Banc Ceannais na hÉireann
Central Bank of Ireland
Eurosystem

2015

Consultation on Central Bank Investment Firm Regulations 2015

Consultation Paper CP 97

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Introduction

Investment Firms are typically authorised in Ireland as MiFID firms under the EC (Markets in Financial Instruments) Regulations, 2007 (SI 60 of 2007) ("**MiFID**") which transposes the Market in Financial Instruments Directive into Irish law. Where the nature of the activities of an investment firm do not bring the firm within the scope of MiFID, they may be authorised under, the Investment Intermediaries Act 1995 ("the **IIA**"), as investment business firms[1][2].

Both MiFID and the IIA provide that the Central Bank of Ireland ("**the Central Bank**") may set down conditions for the authorisation and supervision of such investment firms. The conditions and requirements that the Central Bank has imposed on investment firms under MiFID and the IIA are set out in various Central Bank issued documents as follows:

Requirements issued by the Central Bank under MiFID

- Supplementary Supervisory Requirements for Investment Firms under European Communities (Markets in Financial Instruments) Regulations 2007 (November 2007)
- List of Minimum Records required by Article 51(3) of EC Directive 2006/73/EC and Regulation 40(5) of the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. 60 of 2007)
- Reporting Requirements for Investment Firms

Requirements issued by the Central Bank under the IIA in respect of non-retail IIA Firms

- Prudential Handbook for Investment Firms (April 2008)
- Chapter 5 – Fund Administrator Requirements - of the AIF Rulebook (June 2015)
- Reporting Requirements for IIA Non-Retail Investment Business Firms

Proposal

The Central Bank (Supervision and Enforcement) Act 2013 (the "**2013 Act**") sets out that the Central Bank may make regulations for the proper and effective regulation of regulated financial service providers. The Central Bank proposes publishing an Investment Firms rulebook which will consolidate into one document all of the conditions and requirements which the Central Bank imposes on investment firms. The Central Bank proposes to issue the rulebook in the form of Central Bank regulations under the 2013 Act. The proposed consolidated rulebook will be referred to in this Consultation Paper as the "**proposed Central Bank Investment Firm Regulations**".

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[1] Retail intermediaries are also authorised as investment business firms under the IIA but these are subject to a separate set of rules and are not covered in this consultation.

[2] Some investment fund depositaries are also authorised under the IIA but these are subject to the AIF Rulebook/ the CBI UCITS Regulations and are not covered in this consultation.

Format of this Consultation Document

The proposed Central Bank Investment Firm Regulations form part of this Consultation Document. For the most part these reflect existing requirements as set out above. However, your views are sought, in particular, on two issues, where changes to the existing rules are proposed, details of which are set out below.

When the consultation process is complete we intend to publish a final set of Central Bank Investment Firm Regulations. We will also consider whether any guidance on the requirements might also be useful.

Questions for consideration

While we are consulting on the full set of proposed regulations, we would welcome stakeholders' views on the following questions in particular:

1. Chapter 5 of the Central Bank's AIF Rulebook (June 2015) contains certain requirements applicable to Fund Administrators including those related to capital. It is proposed that those requirements including capital will be removed from the AIF Rulebook and will, in the future, form part of the proposed Central Bank Investment Firm Regulations. The requirements will remain similar to the existing requirements but there are some changes proposed as described in summary below:

   - The definitions of own funds items will be brought broadly into line with certain modernisations made by the CRR/CRD IV regime. In particular, it is proposed that tier 2 capital will be capped at one-third of tier 1 capital - presently no limit is applied. In addition, there are certain new deductions from capital proposed;

   - The method of calculation of the fixed overhead requirement will be refined to better align with CRR/CRD IV;

   - Certain other definitions, amendments and clarifications are also included.

   The purpose behind these changes is to ensure that Fund Administrators are subject to a robust capital requirements regime that is broadly aligned to the CRR/CRD IV regime which applies to certain other investment firms whilst remaining proportionate to the nature and scale of their activities. Do you agree with the approach proposed?[3]

2. Chapter 5 of the Central Bank's AIF Rulebook (June 2015) also contains certain requirements applicable when Fund Administrators outsource activities. Some changes to these requirements are proposed as described in summary below:

   - The circumstances and conditions where the final check and release of the NAV may

[3] Capital requirements for MiFID firms flow from their MiFID authorisation. Capital requirements for IIA non-retail investment business firms other that Fund Administrators are applied on an individual firm basis. This approach will continue for time being.

be outsourced by the administrator are more clearly specified and defined;

- A new requirement for Fund Administrators to make an annual return to the Central Bank concerning outsourced activities is proposed;

- Certain other definitions, amendments and clarifications are also included.

The primary purpose behind these changes is to set out clearly the limited circumstances in which a Fund Administrator may outsource the check and release of Final NAV calculations and to specify the conditions to be complied with by Fund Administrators in such circumstances. The requirement to make an annual return to the Central Bank will also assist in the supervision of Fund Administrators with regard to their outsourced activities. Do you agree with the approach proposed?

3. The intention of the Central Bank is that, in future, as the Central Bank develops additional or revised requirements for Investment Firms these will be brought in by way of amendment to the proposed Investment Firm Regulations, to the extent that it is legally sound to do so. For example, the Central Bank is currently examining the option of a capital planning requirement for certain non-MiFID firms. The intention is to build on work done by our supervisors as part of their bilateral work with Firms not already subject to an obligation to engage in capital planning to encourage them to do so. The Central Bank has had a good response to this initiative which underpins a more forward-looking and risk-focused approach to capital The Bank recognises this is an important piece of prudential regulation and wishes to reinforce its message, being consistently made on a bilateral basis, on the need for investment firm management boards to take ownership in this regard. Our current intention is to consult on this issue before the end of the year.

4. In addition, the Central Bank anticipates that there may be additional requirements relevant to MIFID firms arising from the implementation of MIFID II and the Central Bank will look at that as part of the implementation of MIFID II. Furthermore, it may be appropriate to carry across certain MIFID rules and apply them to other Investment Firms. Finally, once the transition period is complete for the implementation of the Client Asset and Investor Money rules, the Central Bank will examine the feasibility of consolidating those rules together with the Investment Firms rules. In this way the Investment Firms Regulations will be a living single document, subject to regular amendment over time in the interests of increasing the clarity, transparency and appropriateness of the regulatory rules applying to Irish investment firms.

Consultation responses

The Central Bank invites all stakeholders to provide comments on the proposed Investment Firms Regulations which form part of this Consultation Document and on the questions raised in this Consultation Paper.

Please make your submissions electronically by email to invfirmspolicy@centralbank.ie or in writing to:

Investment Firm Regulations Consultation

Markets Policy Division

Central Bank of Ireland

Block D

Iveagh Court

Harcourt Road

Dublin 2

Responses should be submitted no later than 27 January 2016.

It is the policy of the Central Bank to publish all responses to its consultations. All responses will be made available on our website. Commercially confidential information should not be included in consultation responses. We will send an email acknowledgement to all responses sent by email. If you do not get an acknowledgement of an emailed response please contact us on +353 1 2246000 to correct the situation.

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4 November 2015

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S.I. No. XX of 2016

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CENTRAL BANK (SUPERVISION AND ENFORCEMENT) ACT 2013 (SECTION 48(1)) INVESTMENT FIRMS PRUDENTIAL AND SUPERVISORY REQUIREMENTS REGULATIONS 2016

S.I. No. XX of 2016

CENTRAL BANK (SUPERVISION AND ENFORCEMENT) ACT 2013 (SECTION 48(1)) INVESTMENT FIRMS PRUDENTIAL AND SUPERVISORY REQUIREMENTS REGULATIONS 2016

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S.I. No. XXX of 2016

CENTRAL BANK (SUPERVISION AND ENFORCEMENT) ACT 2013 (SECTION 48(1)) INVESTMENT FIRM PRUDENTIAL AND SUPERVISORY REQUIREMENTS REGULATIONS 2016

In exercise of the powers conferred on the Central Bank of Ireland (the "Bank") by section 48 of the Central Bank (Supervision and Enforcement) Act 2013 ("the Act"), the Bank, having consulted with [the Minister] in accordance with section 49(1) of the Act, hereby makes the following Regulations.

