relevant thereto); or
  - (iii) the use of computer or other information facilities to the extent that they are used to support investment decision-taking, advice, research or analysis;
- (b) provide custodian services relating to investment of or managed for clients; or
- (c) provide services relating to valuation of portfolios or the measurement of the performance of portfolios; or
- (d) market price services.

3.5(25) The Institute may from time to time issue guidance on goods and services which may be received under a soft commissions agreement. Failure to comply with such guidance shall be prima facie evidence of a breach of paragraphs 3.4(31) and 3.4(32).

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3.5(26) An Authorised Firm receiving goods or services under a soft commission agreement must provide in writing to those clients affected by the agreement at the outset of the clients relationship or as soon as practical thereafter its policy relating to soft commissions. The policy statement shall outline why a soft commission arrangement is in the best interests of the clients. Each client affected by it shall also be provided annually with the following information:

- (i) the percentage of total commission paid by the Authorised Firm under soft commission arrangements; and
- (ii) the nature of goods or services received by the Authorised Firm under soft commission arrangements and, where practicable, the value of such goods and/or services as a percentage of total commissions paid on a cost basis.

3.5(27) An Authorised Firm must provide to any client to whom it is relevant, details of any changes in its policy in relation to soft commissions immediately after implementation of any such changes.

## **3.6 SUITABILITY AND ADVISING CLIENTS**

### **Know your Client and Suitability of Investments**

3.6(1) Where a client is unwilling or unable to provide the relevant facts as set out in the Consumer Protection Code 2012 the firm is precluded from entering into a relationship with the client unless that client satisfies the conditions set out in provision 5.24 of the Consumer Protection Code 2012.

#### **Suitability**

3.6(2) A firm which is managing a portfolio for a client on a discretionary basis must ensure that the portfolio remains suitable, having regard to the facts disclosed by that client or other relevant facts about the client of which the firm is or ought reasonably to be aware.

A firm must not:

- (a) recommend transactions to a private client or effect discretionary transactions with or for him, unless it has taken all reasonable steps to ensure the client understands the risks involved; or
- (b) recklessly, negligently or deliberately mislead a client as to any perceived advantages or disadvantages of a contemplated transaction.

3.6(3) For this purpose, an Authorised Firm shall be treated as giving investment advice in accordance with Section 2 of the Act to a Client only if he gives to a Client advice on the

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merits of his purchasing, selling, or subscribing for a particular investment, or exercising any rights conferred by a particular Investment to acquire, dispose of, or convert a particular Investment.

A record of all such advice must be maintained and be available for inspection.

### **Client's understanding of Risk**

3.6(4) Before recommending or effecting for an Investment Business Client, which is a Private Client, a transaction relating to an Investment, an Authorised Firm shall – unless it believes on reasonable grounds that it is unnecessary having regard to the Client's knowledge and experience of that Investment, or unless he is providing Discretionary Management services and has warned the Client of the risks involved in accordance with Regulation 3.3(5) – take reasonable steps to enable the Client to understand the nature of the risks to which he may be exposed, including risk resulting from limited marketability, or further liability by entering into the transaction.

## **3.7 DEALING FOR CLIENTS**

### **Objective**

3.7(1) The carrying out of transactions or arrangements, including purchases and sales of Investments, should be in the manner most beneficial to the Investment Business Client.

### **Allocation of Bargains between Clients**

3.7(2) An Authorised Firm shall act only on behalf of a named or otherwise identifiable Client. In any situation where the Authorised Firm finds himself obliged to allocate bargains between different Clients, and all cannot be satisfied, the bargains shall as soon as reasonably practicable thereafter be allocated between the Clients:

- (a) in a manner which the Authorised Firm in good faith believes does not unfairly benefit one Client at the expense of another;
- (b) so as to be reasonable in the interests of each Client;
- (c) so as not to conflict with any instructions a Client may have given the Authorised Firm;  
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- (d) so as not to conflict with any limitations which may have been placed on the Authorised Firm's discretion to act.
- (e) on a pro rata basis with a detailed explanation provided for any deviation from that basis.

### **3.8 CLIENT'S ASSETS**

#### **Objective**

- 3.8(1) The Client's assets (including documents of title) in the possession or under the control of the Authorised Firm should be kept safe and secure.

#### **Title Documents**

- 3.8(2) Where an Authorised Firm holds Title Documents for Investment Business Clients, he shall hold them or cause them to be held in safe custody either by his own nominee or by a third party nominee and shall insure the same against loss, damage or destruction. Where title to investments is recorded electronically, an Authorised Firm must ensure that customer entitlements are separately identifiable from those of the Authorised Firm in the records of the person maintaining records of entitlement.

An Authorised Firm shall not lend a Client's Title Documents which he holds to a third party.

- 3.8(3) Each office or sub office of an Authorised Firm shall maintain an up-to-date register identifying all Title Documents held or received on behalf of Clients and showing details of receipts and despatch, where they are kept, the purposes for which they are held and whether they are subject to any charge. This register shall be reconciled every six months with the Title Documents actually held at the time of such reconciliation and the record of the reconciliation shall be retained.

Reconciliation must take place by

- (a) the physical counting and inspection of all safe custody investments, collateral and other clients' property physically held by it; and
  - (b) obtaining written confirmation from third parties in respect of all safe custody investments, collateral and other clients' property held by them.
- 3.8(4) Where Title Documents are held in safe custody by the Authorised Firm's own nominee or a third party nominee, the Authorised Firm shall instruct the nominee to keep a register and reconcile it in the manner referred above and, for the purposes of that paragraph and

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Regulation 3.7 (3), the Authorised Firm may rely on such register provided that the Authorised Firm has no reason to doubt its accuracy.

3.8(5) A list of Title Documents shall be prepared annually from the Register required under Regulation 3.7(3) and provided to the Investment Business Client unless the information has already been provided to the Client in some other connection.

3.8(6) In the case of registerable Investments which are not registered in names identifying the Investment Business Clients to whom they belong, and of Investments where title passes by delivery of the documents of title, the relevant Title Documents shall be held in such a manner that:

(a) it is readily apparent that the Investments do not belong to the Authorised Firm or an Associate of the Member; and

(b) the owner of each Investment can be identified at all times.

3.8(7) An Authorised Firm who has custody of Investments on behalf of an Investment Business Client must ensure that any registerable Investments which he buys or holds for that Client are properly registered in the clients name or, with the prior written consent of the Client, in the name of:

(a) an eligible nominee which is:

(i) an individual, nominated by the client, who is not an associate of the Authorised Firm;

(ii) a nominee company controlled by either the Authorised Firm or an affiliated company;

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

(iv) a nominee company controlled by an eligible custodian;

an eligible custodian; or

with the prior written consent of the Institute the Authorised Firm himself where, due to the nature of the law or market practice of an overseas jurisdiction, it is not possible to do otherwise.

### **Information on Transactions**

3.8(8) The Authorised Firm shall instruct the broker or other intermediary used to execute a transaction effected on behalf of an Investment Business Client to forward a confirmation note, difference account or contract note to the Authorised Firm or the Client or, where the terms of business with that Client provided for such information to be sent to a third party

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nominated by the Client, to such nominated third party. The records shall be complete and readily accessible.

3.8(9) Where it is the practice for the counterparty to issue the Client's copy of such a document to the instructing intermediary, the Authorised Firm shall forward that copy to the Client upon receipt without undue delay.

3.8(10) If the Counterparty fails to provide the Client or his nominated third party with a confirmation note, a difference account or a contract note, the Authorised Firm shall within three business days of becoming aware of such failure must obtain from the counterparty the relevant documentation and furnish same to the client.

### **3.9 INVESTMENT BUSINESS RECORDS**

#### **Periodic Information**

3.9(5) An Authorised Firm who acts on a discretionary or an advisory basis for a client with regard to portfolio management must send a statement to such client in respect of periods which are not less frequent than six monthly in respect of investment instruments or investment instrument related cash balances as at the statement date.

3.9(6) A firm must within 7 days of being asked by a client and subject to any duty of confidentiality, allow that client, or his or her agents, to inspect, during normal business hours, the firms records relating exclusively to the clients investment business.

3.9(7) An Authorised Firm must send a statement within 30 business days following the end of each period to which the statement relates.

A statement sent to a client for whom the Authorised Firm is acting on an advisory basis pursuant to paragraphs 3.3(1) to 3.3(4) must include matters referred to at (i) to (v) below:

(i) **Contents and Value**

The number, description and value of each investment instrument held in the portfolio;

The amount of cash balances; and

The aggregate amount of the portfolio's value on the valuation date.

(ii) **Basis of Valuation**

A statement of the basis on which the value of each investment instrument at the valuation date has been arrived at (or a reference to an earlier document containing this statement), and, if applicable, a valuation report. Where some of the investments

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are shown in a currency other than the standard one used for valuing the portfolio, the relevant currency exchange rates must be shown.

**(iii) Transactions and Changes in Composition**

- (a) Particulars of each transaction entered into for the portfolio during the period covered by the statement;
- (b) The aggregate of money and particulars of all investment instruments transferred into and out of the portfolio during the period; and
- (c) The aggregate of interest payments, dividends and other benefits received by the Authorised Firm for the portfolio during the relevant period.

**(iv) Charges and Remuneration**

- (a) The aggregate of charges and taxes (as known by the Authorised Firm) deducted in respect of the purchases, sales and management of investment instruments, or a reference to the fact that the details of charges and taxes have been separately disclosed in writing to the client on earlier statements or contract notes, giving the date of such earlier statement or contract note; and
- (b) The particulars of all or any remuneration received by the Authorised Firm from a third party (except for a simultaneous matching transaction) in respect of the transactions entered into for the portfolio during the relevant period, or a statement that the basis or amount has been separately disclosed in writing to the client in earlier statements, contract notes or other documents, giving the date of such earlier statement, contract note or other document.

**(v) Investment Instruments pledged or charged**

- (a) Particulars of any investment instruments at the valuation date which have been pledged by the Authorised Firm as collateral, or charged by the Authorised Firm to secure borrowings on behalf of the portfolio; and
- (b) The aggregate of any interest payments made during the period in respect of such loans.

3.9(8) A statement sent to a client in respect of futures and related cash balances must include all the following matters:

**(i) Changes in Value**

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The aggregate of money transferred into and out of the account during the period covered by the statement.

**(ii) Closed Positions**

- (a) In relation to each transaction effected during the period to close out a client's position, particulars of the resulting profit or loss to the client after deducting profit or loss to the client and after deducting or adding commission (as appropriate) in respect of that transaction.
- (b) A net profit or loss may be shown in respect of the client's overall position in each security rather than the profit or loss attributable to each contract.
- (c) The particulars required in respect of closed positions may be disclosed on separate statements (excluding confirmations or difference accounts) issued to the customer during the valuation period.

**(iii) Open Positions**

- (a) The particulars of each open position in the account at the close of business on the statements date showing unrealised profit or loss in respect of each position (before deducting any commission which would be payable on the closing out of that position).
- (b) A net profit or loss may be shown in respect of the client's overall position in each security rather than the profit or loss attributable to each contract.

**(iv) Aggregate of Contents**

The aggregate of each of the following in, or relating to the client's account at the close of business on the statement date:

- (a) cash;
- (b) collateral value;
- (c) management fees; and
- (d) commissions attributable to transactions during the period or a statement that this information has been separately disclosed in writing on earlier statements or confirmations to the customer.

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3.9(9) The statement sent to a client in respect of options and related cash balances must include the following items:

- (i) changes in value; and
- (ii) the aggregate of contents and the matters referred to below:-

**Open Positions**

In respect of each open option position contained in the account on the statement date:

- (a) the share, future, index or other investment or asset involved;
- (b) the trade price and the date for the opening transaction;
- (c) the market price of the contract;
- (d) the exercise price of the contract; and
- (e) the market price or value at the valuation date of the underlying share, future, index or other investment or asset.

3.9(10) An Authorised Firm is not required to send a statement in accordance with paragraphs 3.8(11) to 3.8(13) above where the client:

- (a) has advised the Authorised Firm in writing that he does not wish to receive such a statement or wishes to receive them less frequently; or
- (b) has given his written consent for them to be retained by the Authorised Firm's compliance officer or an employee of the Authorised Firm designated by him, who is not personally involved in handling the client's portfolio account.

3.9(11p) Where a client asks a firm to see any record of his dealings or of his account with the firm, which the firm is required to keep under this Code, the firm shall provide the client, within a reasonable period of time, with a copy of the records which relate exclusively to that client, and which are certified by the firm being a true and complete copy of the said client's records.

**3.10 INSIDER DEALING**

3.10(1) Information given to the Authorised Firm should not be used in contravention of the statutory provisions on insider dealing.

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- 3.10(2) An Authorised Firm shall make appropriate arrangements to ensure that his Employees are aware of the statutory provisions against insider dealing.
- 3.10(3) An Authorised Firm must not effect an own account transaction where the Authorised Firm or Employee knows that an Authorised Firm or Employee is or would be prohibited under the insider dealing provisions of the Criminal Justice Act from effecting the same transaction.
- 3.10(4) An Authorised Firm must not knowingly effect a transaction for a Client that he knows is prohibited under the insider dealing provisions of the Criminal Justice Act from effecting the transactions.