PART 1
PRELIMINARY AND GENERAL

Citation and Commencement

1. (1) These Regulations may be cited as the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) Investment Firm Prudential and Supervisory Requirements Regulations 2016.

   (2) These Regulations commence on [ ].

Interpretation

2. In these Regulations, unless the context otherwise requires**:**

   "alternative investment fund" or "AIF" has the meaning given to the term in Regulation 5(1) of the European Union (Alternative Investment Fund Managers) Regulations 2013 (S.I. 257 of 2013) (as amended);

   "Annual Accounts" means a firm's accounts prepared in accordance with the Companies Act 2014 and certified by both a director and a secretary of the firm to be a true copy;

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"applicable accounting framework" means the accounting standards to which the firm is subject under the Companies Act 2014;

"bad debt provision" has the same meaning as under the applicable accounting framework;

"Bank" means the Central Bank of Ireland;

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

"chain outsourcing" means outsourcing where the outsourcing service provider subcontracts elements of the service to other providers;

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

"client" means any person to whom a firm provides financial services;

"client assets" shall have the meaning specified in the Central Bank (Supervision and Enforcement) Act 2013 (Section 48 (1)) Client Asset Regulations 2015;

"Client Asset Regulations" means the Central Bank (Supervision and Enforcement) Act 2013 (Section 48 (1)) Client Asset Regulations 2015;

"client funds" shall have the meaning specified in the Central Bank (Supervision and Enforcement) Act 2013 (Section 48 (1)) Client Asset Regulations 2015;

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"close link" has the meaning specified in the European Communities (Markets in Financial Instruments) Regulations 2007;

"collateral margined transaction"

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

(b) includes, but is not limited to,

(i) futures,

(ii) options,

(iii) rollovers,

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

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"core administration activities" means the final checking and release of the net asset value ("NAV") calculation for dealing purposes and the maintenance of the shareholder register;

"core management functions" include

(a) setting the risk strategy;

(b) setting the risk policy, and the risk-bearing capacity of the Fund Administrator;

(c) setting of strategies and policies in respect of the Fund Administrator’s risk profile and control;

(d) the oversight of the operation of the Fund Administrator’s processes;

(e) the final responsibility towards

  (i) clients and

  (ii) the Bank.

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

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

“debtors” has the same meaning as under the applicable accounting framework;

“deferred tax assets” has the same meaning as under the applicable accounting framework;

“deferred tax liabilities” has the same meaning as under the applicable accounting framework;

“defined benefit pension fund assets” means the assets of a defined pension fund or plan, as applicable, calculated after they have been reduced by the amount of obligations under the same fund or plan;

“distributions” means the payment of dividends or interest in any form;

“eligible credit institution” means a credit institution or a credit institution authorised in a third country;

“employee” means a person employed under a contract of service or a person otherwise employed by a regulated entity;

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“financial services legislation” has the meaning given by section 3(1) of the Central Bank (Supervision and Enforcement) Act 2013 (No. 26 of 2013) 2010;

“Final NAV” means a net asset value calculated for the purposes of dealing in an investment fund provided to investors, published or otherwise released to the Market by the Fund Administrator or its outsourcing service provider;

“firm” means an investment business firm or a MiFID investment firm;

“financial sector entity” has the meaning specified in point 27 of paragraph 1 of Article 4 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012;

“fixed assets” has the same meaning as under the applicable accounting framework;

“Fund Administrator” means an investment business firm which has been authorised by the Bank and appointed to provide administration services to investment funds;

“futures” means any rights under an exchange-traded contract for the sale of investment instruments, foreign currency or commodities under which delivery is to be made at a future date and at a price agreed upon when the contract is made;

“goodwill” has the same meaning as under the applicable accounting framework;

“gross intercompany assets” has the same meaning as under the applicable accounting framework;

“group” has the meaning given to the term in Regulation 3(1) of the European Communities (Markets in Financial Instruments) Regulations 2007;

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"group entity" means any undertaking included within the same group as the firm;

"intangible assets" has the same meaning as under the applicable accounting framework and includes goodwill;

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

"investment advice" shall have the meaning given to the term in Regulation 3(1) of the European Communities (Markets in Financial Instruments) Regulations, 2007 (S.I. No. 60 of 2007) and/or the meaning given to the term in Section 2(1) of the Investment Intermediaries Act 1995;

"investment business firm" shall have the meaning given to the term in Section 2(1) of the Investment Intermediaries Act, 1995 but, for the purposes of these Regulations, shall not include:

(a) certified persons within the meaning of section 55 of the Investment Intermediaries Act, 1995;
(b) a restricted activity investment product intermediary within the meaning of Section 2(1) of the Investment Intermediaries Act, 1995;
(c) a person authorised pursuant to section 10 of the Investment Intermediaries Act 1995 to carry out custodial operations involving the safekeeping and administration of investment instruments to the extent that the person engages in that activity"

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

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

"investment fund" means a UCITS or an AIF;

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"investment instruments" means a financial instrument as defined in Regulation 3(1) of the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007) and an investment instrument as defined in Section 2(1) of the Investment Intermediaries Act 1995;

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

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

"investor money" shall have the meaning given to the term in Regulation 2 of the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) Investor Money Regulations 2015 for Fund Service Providers;

"Investor Money Regulations" shall mean the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) Investor Money Regulations 2015 for Fund Service Providers;

"investor" means any person:

(a) from or on behalf of whom the fund service provider receives money for the purposes of subscribing to an investment fund,

(b) in respect of whom the fund service provider transfers money to an investment fund for the purposes of subscribing to or participating in that investment fund,

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(c) in respect of whom the fund service provider receives from an investment fund money for transmission to the person, whether in respect of redemption proceeds or otherwise;

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

"Member State" means a Member State of the European Economic Area;

"MiFID investment firm" means a firm authorised or deemed authorised under the European Communities (Markets in Financial Instruments) Regulations 2007 (SI No. 60 of 2007);

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

"month" means a calendar month;

"Net Asset Value" or "NAV" means the net asset value per unit or share of an investment fund;

"officer" in relation to a regulated entity, means a director, chief executive, manager or secretary, by whatever name called;

"ONR system" means the Central Banks Online Reporting System;

"options" has the meaning specified in Section 2 of the Investment Intermediaries Act 1995;

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"outsourcing" means a Fund Administrator's use of a third party to perform administration activities that would normally be undertaken by the Fund Administrator;

"outsourcing service provider" means the supplier of goods, services or facilities, including another Fund Administrator or an affiliated entity within a corporate group;

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

"person" means a natural person or a legal person;

"performance and quality standards" means at a minimum:

(a) that a detailed Service Level Agreement is in place with the outsourcing provider;

(b) monitoring and checking of the quality of the outsourced activities on an ongoing basis;

(c) reviewing of the systems and processes that the outsourcing service provider has in place and any audits carried out under Service Organisation Controls Report SOC1

"Preliminary NAV" means a calculated NAV which has not yet been provided to investors, published or otherwise released to the market by the Fund Administrator or its outsourcing service provider. This Preliminary NAV may be provided to the investment fund or its investment manager for review prior to release as Final NAV;

"Prepayment" has the same meaning as under the applicable accounting framework;

"profit" has the same meaning as under the applicable accounting framework;

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

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"recognised exchange" means one of the exchanges listed in Appendix 2 of the Bank's notice on the Implementation for Investment Firms of the EU Directive on the Capital Adequacy of Investment Firms and Credit Institutions;