## APPENDIX 1

### DETAILS TO BE INCLUDED IN CONTRACT NOTES

- (a) the name of the Authorised Firm;
- (b) the date of the transaction;
- (c) the time at which the transaction was entered into or a statement that this will be available on request;
- (d) the investment concerned, the size involved and whether the transaction was a purchase or sale;
- (e) the price at which the transaction was executed or averaged and the total consideration due to or from the client;
- (f) the settlement date;
- (g) the amount of the Authorised Firm's charges to the client, if any, in connection with the transaction except where the Authorised Firm has been requested to issue the contract note on a net basis by a professional client and has maintained a written note of such request;
- (h) a statement, if this is the case, that any dividend, bonus or other right which has been declared, but which has not been paid, allotted or otherwise become effective in respect of the relevant investment instrument, will not pass to the purchaser under the transaction;
- (i) the amount or basis of any charges shared by the Authorised Firm with another person (except employees) or the fact that this will be made available on request;
- (j) the amount or basis of any remuneration which the Authorised Firm has received or will receive from another person in connection with the transaction;
- (k) if any interest which has accrued or will accrue on the relevant security is accounted for separately from the transaction price, the aggregate amount of the interest which the purchaser will receive or the number of days for which he or she will receive interest and the applicable rate of interest accruing;
- (l) the amount of any costs, including transaction taxes, which are incidental to the transaction and which will not be paid by the Authorised Firm out of the charges mentioned in (g) above;
- (m) if the transaction involved a foreign currency, the rate of exchange involved and the date of calculation of such if other than the date of the transaction;

## **APPENDIX 2**

### **DETAILS TO BE INCLUDED IN CONFIRMATION NOTES**

- (a) the name of the Authorised Firm;
- (b) the client's name, account number or other identifier;
- (c) the derivative concerned, the size involved and whether the transaction was a sale or purchase;
- (d) the unit price at which the transaction was executed, which in the case of an option must include a reference to the last exercise date and the strike price of the option;
- (e) the date of the transaction;
- (f) the time of the transaction at which the transaction was entered into or a statement that this will be available on request;
- (g) the maturity, delivery or expiry date of the derivative;
- (h) the amount, if any, of the Authorised Firm's charges to the client in connection with the transaction;
- (i) the amount of any costs, including transaction taxes, which are incidental to the transaction and which will not be paid by the Authorised Firm out of the charges mentioned in (h) above;
- (j) if the transaction involved a foreign currency, the rate of exchange involved and the date of calculating same, including the maturity or expiry date of any currency hedge, unless such currency hedge is separately reported;
- (k) the amount or basis of any charges shared by the Authorised Firm with another person or the fact that this will be made available on request;
- (l) a statement, if this is the case, that the Authorised Firm has acted as principal.

### **APPENDIX 3**

#### **DETAILS TO BE INCLUDED IN CONTRACT NOTES ON EXERCISE OF OPTIONS**

- (a) the name of the Investment Business Firm;
- (b) the client's name, account number or other identifier;
- (c) the date of the exercise;
- (d) the time at which the exercise was entered into or a statement that this will be available on request;
- (e) the option concerned, the size involved and whether the exercise creates a sale or purchase in the underlying asset;
- (f) the amount, if any, of the firm's charges to the client in respect of the exercise;
- (g) the strike price of the option and, where applicable, the total consideration due from or to the client;
- (h) the amount of any costs including transaction taxes, which are incidental to the exercise and which will not be paid by the firm out of the charges mentioned in (f) above;
- (i) if the exercise involved a foreign currency transaction the rate of the exchange involved and the date of determination of such rate.

## APPENDIX 4

### PERIODIC STATEMENTS

Unless otherwise provided for in the Investment Management Agreement, each Periodic Statement must include the following:

1. **Contents and value of portfolio** The number of units of each asset in the portfolio on the date as at which the statement is made up (the “closing date”), the Opening Value of the portfolio, the value of each of the assets at the closing date and the aggregate of their values at that date; and
2. **Basis of valuation** A statement of the basis on which the value at the closing date of each asset has been arrived at and, if it is the case, a statement that the basis for valuing a specified asset has changed since the previous valuation; and
3. **Details of any assets loaned or charged** Particulars of which assets (if any) were at the closing date the subject of a loan to a third party and which (if any) were at that date charged to secure borrowings made on behalf of the portfolio; and
4. **Income received** The aggregate income received on behalf of the Client during the period of account (excluding income reflected in the price of the asset) in respect of all assets comprised in the portfolio unless statements of income received on behalf of the client under his Investment Management Agreement are issued more frequently than under paragraph 3.8(12)(iii) (a) (Open Positions); and
5. **Interest paid** The aggregate of interest payments (if any) made during the period of account in respect of sums borrowed on behalf of the portfolio; and
6. **Transaction details** Details in relation to each transaction entered into by the Manager in the assets of the portfolio during the period of account and particulars of each payment made to the Client and amount received from the Client by the Manager during that period; and
7. **Manager’s Remuneration** If not previously advised in writing a statement of the fees and charges for the period; and
8. **Managers** A statement of any remuneration received by the Manager from a third party **Remuneration** which is attributable to transactions entered into by the Manager for the **from Third Parties** portfolio; and

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**9. Movement in**

A statement of the difference between the value of the portfolio at the closing **Portfolio** date and its Opening Value, having regard at least to the following:

- (a) the aggregate of assets received from the client and added to the portfolio during the period of account;
- (b) the aggregate of the value of assets transferred, or of amounts paid, to the client during the period of account;
- (c) the aggregate income received on behalf of the client during the period of account in respect of all the assets comprised in the portfolio;
- (d) the aggregate of interest payments (if any) referred to under (5) above; and
- (e) the aggregate of realised and unrealised profits or gains and losses attributable to the assets comprised in the portfolio during the period of account.

## APPENDIX 5

### OPEN POSITIONS

Statements relating to Open Positions must include the following:

- (a) the name and address of the Manager; and
- (b) the Client's designation and account number; and
- (c) each payment made and amount received by the Manager in respect of the account during the month; and
- (d) a statement, in relation to each transaction effected during the month to close out a Client's position, of the resulting profit or loss to the Client after deducting commission in respect of that transaction; and
- (e) a statement, in relation to each Open Position, of the amount of the unrealised profit or loss (before deducting any commission which would be payable on a closing out of that position) attributable to that position; and
- (f) a statement of the aggregate of each of the following in the Client's account
  - (i) cash;
  - (ii) collateral;
  - (iii) unrealised profits attributable to Open Positions; **and**
  - (iv) unrealised losses attributable to Open Positions.

## **APPENDIX 6**

### **Advertising Requirements**

#### **CONTENTS**

1. General
2. Unusual Risks
3. High Volatility Investments
4. Investments Carrying Contingent Liability
5. Cancellation
6. Property funds
7. Forecasts or projections
8. Direct Offers
9. Letterheads/Business Cards etc.

**1. General**

- 1.1 An authorised firm must include a regulatory disclosure statement, in all advertisements.
- 1.2 An advertisement should not mislead clients or potential clients about any matter likely to influence their attitudes to the advertised product or the investment business firm either by inaccuracy, ambiguity, exaggeration, omission or otherwise.
- 1.3 An advertisement should always be so designed and presented that anyone who looks at it can see immediately that it is an advertisement.

**2. Unusual Risks**

- 2.1 Each advertisement must adequately explain any unusual risks involved.

**3. High Volatility Investments**

- 3.1 Where the advertisement relates to a high volatility investment, it must state, that the investment may be subject to sudden and large falls in value, and if it is the case, that the investor could lose the total value of his investment.

**4. Investments Carrying Contingent Liability**

- 4.1 Where an advertisement relates to an investment in which the investor may not only lose all of the amount originally invested or deposited, but may also have to pay more later, the advertisement must warn of this fact in a prominent position.

**5. Cancellation**

- 5.1 Where cancellation rights apply:
  - (a) the advertisement must state that upon cancellation the investor may not obtain a full refund of the amount invested, if this is the case; and
  - (b) if the advertisement relates to a high volatility investment, the advertisement must state, if it is the case, that the shortfall in the amount recovered by the investor on cancellation may be large.

**6. Property Funds**

- 6.1 An advertisement for a fund which invests in property, or which refers to the fact that a fund may be invested in land or interests in land, must state that the value of the property or land is a matter of a valuer's opinion.
- 6.2 Where an advertisement for a fund which invests in property, or which refers to the fact that a fund may be invested in land, is in respect of a fund which is not open-ended, the advertisement must state that the land and buildings may be difficult to sell and there may be times when the units cannot be sold

**7. Forecasts or Projections**

- 7.1 Where an advertisement contains any forecast or projections, whether of specific growth rate or of a specific return or rate of return, it should make clear the basis upon which that forecast or projection is made, explaining for instance
- whether reinvestment of income is assumed
  - whether account has been taken of the incidence of any taxes or duties and if so, how and
  - whether the forecast or projected rate of return will be subject to any deduction either upon premature realisation or otherwise.

**8. Direct Offers<sup>1</sup>**

- 8.1 Where a direct offer advertisement invites members of the public to respond by returning a response coupon, the full name and address of the investment business firm must be contained in the advertisement, separate from the response coupon.

**9. Letterheads/Business Cards etc.**

- 9.1 All letterheads, business cards, notices, etc. must show clearly that the firm is authorised to carry out Investment Business by the Institute of Certified Public Accountants in Ireland.

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<sup>1</sup> A "direct offer advertisement" means an advertisement which

- (a) contains
- (i) an offer by the Authorised Firm to enter into an investment with anyone who responds to the advertisement; or
  - (ii) an invitation to anyone to respond to the advertisement by making an offer to enter into an investment; and
- (b) specifies the manner or indicates a form in which any response is to be made (for example by providing a tear-off slip).

## **CHAPTER 4**

### **Financial Regulations and Clients' Money Regulations**

#### **Contents**

#### **Index to Chapter 4**

Section 1	-	Application
Section 2	-	Financial Records and Returns
Section 3	-	Investment Business Clients' Money and Bank Accounts and Custodial Investments
Section 4	-	Funds under Discretionary Management
Section 5	-	Annual Reporting
Schedule 1 to Chapter 4	-	Investment Business Clients' Money Regulations

#### **4.1 APPLICATION**

- 4.1(1) (1) Regulations 4.2(1) to 4.2(3) apply to all Authorised Firms.
- (2) Regulations 4.2(1) to 4.3(21) apply to all Category 3 Members and if Authorised to receive and hold Investment Business Clients' money and Custodial Investments, Category 2.
- (3) Regulations 4.2(1) to 4.4(7) apply to all Category 3 Members.

#### **4.2 FINANCIAL RECORDS AND RETURNS**

##### **Accounting Records**

- 4.2(1) An Authorised Firm shall keep accounting records, sufficient to disclose at any time, for each office and of the Authorised Firm:
- a. gross income from Investment Business, whether by way of commissions or fees or otherwise, distinguishing that received from Corporate Finance Activities and other Investment Business;
  - b. gross income from all sources, whether by way of commissions or fees or otherwise.
  - c. a Client Ledger Account to account for all movements on all Client Premium Accounts reconciled with bank statements on a monthly basis.
- 4.2(2) An Authorised Firm shall notify to the Secretary of the Registration Committee of its Accounting Reference Date both on application for Authorisation and immediately when any decision is taken to change the date.

##### **Returns**

- 4.2(3) An Authorised Firm shall submit as part of the returns required under Regulation 2.8 details of gross income as provided for under Regulation 4.2(1)

Maintain and make available for inspection all financial records.

#### **4.3 INVESTMENT BUSINESS CLIENTS' MONEY AND BANK ACCOUNTS AND CUSTODIAL INVESTMENTS**

##### **General**

- 4.3(1) An Authorised Firm shall hold Investment Business Clients' Money in accordance with these Regulations and the Institute's Clients' Money Regulations. (Schedule 1 to Chapter 4)
- 4.3(2) A Member Authorised under Category 2 and Authorised to receive and hold Investment Business Clients Money and/or custodial Investments, or under Category 3, shall not, in respect of any single client, hold Investment Business Clients' Money and Custodial Investments (and, in the case of a Member Authorised under Category 3, other assets which are within paragraphs (a) and (b) of the definition of Readily Disposable Investments held under an agreement for Discretionary Management) of an aggregate value exceeding €50,000 unless it takes out a bond for security in respect of the amount by which that aggregate value exceeds €50,000. Such bonds shall be in the form specified by the Institute and shall be payable to the Institute as beneficiary under the bond in the event of the Insolvency of the Authorised Firm. The Authorised Firm shall lodge any such bond with the Secretary of the Institute and shall notify him immediately;
- (a) if a bond taken out under this Regulation expires without renewal or is cancelled, together with confirmation, either:
    - (1) that a new bond has been taken out; or
    - (2) that any holding of Investment Business Clients' Money and Custodial Investments did not exceed €50,000 from the date when cover under the bond ceased to be effective;
  - (b) if any application by it for a bond required to be taken out under this Regulation is refused.
- 4.3(3) For the purpose of these Regulations the Insolvency of an Authorised Firm occurs:
- (a) in relation to a partnership
    - (1) In the Republic of Ireland and Northern Ireland, on the making of an adjudication of bankruptcy against one of the partners;

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- (2) In England and Wales, on the making of a winding-up order against the partnership under Part V of the Insolvency Act 1986 as applied by the Insolvent Partnerships Order or on the making of a bankruptcy order in relation to the partnership pursuant to petitions presented under Part 4 of that Order;

(b) in relation to a Principal in a sole practice

- (1) In the Republic of Ireland and Northern Ireland when an adjudication of bankruptcy is made against him;
- (2) In England and Wales when an interim order or a bankruptcy order is made against him under Part VIII or IX of the Insolvency Act 1986 or a voluntary arrangement in respect of his affairs as approved under Part VIII of the Act;

4.3(4) Custodial Investments shall be valued at least every three months at their Market Value and the aggregate value so ascertained shall be taken to be the relevant value for the purposes of this Chapter and of Regulation 3.8(9) to 3.8(15) in respect of the period until the next periodic valuation.

4.3(5) Where any increase in the value of Custodial Investments ascertained at a valuation under Regulation 4.3(4) causes an Authorised Firm to exceed the limits in Regulation 4.3(2) the Firm shall not be in breach of these Regulations if:

- (a) within a period of thirty days of the date as at which the value was ascertained it takes any necessary steps to ensure compliance with this limit; or
- (b) it obtains from the Registration Committee a dispensation.

4.3(6) An Authorised Firm shall comply with the Institute's Client Money Regulations in its receipt or holding of Clients Investment Business Money, and shall account to the client for interest in accordance with these Regulations.