"related party", in relation to an investment firm, means:

(a) if the investment firm is a company, another company that is related within the meaning of section 2 of the Companies Act 2014;

(b) a partnership of which the investment firm is a member;

(c) if the businesses of the investment firm and another person have been so carried on that the separate business of each of them, or a substantial part thereof, is not readily identifiable, that other person;

(d) if the decision as to how and by whom the businesses of the investment firm and another person shall be managed are, or can be, made either by the same person or by the same group of persons acting in concert, that other person;

(e) a person who performs a specific and limited purpose by or in connection with the business of the investment firm;

(f) if provision is required to be made for the investment firm and another person in any consolidated accounts compiled in accordance with the Seventh Council Directive 83/349/EEC of 13 June 1983[4], that other person;

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

[4] OJ L193, 18.7.1983, p.1

"report" means the information, records, forecasts, plans and accounts specified in Part 4 – Reporting Requirements;

"retained earnings" means profits and losses brought forward as a result of the final application of profit or loss under the applicable accounting framework;

"share premium account" has the same meaning as under the applicable accounting framework;

"supervisory authority" means the body or bodies designated by statute to act as a regulatory authority in the State;

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

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

"total assets" has the same meaning as under the applicable accounting framework;

"transaction" means -

(a) the purchase or sale by a firm of an investment instrument,

(b) the subscription for an investment instrument,

(c) the underwriting of an investment instrument,

(d) the placing or withdrawal of a deposit;

"UCITS" means Undertakings for Collective Investment in Transferable Securities and has the meaning given to the term in Regulation 4 (3) of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (S.I. No. 352 of 2011) (as amended);

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Application and scope

3. (1) All investment firms are subject to the requirements specified in Parts 2 and 3 of these Regulations.

(2) A fund administrator is subject to the requirements specified in Parts 4 & 5 of these Regulations.

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PART 2

GENERAL SUPERVISORY REQUIREMENTS

Relationship with the Bank

4. A firm shall notify the Bank as soon as practicable of the following:

    (a) the commencement of any legal proceedings by or against the firm;

    (b) any situations or events which impact, or potentially impact, on the firm to a significant extent or anything relating to the firm of which the Bank would reasonably expect notice, or which may impact on the reputation or good standing of the firm;

    (c) the imposition on the firm of a fine or other penalty by another supervisory authority;

    (d) a visit to the firm by another supervisory authority.

5. A firm shall:

    (a) consult with the Bank prior to engaging in any significant new activities, or establishing new branches, offices or subsidiaries;

    (b) obtain the prior written approval of the Bank before changing the firm’s name or business name;

    (c) notify the Bank promptly in writing of any change to the firm’s address, telephone number, email address, website or facsimile number.

6. A firm shall notify the Bank in writing, in advance of either acquiring or disposing of a holding in another undertaking or business, other than acquisitions or disposals for the purposes of a trading book within the meaning of regulation 3 of the European Union

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(Capital Requirements) Regulations 2014) S.I. No. 158 of 2014 such that the proportion of the voting rights or of the capital held would exceed 20%.

7. A firm which has an internal audit function, or which is a member of a group which has such a function, must provide the Bank as soon as practicable with a copy of any internal audit report which refers to the firm.

Management of Business

8. (1) A firm shall, at all times, have policies and systems to identify, monitor and control risk arising in respect of the firm's activities and in particular shall have:

(a) adequate management resources to conduct its activities effectively;
(b) adequate financial resources to meet its investment business objectives and to reflect the risks to which its business is subject;
(c) adequate control systems and accounting procedures to facilitate effective management of the firm and to ensure that the firm is in a position to satisfy the Bank's supervisory and reporting requirements and compliance with financial services legislation as appropriate

(2) A firm shall ensure, within 12 months of the commencement of these Regulations, that a suitably qualified person is appointed as compliance officer.

(3) The compliance officer will have responsibility for compliance with all legal and regulatory requirements and for co-operation and liaison with the Bank.

(4) The compliance officer will have necessary access to systems and records and will have the freedom to report to the Board of the firm (or equivalent in the case of a partnership) at all times.

Change of Auditor

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9. A firm shall notify the Bank as soon as practicable that an auditor may seek to resign or not seek re-election or of any other proposal to change the auditor.

Customer Borrowing

10. A firm shall not lend money or extend credit to a client except in the case where a firm settles a securities transaction on a regulated market in the event of default or late payment by the client or pays an amount to cover a margin call made on a client. In such cases the firm shall close out, in accordance with its terms of business or relevant investment management agreement, the relevant position as soon as possible.

    (d) Such a measure shall be of a temporary and exceptional nature and must be in accordance with approved credit policy;

    (e) Before entering into a collateral margined transaction on behalf of a client a firm shall take account of the financial resources available to the client and whether or not the client would be in a position to meet margin calls and fund a loss on that transaction.

    (f) Where an officer or employee of a firm holds an outstanding position transacted by the firm in relation to a collateral margined transaction which shows a loss, the firm shall:

        (i) take immediate steps to have this loss repaid by the officer or employee concerned;

        (ii) immediately close out any unpaid position in accordance with the firm's terms of business.

Books and Records

11. (1) A firm shall retain, in a readily accessible form, for a period of at least six years:

(a) a full record of each transaction entered into by it (whether on its own behalf or on behalf of clients);

(b) a full record of all investment advice given to clients and all records required to demonstrate compliance with these Regulations;

(c) details of all money received and expended by the firm whether on its own behalf or on behalf of clients, together with details of how such receipts and payments arose;

(d) a record of all income and expenditure of the firm;

(e) a record of all assets and liabilities of the firm, long and short positions and off-balance sheet items, including any commitments or contingent liabilities;

(f) a record of all investment instruments or documents of title in the possession, control or responsibility of the firm showing the physical or electronic location, the beneficial owner, the purpose for which they are held and whether they are subject to any charge;

(g) management information records maintained in a manner such that they disclose or are capable of disclosing the financial and business information which will readily enable the firm's management to:

  (i) identify, quantify, control and manage the firm's risk exposures;
  (ii) make timely and informed decisions;
  (iii) monitor the performance of all aspects of the firm's business;
  (iv) monitor the quality of the firm's assets;
  (v) safeguard the assets of the firm and its clients, including any client assets and investor money.

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(2) A firm shall have adequate procedures for the maintenance, security, privacy and preservation of records, working papers and other documents of title held by the firm so that they are reasonably safeguarded against loss, unauthorised access, alteration or destruction.

(3) A firm which records any telephone conversation shall retain its recording of that telephone conversation for at least six years, and, if the firm has reasonable cause to believe the tape recording is or might be relevant to a complaint, disciplinary action or investigation, it shall retain such tape recording until it ceases to be of relevance to such complaint, disciplinary action or investigation.

(4) Where a firm outsources all or part of its record-keeping to another person it shall only do so in accordance with the provisions of a written agreement.

12. (1) (a) A firm shall maintain a reconciliation of all balances with eligible credit institutions or relevant parties as recorded by the firm to the balance on the statement issued by the eligible credit institution or relevant party;

(b) The firm shall maintain a written record of any differences corrected unless they arise solely as a result of identified differences in timing between the records of the firm and the eligible credit institution or relevant party;

(c) A firm shall carry out such reconciliations at least monthly.

(2) Where a firm receives a statement from a counterparty, which is a member of a recognised exchange, setting out the balances and securities positions due to and from the counterparty it must maintain:

(a) a reconciliation of the balances and securities positions as recorded by the firm to the balance or securities position on the statement obtained from the counterparty;

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(b) a written record of any differences corrected by agreement with the counterparty.