## Accounting Records

- 4.3(7) An Authorised Firm shall keep accounting records in addition to those specified in 4.2(1) which contain, for each office, in respect of all Investment Business Clients' Money:
- (a) entries of all money paid into and out of all Investment Business Clients' Bank Accounts
  - (b) entries of all receipts in cash of Investment Business Clients' Money which are paid directly to the client concerned identifying the person to whom each such receipt and payment relates; and
  - (c) information from which the balances on each Clients' Money Bank Account for each client may be readily obtained as at any time.
- 4.3(8) An Authorised Firm shall keep a record of the most recent values placed on Custodial Investments under Regulation 4.3(4)
- 4.3(9) An Authorised Firm shall prepare, for the year ending on its Accounting Reference Date, a summary of all Investment Business Clients' Money and Custodial Investments held or received showing, in respect of Investment Business Clients' Money:
- (a) the closing balance from the previous summary;
  - (b) total receipts;
  - (c) total payments;
  - (d) the aggregate of all reconciled balances on all Clients' Money Bank Accounts at the Accounting Reference Date, together with the number of individual bank accounts comprised in the total and the number of different clients on whose behalf the money is held;
- and, in respect of custodial Investments:
- (e) the aggregate at each date of the periodic valuations made under Regulation 4.3(4);
  - (f) the aggregate of the valuations at Market Value as at the Accounting Reference Date, together with the number of holdings comprised in the aggregate and the number of different Clients on whose behalf Custodial Investments are held;

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- (g) in respect of holdings included in paragraph (f) which have been evaluated other than at their published bid prices, the aggregate amount of such valuations, together with the number of holdings comprised in the aggregate, their acquisition cost and the number of Clients on whose behalf they were held;  
  
and, in respect of the aggregate of Investment Business Clients' Money and Custodial Investments:
- (h) if the aggregate for any client held exceeded €50,000 at any time, the highest amount so held, the number of days during which the balance exceeded €50,000, the amount of that Client's balance included in (a), (d) and (f) above, and a reference by which the Client can be identified.

#### **Reconciliation of Investment Business Clients' Money**

4.3(10) Every business day, an Authorised Firm must ensure that the sum of-

- (a) the aggregate balance on its client accounts;
- (b) the net aggregate of the authorised firm's equity balance<sup>2</sup> on transaction accounts for clients with exchanges, clearing houses, intermediate brokers and OTC Counterparties (negative balances must be deducted from positive balances); and
- (c) the current market value of approved collateral held with the Authorised Firm.

is by the close of business that day, at least equal to the required amount calculated in accordance with 4.3(12) below, as at the close of business on the previous day.

4.3(11) In order to satisfy 4.3(10) above an Authorised Firm may be required to pay money into a client account and such money will be client money for the purposes of these rules. Such circumstances should be notified to the Institute immediately, except if in the calendar month in question:

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<sup>2</sup> An Authorised Firm's equity balance is the amount which the authorised firm would be liable to pay to the exchange clearing house, intermediate broker or OTC counterparty (or vice versa) in respect of margined transactions if each of the open positions of the Authorised Firm's clients was liquidated at the closing or settlement prices published by the relevant exchange and the Authorised Firm's account with the exchange clearing house, intermediate broker or OTC counterparty closed.

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- (a) the total amount of money paid into the client account is less than €730: and
- (b) no more than three deposits have been made by the authorised firm in this respect, in the calendar month in question.

4.3(12) Subject to 4.3(12)b below, the required amount for the purpose of 4.3(10) above is the sum of :

- (a) the “individual client balances” calculated in accordance with 4.3(12)b below, excluding:
  - (i) “individual client balances” which are negative; and
  - (ii) clients’ equity balances; and
- (b) The “individual client balance” for each client is the sum of:
  - (i) free money where there are no trades (including dividends received and allocated interest);
  - (ii) in respect of principal deals, sale proceeds due to the client where the client has delivered the investments (except that if received prior to the settlement date agreed with the client for that trade, an authorised firm may segregate the investments instead of the money);
  - (iii) in respect of agency deals, sale proceeds due to the client where either the sale proceeds have been received by the authorised firm and the client has delivered the investments or the authorised firm holds the client’ s investments, in both cases the authorised firm may segregate the investments instead of the money; and
  - (iv) in respect of principal deals, the cost of purchases which have been paid for by the client but the authorised firm has not delivered to the client (except that an authorised firm may segregate the investments instead of the money) and
  - (v) in respect of agency deals, the cost of purchases which have been paid for by the client, where either the authorised firm has not remitted the money to, or to the order of, the counterparty or the investments have been received by the authorised firm but have

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not been delivered to the client (except that an authorised firm may segregate the investments instead of the money),

Less:

- (vi) money owed by the client in respect of unpaid purchases where delivery of such investments has been made to the client; and
- (vii) proceeds remitted to the client in respect of sales transactions where the client has not delivered the investment

4.3(13) The “total margined transaction requirement” is:

- (a) the sum of each of its clients’ equity balances<sup>1</sup> which are positive; less
- (b) the proportion of individual negative customer’s equity balances which is secured by approved collateral; and
- (c) the net aggregate of the Authorised Firm's equity balance (negative balances being deducted from positive balances) on transaction accounts for customers with exchanges, clearing houses and intermediate brokers.

4.3(14) An authorised firm may in respect of each of its clients reduce to a minimum of zero

- (a) a positive value in 4.3(10) above by a negative “individual client balance”; and
- (b) a positive “individual client balance” by a negative value in 4.3(10) above.

4.3(15) An Authorised Firm shall, at least once every month, reconcile the total balances on all its Clients Money Bank Accounts with the total corresponding credit balances in respect of its Clients, as recorded by the Authorised Firm, and where any difference arises correct it forthwith.

4.3(16) An Authorised Firm shall, at the same time as carrying out the reconciliation under Regulation 4.3(15) reconcile the balance on each Clients Money Bank Account, as recorded by the Authorised Firm, with the balance on that account as set out in the statement issued by the bank and, where any difference arises, correct it forthwith, unless the difference arises solely as a result of differences between the accounting and settlement systems of the bank and the Authorised Firm.

## Independent Accountant

4.3(17) An Authorised Firm shall appoint an Independent Accountant and shall notify the Secretary of the Registration Committee within thirty days of the appointment or of any change in such appointment.

1 “Clients’ equity balance” means the amount which the authorised firm would be liable to pay to a client (or vice versa) in respect of his margined transactions if each of his open positions was liquidated at the closing settlement prices published by the relevant exchange or other appropriate pricing source and his account closed.