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PART 3
REPORTING REQUIREMENTS

General Requirements

Submission of Reports

13. (1) (a) An investment business firm shall submit to the Bank the reports specified in Schedule 1 to these Regulations using the ONR system within the time period and at the frequency provided therein;

(b) A MiFID investment firm shall submit to the Bank the reports specified in Schedule 2 to these Regulations using the ONR system within the time period and at the frequency provided therein.

(2) Where the date for submission of a report under paragraph (1) falls on a day which is not a business day, the submission date is deemed to be the next business day.

(3) A firm shall ensure that information, records, reports plans and accounts submitted pursuant to this Part are factually accurate, complete and in the case of an estimate or a judgment, supported by adequate enquiry or evidence.

(4) Notwithstanding the reporting frequencies set out in the Schedules to these Regulations, the Bank may impose more frequent reporting.

PART 4
FUND ADMINISTRATOR REQUIREMENTS

Organisational Requirements

14. A Fund Administrator shall comply with the requirements on outsourcing of administration activities, as set out in this Part in relation to investment funds to which it directly or indirectly provides fund administration services.

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15. A Fund Administrator shall not hold Client Assets or Investor Money without the prior written approval of the Bank.

16. Subject to subparagraph 15 above, where a Fund Administrator holds client assets or investor money accounts for processing subscriptions and redemption monies or otherwise, it shall comply with the Client Asset Regulations and Investor Money Regulations, as applicable.

17. (1) A Fund Administrator shall establish, implement, document and maintain an adequate business continuity policy aimed at ensuring, in the case of an interruption to its systems and procedures, the preservation of essential data and functions and the maintenance of services and activities or, where that is not possible, the timely recovery of such data and functions and the timely resumption of its services and activities.

(2) The business continuity policy referred to in subparagraph (1) shall be:

(a) subject to annual testing and the test results recorded and maintained;

(b) communicated to the relevant persons in the Fund Administrator;

(c) subject to review on at least an annual basis.

18. A Fund Administrator shall establish, implement, document and maintain accounting policies and procedures that enables the Fund Administrator to deliver to the Bank in accordance with the requirements of these Regulations financial accounts which reflect a true and fair view of its financial position and which comply with all applicable accounting standards and rules.

19. Half-yearly financial and annual audited accounts of the Fund Administrator shall be submitted to the Bank. The half-yearly accounts shall be submitted within two months of the half year end and the annual audited accounts within four months of the year end.

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20. Both half-yearly and annual audited accounts shall be accompanied by the Minimum Capital Requirement Report required under Schedule One of these Regulations. The Fund Administrator shall also submit the annual audited accounts of its direct parent.

21. A Fund Administrator shall monitor and, on a regular basis, evaluate the adequacy and effectiveness of its systems, internal control mechanisms and arrangements established in accordance with this Part and take appropriate measures to address any deficiencies.

22. A Fund Administrator which provides administration services to investment funds not authorised by the Bank shall ensure that the prospectus issued by any such investment fund does not imply in any way that the investment funds is authorised by the Bank.

Directors

23. The board of a Fund Administrator shall not have directors in common with the board of the depositary of the investment funds under administration.

24. A Fund Administrator shall have a minimum of two Irish resident directors.

25. A Fund Administrator shall ensure that its directors to disclose to the Fund Administrator any concurrent directorships which they hold on the boards of investment funds and/or related entities which supply services to such investment funds.

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<u>Outsourcing of Administration Activities in relation to Investment Funds</u>

Management of Risks of Outsourcing

26. A Fund Administrator shall retain responsibility for the proper management of the risks associated with outsourcing or the outsourced activities.

27. A Fund Administrator shall ensure that the outsourcing of functions to an outsourcing service provider does not impair the ability of the Bank to supervise the Fund Administrator.

28. The Fund Administrator shall at all times retain responsibility for outsourced functions. The Fund Administrator shall retain its regulatory responsibilities for its authorised activities or the function concerned.

29. The Fund Administrator shall retain adequate core competence at a senior operational level in-house to enable it to have the capability to resume the performance of an outsourced activity, in extremis.

30. The Fund Administrator shall retain its full and unrestricted responsibilities under, and its ability to comply with, applicable investment fund legislation and the conditions with which the Fund Administrator must comply in order to be authorised by the Bank.

31. A Fund Administrator shall not alter its obligations towards its investment fund clients as a result of any outsourcing arrangements in place.

No Delegation of Senior Management Responsibility

32. Senior management may not delegate responsibility as a result of any outsourcing arrangements.

33. Core management functions shall not be delegated as a result of any outsourcing arrangements. The Fund Administrator must continue to exercise adequate and effective control and decision-making.

Outsourcing to comply with certain Requirements

34. A Fund Administrator shall not outsource services and activities unless the outsourcing service provider has the appropriate authorisation to carry out the outsourced services

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and activities as required by the outsourcing service provider’s national legal framework.

35. The responsibilities and obligations identified in sections 26 - 33 above shall not be outsourced.

36. Core administration activities shall not be outsourced.

37. Any area of activity of a Fund Administrator other than core administration activities or those identified in sections 26-33 above may be outsourced provided that such outsourcing does not impair:

    (a) the orderliness of the conduct of the Fund Administrator’s business or of the financial services provided;

    (b) the senior management's ability to manage and monitor the Fund Administrator’s business and its authorised activities;

    (c) the ability of other internal governance bodies, such as the board of directors or the audit committee, to fulfil their oversight tasks;

    (d) the supervision of the Fund Administrator by the Bank;

    (e) the Fund Administrator’s ability to have full access and control over the administration systems and to generate a full set of the books and records for each investment fund serviced.

38. The requirements in this Part do not affect the principle of the Fund Administrator’s ultimate responsibility for all authorised activities. The senior management of the Fund Administrator shall be responsible for any outsourced activity. Senior management must therefore take suitable measures to ensure that the outsourced activities continue to meet the performance and quality standards that would apply if their own institution were to perform the relevant activities in-house.

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39. The final check and release of each investment fund NAV is a core administration activity which must be performed by the Fund Administrator. This review must be completed prior to the release of the Final NAV and should be completed, signed and dated by a senior staff member within the Fund Administrator.

40. Notwithstanding Regulation 39, the Outsourcing Service Provider may release the Final NAV provided the following conditions are met:

    (a) The fund is daily dealing;

    (b) The outsourcing service provider who releases the Final NAV is an entity within the administrator's group and the administrator and the outsourcing service provider share the same systems, controls, staff training, procedures and processes for the valuation of each fund's NAV;

    (c) The prices for investments used for valuation purposes are not available from markets before 5pm Irish time in order to facilitate a release of the final NAV within normal Irish business hours;

    (d) The administrator shall be able to demonstrate that release of the Final NAV outside of normal Irish business hours (8am – 6pm) is necessary in order to facilitate investor dealing due to the existence of one of the following circumstances:

        (i) The Final NAV is required to be received by the underlying investor in the Asian Market by T+1 Asian time;

        (ii) The fund is a US Money Market Fund with trade date settlement;

        (iii) The fund is an ETF which needs to release the NAV to the primary market and to investors in the secondary market outside of normal Irish business hours (8am-6pm); and

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(e) A final check of the NAV is performed by the Fund Administrator on the following day

41. Documentary evidence of the final check on the NAV shall be maintained by the Fund Administrator for a period of at least six years and shall be made available to the Bank on request.

42. The Fund Administrator must maintain the shareholder register for each investment fund and ensure that the Fund Administrator has oversight and control of the register and can reproduce the full register at any time.

43. The Fund Administrator shall inform the Bank in writing in good time in advance of any activity to be outsourced. This notification must afford the Bank sufficient time to consider the proposal and must include the following information:

(a) The activities to be outsourced;
(b) The identity of the impacted investment funds;
(c) The name of the outsourcing service provider (indicating whether this firm is part of the Fund Administrator's group and its regulatory status, if any);
(d) The location where the outsourced activity will be carried out.

44. The Fund Administrator shall also submit written confirmation from senior management that the Requirements in this Part have been fully complied with in relation to the outsourced activities.

45. It is not permitted to combine a model where the Preliminary NAV calculation is outsourced with a model where the Final NAV calculation is also outsourced for the same investment fund without prior notification to the Bank.

46. The Bank may request up-to-date details of all outsourcing arrangements including the impacted investment funds at any time. Any change to the activities which are

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outsourced must be notified to the Bank in accordance with the procedure outlined in Regulation 43.

47. The Bank will inform the Fund Administrator within one month of receipt of the proposed outsourcing notification as to whether:

(a) further information regarding the outsourcing arrangement is required, or

(b) the Fund Administrator may or may not proceed with its proposals.

48. The outsourcing proposal will lapse if it does not proceed within 12 months of the Bank's confirmation that it may proceed.

49. A Fund Administrator shall inform the Bank of any material development affecting the outsourcing service provider and its ability to fulfil its obligations to customers. The Fund Administrator shall ensure that the outsourcing service provider is required to disclose to the Fund Administrator any development that may have a material impact on its ability to carry out the outsourced functions effectively and in compliance with applicable laws and regulatory requirements.

50. Fund Administrators shall submit an annual return to the Bank detailing:

(a) all outsourcing models being used;

(b) the locations of the outsourcing service provider;

(c) the Central Bank clearance date;

(d) the names of all funds (including sub-funds) where the Fund Administrator has outsourced the check and release of Final NAV.

51. Fund Administrators shall take special care when entering into and managing outsourcing agreements in order to ensure that it can comply with the Requirements under this Part and legal obligations under data protection legislation.

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52. The outsourcing service provider must have the ability and capacity to perform the outsourced functions, services or activities reliably and professionally.

53. Intra-group outsourcing is also covered by these Regulations. The Bank will take specific circumstances into consideration, including the extent to which the Fund Administrator controls the service provider or has the ability to influence its actions and the extent to which the service provider is included in the consolidated supervision of the group, when assessing the risks associated with an intra-group outsourcing arrangement and the treatment to apply to such arrangements.

Controls and Contingency Planning

54. The Fund Administrator shall:

(a) conduct its business in a controlled and sound manner at all times

(b) have a documented policy on its approach to outsourcing, including contingency plans and exit strategies, ensuring that it:

(i) covers all aspects of outsourcing, whether the outsourcing takes place within the Fund Administrator's group or not;

(ii) explicitly recognises that no form of outsourcing is risk free;

(iii) recognises that the management of intra-group outsourcing must be proportionate to the risks presented by these arrangements;

(iv) explicitly addresses the potential effects of outsourcing on certain significant functions, in particular, internal audit and compliance functions, when conducting the risk analysis prior to outsourcing;

(v) ensures that the outsourcing service provider's financial performance and essential changes in the service provider's

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organisation structure and ownership structure are appropriately monitored and assessed by the Fund Administrator's management so that any necessary corrective measures can be taken promptly.

55. The Fund Administrator must specify the persons that are responsible for monitoring and managing each outsourcing arrangement.

56. The policy must address the main phases that make up the life cycle of the Fund Administrator’s outsourcing arrangements:

(a) the decision to outsource or change an existing outsourcing arrangement (the decision making phase);

(b) due diligence checks on the outsourcing service provider, including both pre-contractual and on-going due diligence checks. These checks should include periodic visits to the outsourcing service provider. The extent to which periodic visits are required will depend on the nature, scale and complexity of the outsourced task;

(c) drafting a written outsourcing contract and service level agreement (the pre-contractual drafting phase);

(d) the implementation, monitoring, and management of an outsourcing arrangement (the contractual phase) including but not limited to monitoring changes affecting the outsourcing service provider;

(e) dealing with the expected or unexpected termination of a contract and other service interruptions (the post contractual phase). Fund Administrators must plan and implement arrangements to maintain the continuity of their business in the event that the provision of services by an outsourcing service provider fails or deteriorates to an unacceptable degree, or the firm experiences other changes. This policy shall include contingency planning and a clearly defined exit strategy.

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57. The Fund Administrator’s existing clients must be made aware of the outsourcing arrangement, if applicable, and future clients must be advised of the arrangement prior to the commencement of business.

58. A Fund Administrator shall appropriately manage the risks associated with its outsourcing arrangements.

59. Compliance with this Requirement shall include an on-going assessment by the Fund Administrator of the operational risks and the concentration risk associated with all of its outsourcing arrangements. A Fund Administrator shall inform the Bank of any material development in relation to the management of these risks.

Outsourcing to be subject to comprehensive contract/service level agreement

60. All outsourcing arrangements shall be subject to a formal and comprehensive contract or formal service level agreement. The outsourcing contract or service level agreement shall oblige the outsourcing service provider to protect confidential information.

61. Prior to concluding a written contract or service level agreement with an outsourcing service provider, the Fund Administrator shall satisfy itself in advance as to the outsourcing service provider's ability to meet performance requirements in both quantitative and qualitative terms and of the outsourcing service providers’ ability to meet the Requirements in this Part.

62. In managing its relationship with an outsourcing service provider the Fund Administrator shall ensure that the contract or service level agreement includes details of the responsibilities of both parties and provides that a quality control description is put in place.

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63. Any outsourcing arrangement must be based on a clear written legally binding contract or legally binding service level agreement.

64. A Fund Administrator shall ensure that the written contract or service level agreement:

   (a) Defines clearly the operational activity that is to be outsourced;

   (b) Specifies and documents the precise requirements concerning the performance of the service taking account of the objective of the outsourcing solution;

   (c) Defines and specifies the respective rights and obligations of the Fund Administrator and the outsourcing service provider to ensure compliance with laws and supervisory regulations and guidelines for the duration of the outsourcing arrangement.

65. In order to underpin an effective policy for managing and monitoring the outsourced activities, the contract or service level agreement must also include:

   (a) a termination and exit management clause which allows the activities being provided by the outsourcing service provider to be transferred to another outsourcing service provider or to be reincorporated into the Fund Administrator;

   (b) a provision to protect confidential information and the confidentiality rules applicable at the level of the Fund Administrator must be maintained by the outsourcing service provider;

   (c) a provision to ensure that the outsourcing service provider's performance is continuously monitored and assessed so that any necessary corrective measures can be taken promptly;

   (d) an obligation on the outsourcing service provider to allow the Fund Administrator's compliance and internal audit departments full access to

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its data and its external auditors full and unrestricted rights of inspection and auditing of that data;

(e) an obligation on the outsourcing service provider to allow direct access by the Bank and its authorised officers and agents to relevant data and its premises as required;

(f) an obligation on the outsourcing service provider to immediately inform the Fund Administrator of any material changes in circumstances which could have a material impact on the continuing provision of services. Consents from affected parties such as the parent company and relevant home supervisory authority must be provided, if required;

(g) provisions allowing the Fund Administrator to terminate the contract or service level agreement if so required by the Bank.

66. The Fund Administrator shall ensure the contract or service level agreement provides for a level of monitoring, assessment, inspection and auditing proportionate to the risks involved and the size and complexity of the outsourced activity.

67. The contract or service level agreement shall contain both quantitative and qualitative performance targets, to enable a Fund Administrator to assess the adequacy of service provision.

68. The Fund Administrator shall evaluate the performance of its outsourcing service provider on an ongoing basis. Such evaluation shall include using mechanisms including but not limited to:

(a) key performance indicators (including price, delivery times, error rates and reconciliation breaks);

(b) service delivery reports;

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(c) self-certification or independent review by the Fund Administrator or the outsourcing service provider's internal or external auditors.