(a) The Authorised Firm shall ensure that the terms of appointment of the Independent Accountant require him to prepare a report addressed both to the Authorised Firm and to the Secretary of the Registration Committee stating whether, in his opinion:

(1) the Authorised Firm has maintained systems adequate to enable it:

- to comply with the Clients’ Money Regulations and this Chapter 4; and
- to comply with Regulations 3.7(2) to 3.7(7) concerning the custody of Title Documents; and
- to carry out a reconciliation in accordance with Regulations 4.3(10) at any time;

(2) the Authorised Firm complied with the Clients’ Money Regulations and this Chapter 4 at the Accounting Reference Date; provided that the terms of appointment shall not require the Independent Accountant to report any trivial breaches of the Clients Money Regulations or this Chapter 4 which were rectified on discovery and which have not caused and are not likely to cause any loss to any Client;

(3) the summary prepared by the Authorised Firm under Regulation 4.3(9) has been properly prepared;

(4) in any case where he is unable to form such an opinion as to whether one or more of the requirements of the paragraph (1), (2) or (3) have been met, the requirements in question and the reason why he has been unable to form an opinion; and

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- (5) where the Authorised Firm states that it did not in the relevant period receive or hold Investment Business Clients' Money or Custodial Investments, that the Independent Accountant is not aware of the Authorised Firm having done so.
- 4.3(18) A report under Section 33(3) of the Investment Intermediaries Act, 1995 must be made by the Independent accountant immediately upon arriving at the conclusion that he cannot form an opinion.
- 4.3(19) The terms of appointment shall also require the Independent Accountant to confirm that, in the course of carrying out the work necessary for the report, nothing came to his attention which caused him to believe that the Authorised Firm had failed to meet any other of the requirements of this Chapter 4, other than trivial breaches which had been rectified on discovery and which had not caused and are not likely to cause any loss to any client.
- 4.3(20) The Authorised Firm shall further ensure that the terms of appointment of the Independent Accountant provide that:
  - (1) the Independent Accountant shall report to the Secretary of the Registration Committee forthwith any grounds which he may have for believing that the continuance by the Authorised Firm of Investment Business could be materially prejudicial to the interest of a client or any other person;
  - (2) the Independent Accountant shall at any time be entitled to report to the Secretary of the Registration Committee any matter concerning the Authorised Firm which he is required and/or he considers is likely to be of assistance to the Registration Committee in discharging any of its functions;
  - (3) within seven days of the termination of his appointment, the Independent Accountant shall deliver a statement to the Secretary of the Registration Committee indicating whether there are any matters connected with the termination which he considers should be drawn to the attention of the Institute and, if so, any such matters shall be identified;
  - (4) the Independent Accountant shall be required to respond to any enquires from the Institute relating to the discharge of his functions; and

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- (5) no duty to which the Independent Accountant may be subject shall be regarded as contravened by reason of his communicating in good faith to the Institute, whether or not in response to a request for any information or opinion, on a matter of which he has become aware in his capacity as Independent Accountant and which is relevant to any functions of the Institute as a Recognised Professional Body.

### **Annual Returns**

4.3(21) An Authorised Firm shall submit as part of the returns referred to in Regulation 4.2(3)

- (a) a declaration that the Authorised Firm has complied with and will continue to comply with the requirements of Regulations 4.3(7) to 4.3(16)
- (b) a declaration that the aggregate amount of Investment Business Clients' money and Custodial Investments held was at all times within the limits permitted by the Firm's Authorisation;
- (c) the summary required under Regulation 4.3(9); and
  - (i) Within seven days of its receipt and in any event not later than six months after each Accounting Reference Date or such other date as the Registration Committee may specify, the Authorised Firm shall submit an Independent Accountant's report on the Authorised Firm's Client Bank Accounts prepared in accordance with Regulation 4.3(18) to 4.3(20) to which shall be attached a copy of the summary prepared under Regulation 4.3(9)
  - (ii) In relation to Category 3 Members, this report must be submitted no later than four months after the Accounting Reference Date.
  - (iii) Where the Registration Committee for any reason determines that the Independent Accountant's report does not deal or fails to deal satisfactorily with one or more of the matters referred to in Regulation 4.3(18) to 4.3(20) or is deficient in any other material respect, the committee may require the Authorised Firm to commission a further report from the Independent Accountant or from another Independent Accountant as the committee may at its sole discretion direct. This power is exercisable in respect of any such subsequent report or reports in the same manner as it is

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exercised in relation to the initial report. For the avoidance of doubt the Authorised Firm shall bear the cost of such further report or reports.

#### **4.4 FUNDS UNDER DISCRETIONARY MANAGEMENT**

##### **Accounting Records**

4.4(1) An Authorised Firm which holds funds under Discretionary Management shall keep accounting records which contain for each office and in total:

- (a) a statement showing income received in respect of each portfolio managed on a discretionary basis;
- (b) a record of all Investment Business transactions for each portfolio managed on a discretionary basis; and
- (c) a record disclosing the Investments and cash balances held as at any time for each portfolio managed on a discretionary basis.

4.4(2) For Periodic Information under this section see page 18.

4.4(3) For each portfolio managed on a discretionary basis an Authorised Firm shall prepare:

- (a) half yearly accounts which shall be approved by the Client; or
- (b) annual accounts if, by agreement with the client, such accounts are audited by an Independent Accountant approved by the client (but who need not be the person appointed under Regulation 4.3(17); and, where a Portfolio Review is carried out these accounts shall disclose the information required to be submitted to the Client.
- (c) Periodic information and statements must be prepared for each client in accordance with Chapter 3 Appendix 4 "Periodic Statements"

And provide independent supporting documents in respect of assets held or client money held on Deposit Receipt

4.4(4) The Investments and cash balances held for each portfolio managed on a discretionary basis shall be reconciled every six months both with the funds available for Investment in each portfolio and with the relevant title documents.

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- 4.4(5) For the purpose of ascertaining the aggregate Market Value of Investments being managed on a discretionary basis at any one time, the Market Value shall be determined every three months (or more frequently if so required under any management agreement) and the value so ascertained shall be taken to be the relevant value for the purpose of Regulation 3.8(9) to 3.8(15) in respect of the period until the next valuation. Where the aggregate Market Value of Investments ascertained under Regulation 4.4(4) causes an Authorised Firm to exceed the limit applicable to it under Regulation 4.3(2), the Authorised Firm shall not be in breach of these Regulations if:
- (a) within a period of thirty days or the date at which the value was ascertained, it takes any necessary steps to ensure compliance with that limit; or
  - (b) it obtains from the Registration Committee a dispensation.
- 4.4(6) If the excess is in excess of 10% of the limit applicable it should be reported immediately to the Registration Committee.

## Returns

- 4.4(7) An Authorised Firm which holds funds under Discretionary Management shall submit as part of the returns required under Regulation 4.2(3);
- (a) a summary as at the Authorised Firm's Accounting Reference Date, or to a date not more than two months earlier, showing the number of funds held under agreements for Discretionary Management, the number of those funds the annual accounts of which are independently audited together with the aggregate Market Value of all funds distinguishing between:
    - (1) shares, debentures, government and public securities which are Readily Disposable Investments;
    - (2) other shares, debentures, government and public securities;
    - (3) units in Collective Investment Schemes which are Readily Disposable Investments;
    - (4) units in other Collective Investment Schemes;
    - (5) investments arising from transactions in options, futures and contracts for differences;

- (6) long term insurance;
  - (7) freehold and long leasehold property; and
  - (8) cash; and
- (b) a declaration that the aggregate value of funds under Discretionary Management at any one time has not exceeded the limit for which it is Authorised.