69. The extent of this evaluation and the mechanisms to be used will depend on the nature, scale and complexity of the outsourced task. The Bank requires that the Fund Administrator's internal auditors and compliance function will examine the operation of the outsourcing arrangement within the first 12 months of its operation and a copy of both their reports must be sent to the Bank within three months of the examinations being completed. The Bank may require additional periodic reports during the course of any outsourcing arrangement.

70. The Fund Administrator shall take remedial action if the outsourcing service provider's performance is inadequate. The Fund Administrator must have sufficiently detailed knowledge of the outsourcing service provider's processes and the necessary resources for that purpose.

Chain Outsourcing

71. The Fund Administrator shall take account of the risks associated with chain outsourcing.

72. The Fund Administrator shall only agree to chain outsourcing if the sub-contractor will also fully comply with the obligations existing between the Fund Administrator and the outsourcing service provider, including obligations and commitments to the Bank.

73. The Fund Administrator shall take appropriate steps to address the risk of any weakness or failure in the provision of the sub-contracted activities having a significant effect on the outsourcing service provider's ability to meet its responsibilities under the outsourcing agreement.

74. The sub-outsourcing of outsourced activities and functions to third parties (sub-contractors) must be treated by the Fund Administrator as equivalent to a primary outsourcing measure. The outsourcing contract must contain a clause requiring the prior

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consent of the Fund Administrator to the possibility and the modalities of sub-outsourcing.

75. The Fund Administrator shall ensure that the outsourcing service provider agrees that the contractual terms agreed with the sub-contractor will always conform, or at least not be contradictory, to the provisions of the agreement with the Fund Administrator.

Bank access to records on outsourcing

76. The Fund Administrator shall provide the Bank with access to relevant data held by the outsourcing service provider and the right for the Bank to conduct onsite inspections at an outsourcing service provider's premises.

77. The Fund Administrator shall include in contracts with outsourcing service providers a clause stating that the Bank has the rights which the Bank needs in order to exercise its supervisory functions, including but not limited to the following rights: access to information and right of inspection, admittance and access, including access to databases, as well as the right to give directions or instructions,.

78. The Fund Administrator shall ensure that information is made available to the Bank by the outsourcing service provider's external auditor.

79. The Fund Administrator shall ensure that, in relation to any outsourced activity, it and its outsourcing service provider can comply with formal orders or instructions issued by the Bank to the Fund Administrator.

80. In the case of outsourcing to service providers outside the jurisdiction, the Fund Administrator shall be responsible for ensuring that the Bank can exercise its information gathering rights, including its right to demand documents and audits and compatible with the overall legal framework and its rights of inspection.

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81. The Fund Administrator must, prior to engaging in outsourcing, consider and set out in a risk management document alternative measures that could adequately mitigate the risks involved.

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PART 5 – FUND ADMINISTRATOR OWN FUNDS REQUIREMENTS

Fund Administrator Own Funds Requirement

82. (1) A fund administrator shall have at all times own funds, calculated in accordance with Regulations 85 to 95, that are at least equal to the higher of:

(a) €125,000; or

(b) the fund administrator's expenditure requirement calculated in accordance with Regulation 83.

(2) The amount referred to in paragraph (1) is the fund administrator's own funds requirement.

Expenditure Requirement

83. (1) For the purpose of Regulation 82, the expenditure requirement is calculated as one quarter of the fund administrator's fixed overheads of the preceding year. The fund administrator's fixed overheads of the preceding year shall be calculated in accordance with paragraphs (2) to (5).

(2) Fund administrators shall calculate their fixed overheads of the preceding year, using figures resulting from the applicable accounting framework, by subtracting the following items from the total expenses after distribution of profits to shareholders in their most recent audited financial statements, or, where audited statements are not available, in annual financial statements validated by the Bank:

(a) fully discretionary staff bonuses;

(b) employees', directors' and partners' shares in profits, to the extent that they are fully discretionary;

(c) other appropriations of profits and other variable remuneration, to the extent that they are fully discretionary;

(d) shared commission and fees payable which are directly related to commission and fees receivable, which are included within total

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revenue, and where the payment of the commission and fees payable is contingent upon the actual receipt of the commission and fees receivable;

(e) fees, brokerage and other charges paid to clearing houses, exchanges and intermediate brokers for the purposes of executing, registering or clearing transactions;

(f) interest paid to customers on client funds or investor money;

(g) non-recurring expenses from non-ordinary activities.

(3) Where fixed expenses have been incurred on behalf of a fund administrator by third parties, and these fixed expenses are not already included within the fund administrator's total expenses referred to in paragraph (2), the fund administrator shall add these fixed expenses to the figure resulting from paragraph (2).

(4) Where the fund administrator's most recent audited financial statements do not reflect a twelve month period, the fund administrator shall divide the result of the calculation of paragraphs (2) and (3) by the number of months that are reflected in those financial statements and shall subsequently multiply the result by twelve, so as to produce an equivalent annual amount.

(5) Where a fund administrator has not completed business for one year from the day it starts trading, it shall use, for the calculation of items in paragraphs (2) to (4), the projected fixed overheads included in its budget for the first twelve months' trading, as submitted with its application for authorisation.

84. (1) Fund administrators shall notify the Bank where there is a change of business in the fund administrator resulting in a material change in the fund administrator's expenditure requirement.

(2) For the purpose of paragraph (1), a material change in the fund administrator's expenditure requirement occurs if:

(a) the figure resulting from completing the calculation set out in paragraphs (2) to (5) of Regulation 83 using projected overheads of the current financial year differs by 20 per cent or greater than the figure resulting from completing the calculation set out in paragraphs (2) to (5) of Regulation 83 strictly as set out therein; or

(b) the figure resulting from completing the calculation set out in paragraphs (2) to (5) of Regulation 83 using projected overheads of the next financial year differs by 20 per cent or greater than the figure resulting from completing the calculation set out in paragraphs (2) to (5) of Regulation 83 strictly as set out therein.

(3) Where there is a change of business in the fund administrator resulting in a material change in the fund administrator's expenditure requirement the Bank may adjust the fund administrator's expenditure requirement accordingly.

Own Funds

85. (1) A fund administrator's own funds consists of the sum of the Tier 1 capital, as set out in paragraph (2), and Tier 2 capital, as set out in paragraph (5), of the fund administrator, subject to the restriction that the inclusion of Tier 2 capital is limited to one third of the fund administrator's Tier 1 capital.

(2) The Tier 1 capital of a fund administrator consists of the sum of the Common Equity Tier 1 capital, as set out in paragraph (3), and Additional Tier 1 capital, as set out in paragraph (4), of the fund administrator, subject to the restriction that the inclusion of Additional Tier 1 capital is limited to one third of Common Equity Tier 1 capital.

(3) The Common Equity Tier 1 capital of a fund administrator consists of the Common Equity Tier 1 items of the fund administrator as set out in Regulation 86 after the prudential filters and deductions referred to in Regulation 87 have been applied.

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(4) The Additional Tier 1 capital of a fund administrator consists of the Additional Tier 1 items of the fund administrator as set out in Regulation 88 after the deductions referred to in Regulation 89 have been applied.

(5) The Tier 2 capital of a fund administrator consists of the Tier 2 items of the fund administrator as set out in Regulation 90 after the application of Regulation 91 and the deductions referred to in Regulation 92.

86. (1) Common Equity Tier 1 items of fund administrators consist of the following:

(a) capital instruments meeting the conditions set out in paragraph (3);

(b) share premium accounts related to the instruments referred to in point (a);

(c) retained earnings subject to the restrictions set out in paragraph (4);

(d) capital contributions that meet the criteria set out in paragraph (5).

(2) The items referred to in points (c) and (d) of paragraph (1) shall be recognised as Common Equity Tier 1 only where they are available to the fund administrator for unrestricted and immediate use to cover risks or losses as soon as these occur.

(3) Capital instruments shall qualify as Common Equity Tier 1 instruments only with the written prior permission of the Bank and only where all of the following conditions are met:

(a) the instruments are issued directly by the fund administrator, are paid up and their purchase is not funded directly or indirectly by the fund administrator;

(b) the instruments are classified as equity within the meaning of the applicable accounting framework and are clearly and separately disclosed on the balance sheet in the financial statements of the fund administrator;

(c) the instruments are perpetual;

(d) the principal amount of the instruments may not be reduced or repaid, except in either of the following cases:

(i) the liquidation of the fund administrator;

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(ii) discretionary repurchases or other discretionary means of reducing the amount of Common Equity Tier 1 capital in accordance with Regulation 94;

(e) the provisions governing the instruments do not indicate that the principal amount of the instruments would or might be reduced or repaid other than in the liquidation of the fund administrator;

(f) the instruments meet the following conditions as regards distributions:

(i) the terms governing the instruments do not provide preferential rights to payment of distributions;

(ii) the conditions governing the instruments do not include any obligation for the fund administrator to make distributions to their holders and the fund administrator is not otherwise subject to such an obligation;

(iii) non-payment of distributions does not constitute an event of default of the fund administrator;

(iv) the cancellation of distributions imposes no restrictions on the fund administrator;

(v) the conditions governing the instruments do not include a cap or other restriction on the maximum level of distributions;

(vi) the level of distributions is not determined on the basis of the amount for which the instruments were purchased at issuance;

(g) compared to all the capital instruments issued by the fund administrator, the instruments absorb the first and proportionately greatest share of losses as they occur, and each instrument absorbs losses to the same degree as all other Common Equity Tier 1 instruments;

(h) the instruments rank below all other claims in the event of insolvency or liquidation of the fund administrator and are not subject to any arrangement, contractual or otherwise, that enhances the seniority of the claims under the instruments in insolvency or liquidation;

(i) the instruments are neither secured nor subject to a guarantee that enhances the seniority of the claim by any group entity or entity with which the fund administrator has a close link;

(j) the instruments entitle their owners to a claim on the residual assets of the fund administrator, which, in the event of its liquidation and after the

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payment of all senior claims, is proportionate to the amount of such instruments issued and is not fixed or subject to a cap.

(4) For the purposes of point (c) of paragraph (1), fund administrators may include interim or year-end profits in Common Equity Tier 1 capital before the fund administrator has taken a formal decision confirming the final profit or loss of the fund administrator for the year only with the written prior permission of the Bank and only where the following conditions are met:

(a) the fund administrator has demonstrated to the satisfaction of the Bank that any foreseeable charge or dividend has been deducted from the amount of those profits;

(b) the fund administrator's auditors have evaluated and verified the profits in accordance with the principles set out in the applicable accounting framework and have confirmed this verification in writing to the Bank.

(5) For the purposes of point (d) of paragraph (1), fund administrators may include capital contributions in Common Equity Tier 1 capital only with the written prior permission of the Bank.

87. (1) A fund administrator shall exclude from any element of own funds any increase in equity under the applicable accounting framework that results from a securitisation transaction, such as that associated with expected future margin income resulting in a gain on sale for the fund administrator.

(2) Fund administrators shall deduct the following from Common Equity Tier 1 items:

(a) losses for the current financial year;

(b) intangible assets including goodwill less any associated deferred tax liabilities that would be extinguished if the intangible assets became impaired or were derecognised under the applicable accounting framework;

(c) deferred tax assets as set out in paragraph (3);

(d) defined benefit pension fund assets on the balance sheet of the fund administrator less the items set out in points (i) and (ii):

  (i) any associated deferred tax liabilities that would be extinguished if the defined benefit pension fund assets became impaired or were derecognised under the applicable accounting framework;

  (ii) the amount of assets in the defined benefit pension fund which the fund administrator has an unrestricted ability to use, provided that the fund administrator has received the written prior permission of the Bank;

(e) any holdings by the fund administrator of its own Common Equity Tier 1 instruments including own Common Equity Tier 1 instruments that a fund administrator is under an actual or contingent obligation to purchase by virtue of an existing contractual obligation;

(f) any holdings by the fund administrator of the Common Equity Tier 1 instruments of financial sector entities where those entities have a reciprocal cross holding with the fund administrator that the Bank considers to have been designed to artificially inflate the own funds of the fund administrator;

(g) subject to paragraph (4), any holdings by the fund administrator of capital instruments of financial sector entities where the fund administrator holds more than 10% of the capital of those entities;

(h) subject to paragraph (4), where the fund administrator has holdings in capital instruments of financial sector entities that represent less than 10% of the capital of those entities and where, in aggregate, the total amount of such holdings exceeds 10% of the fund administrator's own funds calculated after all prudential filters and deductions other than those set out in point (g) and herein, the amount of such holdings exceeding 10% of the fund administrator's own funds calculated after all prudential filters and deductions other than those set out in point (g) and herein;

(i) the amount of items required to be deducted from Additional Tier 1 items in accordance with Regulation 89 that exceeds the Additional Tier 1 capital of the fund administrator;

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(j) any tax charge relating to Common Equity Tier 1 items foreseeable at the moment of its calculation, except where the fund administrator suitably adjusts the amount of Common Equity Tier 1 items insofar as such tax charges reduce the amount up to which those items may be used to cover risks or losses.

(3) Fund administrators shall determine the amount of deferred tax assets that require deduction in accordance with points (a) to (c):

(a) Except where the conditions set out in point (b) are met, the amount of deferred tax assets to be deducted shall be calculated without reducing it by the amount of the associated deferred tax liabilities of the fund administrator.

(b) The amount of deferred tax assets to be deducted may be reduced by the amount of the associated deferred tax liabilities of the fund administrator provided the deferred tax assets and the deferred tax liabilities relate to taxes levied by the same tax authority and on the same taxable entity and the fund administrator has a legally enforceable right to set off those deferred tax assets against deferred tax liabilities.

(c) Associated deferred tax liabilities used for the purposes of point (b) may not include deferred tax liabilities that reduce the amount of intangible assets or defined benefit pension fund assets required to be deducted.

(4) With reference to points (g) and (h) of paragraph (2), fund administrators shall not deduct holdings of capital instruments issued by a regulated financial sector entity that do not qualify as regulatory capital of that entity.

88. (1) Additional Tier 1 items of fund administrators consist of the following:

(a) capital instruments where the conditions laid down in paragraph (2) are met;

(b) the share premium accounts related to the instruments referred to in point (a).

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(2) Capital instruments shall qualify as Additional Tier 1 instruments only with the written prior permission of the Bank and only where all of the following conditions are met:

(a) the instruments are issued directly by the fund administrator, are paid up and their purchase is not funded directly or indirectly by the fund administrator;

(b) the instruments rank below Tier 2 instruments in the event of the insolvency of the fund administrator;

(c) the instruments are neither secured nor subject to a guarantee that enhances the seniority of the claim by any group entity or entity with which the fund administrator has a close link;

(d) the instruments are not subject to any arrangement, contractual or otherwise, that enhances the seniority of the claim under the instruments in insolvency or liquidation;

(e) the instruments are perpetual and the provisions governing them include no incentive for the fund administrator to redeem them;

(f) where the provisions governing the instruments include one or more call options, the option to call may be exercised at the sole discretion of the fund administrator;

(g) the provisions governing the instruments do not indicate that the instruments would or might be called, redeemed or repurchased and the fund administrator does not otherwise provide such an indication, except in the following cases:

(i) the liquidation of the fund administrator;

(ii) discretionary repurchases or other discretionary means of reducing the amount of Additional Tier 1 capital in accordance with Regulation 94;

(h) the fund administrator does not indicate that the Bank would consent to a request to call, redeem or repurchase the instruments;

(i) distributions under the instruments meet the following conditions:

(i) the level of distributions made on the instruments will not be amended on the basis of the credit standing of the fund administrator or its parent undertaking;

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(ii) the provisions governing the instruments give the fund administrator full discretion at all times to cancel the distributions on the instruments for an unlimited period and on a non-cumulative basis and the fund administrator may use such cancelled payments without restriction to meet its obligations as they fall due;

(iii) cancellation of distributions does not constitute an event of default of the fund administrator and the cancellation of distributions imposes no restrictions on the fund administrator in particular with regard to the payment of distributions on other classes of instruments.