#### **4.5 ANNUAL REPORTING**

##### **Accounts and Independent Accountant's Report**

- 4.5(1) A Firm Authorised under Category 3, shall prepare annual accounts in respect of the whole of its business for each year ended on its Accounting Reference Date. An Independent Accountant's report shall be annexed to the accounts, and both the accounts and the report shall be submitted to the Secretary no later than four months after the date to which they have been made up. The accounts shall disclose the accounting policies used in their preparation, and any material contingent liabilities not reflected in the balance sheet. The Authorised Firm shall ensure that the terms of appointment of the Independent Accountant require him to prepare a report stating whether, in his opinion, the accounts have been prepared in accordance with the disclosed policies and whether or not he is satisfied that the Authorised Firm has complied with Regulations 4.3(19) and 4.3(20)

## **SCHEDULE 1 TO CHAPTER 4**

### **INVESTMENT BUSINESS CLIENTS' MONEY REGULATIONS**

#### **1. FIDUCIARY RESPONSIBILITIES**

##### **Clients' Money**

1.1 'Clients' Money' means money or any currency which an Authorised Firm holds or receives for or from a client and which is not immediately due and payable on demand to the Authorised Firm for its own account.

1.2 Fees paid in advance for professional work agreed to be performed and clearly identifiable as such shall not be regarded as clients' money for the purposes of these Regulations.

1.3 An Authorised Firm must not hold client money in a client account outside the European Economic Area unless:

the Authorised Firm has identified to the client in writing the country or territory in which the account will be held, and

(b) the authorised firm has informed the client in writing -

(i) that the legal and regulatory regime applying to the Credit Institution with whom the client account is held will be different to that of Ireland and that in the event of a default of such Credit Institution his money may be treated differently from, the position which would apply if the money was held in an Credit Institution in Ireland; and

(ii) that the above should consider taking independent legal advice if he is concerned about the implications of (i) above, and

(c) the client has acknowledged (b) (i) and (ii) above in writing"

##### **Payment into a Client Bank Account**

1.4 Client money accounts must be designated as Section 52 accounts<sup>1</sup>

1.5 Where an authorised firm opens a client account it must ensure that the Credit Institution with which the account is held:

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- (a) describes the account in its records in such a way as to make it clear that the money in the account does not belong to the authorised firm and is subject to the provisions of Section 52 of the Investment Intermediaries Act, 1995; and

1. In these Requirements, a designated Section 52 account means an account which:

- (1) contains the money of one or more clients;
- (2) includes in its title the word “client”; and
- (3) in the event of the default of the institution with whom the account is held is not pooled with any other account or type of account.

- (b) includes in the title of the account the word “client<sup>2</sup>”

1.6 When an authorised firm opens a client account the authorised firm must give or have given written notice to the credit institution requiring the said credit institution to acknowledge to it in writing:

- (a) that all money standing to the credit of the account is held by the authorised firm as trustee and that the credit institution is not entitled to combine the account with any other account or to exercise any right of setoff or counterclaim against money in that account in respect of any sum owed to it on any other account of the authorised firm;
- (b) that interest earned on the account shall be credited to the account; and
- (c) that, in accordance with requirement 4.6(5) of these requirements, the title of the account sufficiently distinguishes the account from any account containing money that belongs to the authorised firm, and is in the form requested by the authorised firm.

1.7 If the Credit Institution does not provide the acknowledgement referred to in requirement 4.6(6) above within twenty business days of the despatch of the notice by the authorised firm, the authorised firm must withdraw all money standing to the credit of the account, and deposit it in a client account with another Credit Institution.

1.8 Clients’ Money received by a firm in the form of cash shall be paid forthwith into a Client Bank Account or paid to the client or as he directs.

1.9 Any cheque, draft or electronic transfer received by an Authorised Firm which is drawn in favour of the Authorised Firm and which comprises or includes Clients’ Money shall be paid forthwith into a Client Bank Account unless it comprises money payable to one

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client only, in which case it may be endorsed over or paid to the client or dealt with as he directs.

- 1.10 An Authorised Firm shall not pay any money into a Client Bank Account, unless:
- (a) the Authorised Firm is required to make such payment under these Regulations; or
  - (b) the money is the Authorised Firm's own money and:
    - (i) it is required to be so paid for the purpose of opening or maintaining the account and the amount is the minimum required for that purpose; or
    - (ii) it is so paid in order to restore in whole or in part any money paid out of the account in contravention of these Regulations. In such circumstances a report must be made to the Institute detailing the relevant transactions verified by the independent Accountant.
- 1.11 For the avoidance of doubt, where the title of an account contains the client's name, the word "client" should also be added.
- 1.12 An Authorised Firm shall not be regarded as having breached the previous Regulation simply because it transpires that money which the Authorised Firm paid into a Client Bank Account in the belief that it was required so to do under these Regulations should not have been paid into such an account, provided that immediately upon discovering the error the Authorised Firm takes the necessary steps to withdraw the money which has been paid into such account in error.
- 1.13 Where money of any one client in excess of **€10,000** is held or is expected to be held by the firm for more than 30 days, the money shall be paid into a Client Bank Account designated by the name of the client or by a number or letters allocated to that account.
- 1.14 Subject to these Regulations if the total sum of Clients' money held or received by an Authorised Firm in respect of any one client at any one time is such as would, if deposited in an interest bearing account at a rate no less than that from time to time posted publicly by the relevant Bank for small deposits subject to the minimum period of notice of withdrawals, results in or be likely to result in material interest being received thereon such sum shall be placed in an interest bearing Client Bank Account.
- 1.15 Subject to these Regulations any interest accruing to sums placed in an interest bearing account shall be paid to the client concerned.

### **Payment of interest on client money**

- 1.16 Regulations in respect of interest shall not affect any agreement in writing, whenever made, between an Authorised Firm and a client as to the payment of interest or money in lieu thereof and Clients' Money held or received by the Authorised Firm for that client.
- 1.17 It shall be a breach of these Regulations if an Authorised Firm fails to comply with any of the terms of any such agreement as is referred to in the above Regulation. For the purposes of these Regulations Clients' Money held by a Authorised Firm for two or more clients acting together in one or more transactions shall be treated as though held for a single client.

### **Withdrawals from a Client Bank Account**

- 1.18 When a cheque or draft is paid into a Client Bank Account and that cheque or draft includes money which is not Clients' Money, the money which is not Clients' Money shall be withdrawn from the account as soon as cleared funds are credited to the account in respect of that cheque or draft.
- 1.19 Money shall not be withdrawn from a Client Bank Account except the following:
- (a) money, not being Clients' Money, paid into a Client Bank Account for the purpose of opening or maintaining the account;
  - (b) money which would remain in a Client Bank Account after all clients whose money has been credited to that account received payment in full of sums due to them from that account whether under these Regulations or otherwise;
  - (c) money properly required for a payment to or on behalf of a client;
  - (d) money properly required for or towards payment of a debt due to the Authorised Firm from a client otherwise than in respect of fees or commissions earned by the Authorised Firm;
  - (e) subject to these Regulations, money properly required for or towards payment of fees payable to the Authorised Firm by the client and specified in a statement delivered to the client showing the details of the work undertaken;

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- (f) money drawn on a client's authority or in conformity with any contract between the Authorised Firm and the client;
  - (g) money which may be properly transferred into another Client Bank Account or into a bank account in the name of an individual client.
  - (h) Money paid into account in contravention of this regulation.
  - (i) Money required to be withdrawn in pursuance to paragraph 4.6(17)
- 1.20 Money withdrawn under paragraphs (b) to (g) of this Regulation shall not exceed the total of the money held for the time being in the account of the client concerned.
- 1.21 Money shall not be withdrawn from a Client Bank Account for or towards payment of fees payable by the client to the Authorised Firm unless:
- (a) the precise amount thereof has been agreed by the client or has been finally determined by a court arbitrator; or,
  - (b) the fees have been accurately calculated in accordance with a formula agreed in writing by the client on the basis on which the amount thereof can be determined; or,
  - (c) thirty days have elapsed since the date of delivery to the client of the statement referred to in these Regulations and the client has not questioned the amount therein specified as due.
- 1.22 Money which may be withdrawn from a Client Bank Account in accordance with these Regulations by way of payment from the client to the Authorised Firm shall be withdrawn soon as is practicable after the Authorised Firm becomes entitled to withdraw it under these Regulations.

### **Records and Reconciliation**

- 1.23 An Authorised Firm shall at all times maintain records so as to show clearly the money it has received on account of its clients and the details of any other money dealt with by it through a Client Bank Account, clearly distinguishing the money of each client from the money of other clients and from money of the Authorised Firm.
- 1.24 An Authorised Firm shall maintain records of cheques endorsed over to its clients.

## RECONCILIATIONS

- 1.25 An Authorised Firm must as often as necessary to ensure the accuracy of its records, and at least once in every month, reconcile:
- (1) the balance on each client account as recorded by the authorised firm with the balance on that account as set out on the statement or other form of confirmation issued by the Credit Institution, currency by currency;
  - (2) the balance on each client account with settlement agents as recorded by the authorised firm with the balance on that account as set out in the statement or other form of confirmation issued by the settlement agent, currency by currency;
  - (3) the balance on each client transaction account with exchanges, clearing houses, intermediate brokers and OTC counter parties as recorded by the authorised firm with the balance on that account as set out in the statement or other form of confirmation issued by the exchange, clearing house, intermediate broker or OTC counter party, currency by currency; and
  - (4) its records of approved collateral received from clients with the statement or other form of confirmation issued by the person with whom that collateral is located.
- 1.26 An Authorised Firm must perform the reconciliation in 4.6(24) above within ten business days of the date to which the reconciliation relates.
- 1.27 Where any difference arises on any of the reconciliation's in 4.6(24) above the Authorised Firm must correct it as soon as possible, unless the difference arises solely as a result of timing differences between the accounting systems of the Credit Institution, settlement agent, exchange, clearing house, intermediate broker or OTC counter party and of the authorised firm.
- 1.28 Records kept in accordance with these Regulations shall be preserved for at least six years from the date of the last transaction recorded therein.
- 1.29 Failure to perform said monthly reconciliation must be reported immediately to the Secretary of the Registration Committee.

## Returns and Reports

- 1.30 Authorised Firms shall confirm annually, at a time and in such form, as Council shall require, that they meet the requirement of these Regulations and shall supply such evidence as these Regulations and/or Council may require to support such confirmation.
- 1.31 Members shall conduct a review at least annually into their compliance with these Regulations.
- 1.32 Such a review shall include:
- (a) consideration whether the Authorised Firm has maintained systems adequate to enable it:
    - 1. to comply with these Regulations
    - 2. to carry out the reconciliation in accordance with these Regulations
    - 3. to prepare the returns required under these Regulations;
  - (b) consideration whether the Authorised Firm has complied with these regulations during the period covered by the review. Minor breaches which were rectified upon discovery by the Authorised Firm prior to the review need not be recorded, but any breaches which were discovered during the course of the review should be detailed as should any significant breaches discovered earlier or already corrected;
  - (c) consideration whether the reconciliation prepared by the Authorised Firm in accordance with these Regulations has been properly prepared;
- 1.33 Where possible the review should be conducted by a partner or member of staff who is not involved in the handling of Client's Money.

## Safeguarding Client Funds

- 1.34 An Authorised Firm who at any time holds Clients' Money in aggregate exceeding **€31,700** shall take out a bond for security, in respect of the amount by which that aggregate exceeds €31,700.
- 1.35 Such bonds shall be in the form specified by Council and shall be payable to the Institute as beneficiary under the bond in the event of the Insolvency of the Authorised Firm. The Authorised Firm shall lodge any such bond with the Secretary of the Registration Committee and shall notify it immediately,

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- (a) if a bond taken out under the Regulation expires without renewal or is cancelled, together with confirmation either:
    - 1. that a new bond is taken out; or
    - 2. that any holding of clients' money did not exceed **€31,700** from the date when cover under the bond ceased to be effective.
  - (b) if any application by it for a bond required to be taken out under this Regulation is refused.
- 1.36 Supply such evidence as Council may require that the Authorised Firm is at all times in compliance with the Bye-Law in respect of Professional Indemnity Insurance Regulation after taking into account any aggregate accounts of Clients Money held at any one time, and that the scope of the cover extends to such Client's Money saving in the event of criminal activity by all the partners in a partnership.
- 1.37 An Authorised Firm which is a sole practitioner may not receive or hold clients money unless he has adequate arrangements with another Authorised Firm acceptable to Council, to enable the proper distribution or processing of Clients' Money held by the Authorised Firm with a minimum of dislocation in the event of the incapacity or death of the sole practitioner. Notification of such arrangements shall be made in writing to the Institute before or immediately following the first receipt of Clients' Money by the firm, and immediately following any change (including cancellation) in the arrangement.

### **Inspection**

- 1.38 The Professional Standards Department shall have the right through its nominee to inspect the books and records of an Authorised Firm either at the instigation of the Professional Standards Department or in pursuance of a complaint lodged.

**EXPLANATORY NOTES****(These notes do not form part of the Regulations)**

1. For convenience only, these Regulations have been drafted in terms of the duties imposed on Members. However, disciplinary proceedings can only be brought against members under Article 52 of the Institutes Memorandum & Articles of Association and attention is drawn to that Article.
2. Unless the Authorised Firm agrees otherwise with a client a Client Bank Account should be an interest bearing account if 'material interest' would be likely to accrue and any interest paid must in the absence of such agreement be paid to the client.
3. 'Material Interest' should be deemed to be earned if the sum of money is or is likely to be held for at least the number of weeks shown in the left hand column of the following table and the minimum balance in the Client Bank Account (or credited to the client in the case of an account comprising the money of two or more clients) equals or exceeds the corresponding sum in the right hand column of the Table:

<i>Number of Weeks</i>	<i>Minimum Balance</i>
8	<b>€635</b>
4	<b>€1,270</b>
2	<b>€6,350</b>
1	<b>€12,700</b>

The above is merely a guide to the interpretation of 'material interest' the obligation of the Authorised Firm is to take reasonable steps to ensure that the client does not suffer material loss if money remains on low or non-interest bearing accounts There may be circumstances, for example, where money should be placed on overnight deposit.