89. Fund administrators shall deduct the following from Additional Tier 1 items:

(a) any holdings by the fund administrator of its own Additional Tier 1 instruments including own Additional Tier 1 instruments that a fund administrator is under an actual or contingent obligation to purchase by virtue of an existing contractual obligation;

(b) any holdings by the fund administrator of the Additional Tier 1 instruments of financial sector entities where those entities have a reciprocal cross holding with the fund administrator that the Bank considers to have been designed to artificially inflate the own funds of the fund administrator;

(c) the amount of items required to be deducted from Tier 2 items pursuant to Regulation 92 that exceed the Tier 2 capital of the fund administrator;

(d) any tax charge relating to Additional Tier 1 items foreseeable at the moment of its calculation, except where the fund administrator suitably adjusts the amount of Additional Tier 1 items insofar as such tax charges reduce the amount up to which those items may be used to cover risks or losses.

90. (1) Tier 2 items consist of the following:

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(a) capital instruments and subordinated loans where the conditions laid down in paragraph (2) are met;

(b) the share premium accounts related to instruments referred to in point (a).

(2) Capital instruments and subordinated loans shall qualify as Tier 2 instruments only with the written prior permission of the Bank and only where all of the following conditions are met:

(a) the instruments are issued directly by the fund administrator or the subordinated loans are raised directly by the fund administrator, as applicable, and fully paid up and their purchase is not funded directly or indirectly by the fund administrator;

(b) the claim on the principal amount of the instruments under the provisions governing the instruments or the claim of the principal amount of the subordinated loans under the provisions governing the subordinated loans, as applicable, is wholly subordinated to the claims of all non-subordinated creditors;

(c) the instruments or subordinated loans, as applicable, are neither secured, nor subject to a guarantee that enhances the seniority of the claim by any group entity or entity with which the fund administrator has a close link;

(d) the instruments or subordinated loans, as applicable, are not subject to any arrangement that otherwise enhances the seniority of the claim under the instruments or subordinated loans respectively;

(e) the instruments or subordinated loans, as applicable, have an original maturity of at least five years;

(f) the provisions governing the instruments or subordinated loans, as applicable, do not include any incentive for their principal amount to be redeemed or repaid by the fund administrator prior to their maturity;

(g) where the instruments or subordinated loans, as applicable, include one or more call options or early repayment options, the options are exercisable at the sole discretion of the fund administrator;

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(h) the provisions governing the instruments or subordinated loans, as applicable, do not indicate that the instruments or subordinated loans, as applicable, would or might be called, redeemed, repurchased or repaid early, as applicable by the fund administrator and the fund administrator does not otherwise provide such an indication, except in the following cases:

    (i) the insolvency or liquidation of the fund administrator;

    (ii) discretionary repurchases or other discretionary means of reducing the amount of Tier 2 capital in accordance with Regulation 94;

(i) the provisions governing the instruments or subordinated loans, as applicable, do not give the holder the right to accelerate the future scheduled payment of interest or principal, other than in the insolvency or liquidation of the fund administrator;

(j) the level of interest or dividend payments, as applicable, due on the instruments or subordinated loans, as applicable, will not be amended on the basis of the credit standing of the fund administrator or its parent undertaking.

91. The extent to which Tier 2 instruments qualify as Tier 2 items during the final five years of maturity of the instruments is calculated by multiplying the result derived from the calculation in point (a) by the amount referred to in point (b) as follows:

    (a) the nominal amount of the instruments or subordinated loans on the first day of the final five year period of their contractual maturity divided by the number of calendar days in that five year period;

    (b) the number of remaining calendar days of contractual maturity of the instruments or subordinated loans.

92. The following shall be deducted from Tier 2 items:

    (a) any holdings by the fund administrator of its own Tier 2 instruments including own Tier 2 instruments that a fund administrator is under an actual or contingent obligation to purchase by virtue of an existing contractual obligation;

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(b) any holdings by the fund administrator of the Tier 2 instruments of financial sector entities where those entities have a reciprocal cross holding with the fund administrator that the Bank considers to have been designed to artificially inflate the own funds of the fund administrator.

93. Where, in the case of a Common Equity Tier 1, Additional Tier 1 or Tier 2 instrument, the conditions laid down in Regulation 86(3), Regulation 88(2) or Regulation 90(2) as applicable cease to be met:

(a) that instrument shall immediately cease to qualify as a Common Equity Tier 1, Additional Tier 1 or Tier 2 item as applicable;

(b) the share premium associated with that instrument shall immediately cease to qualify as a Common Equity Tier 1, Additional Tier 1 or Tier 2 item as applicable.

94. (1) A fund administrator shall require the written prior permission of the Bank to do either or both of the following:

(a) reduce, redeem or repurchase Common Equity Tier 1 instruments issued by the fund administrator;

(b) effect the call, redemption, repayment or repurchase of Additional Tier 1 or Tier 2 instruments prior to the date of their contractual maturity.

(2) With reference to paragraph (1), permission shall only be granted for the fund administrator to reduce, repurchase, call or redeem Common Equity Tier 1, Additional Tier 1 or Tier 2 instruments where either of the following conditions are met:

(a) earlier than or at the same time as the action referred to in paragraph (1), the fund administrator replaces the instruments referred to in paragraph (1) with own funds instruments of equal or higher quality at terms that are sustainable for the income capacity of the fund administrator;

(b) the fund administrator has demonstrated to the satisfaction of the Bank that the own funds of the fund administrator would, following the action referred to in paragraph (1), exceed the capital requirements of the fund

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administrator by a margin that the Bank may consider necessary on the basis of the fund administrator's capital, risk and income projections.

Own Funds Transitional Measures

95. (1) Capital instruments that were in existence at 31 December 2015 and formed a part of the fund administrator's regulatory capital as at that date but that do not meet the criteria set out in Regulation 86(3) shall be treated as set out in points (a) and (b):

(a) Subject to point (b), the capital instruments may be included as Common Equity Tier 1 items during the period 01 July 2016 to 30 June 2019 as follows:

(i) during the period 01 July 2016 to 30 June 2017 100% of the value included in the fund administrator's regulatory capital as at 31 December 2015 may be included in Common Equity Tier 1 items;

(ii) during the period 01 July 2017 to 30 June 2018 two thirds of the value included in the fund administrator's regulatory capital as at 31 December 2015 may be included in Common Equity Tier 1 items;

(iii) during the period 01 July 2018 to 30 June 2019 one third of the value included in the fund administrator's regulatory capital as at 31 December 2015 may be included in Common Equity Tier 1 items;

(b) With reference to point (a), if there are any reductions, repurchases, calls or redemptions of the capital instruments in the period between 31 December 2015 and the applicable date, with the result that the value of the capital instruments remaining after such reductions, repurchases, calls or redemptions is less than the limit set out in point (b)(i), (b)(ii) or (b)(iii) as applicable, then the amount that may be included in Common Equity Tier 1 items is capped at the value of the capital instruments remaining after such reductions, repurchases, calls or redemptions.

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(2) The prudential filters and deductions referred to in Regulation 87(1), points (b) to (j) of Regulation 87(2), Regulation 89 and Regulation 92 shall be phased in over the period 01 July 2016 to 30 June 2019 as follows:

(a) during the period 01 July 2016 to 30 June 2017 0% of the applicable filter or deduction shall be applied;

(b) during the 01 July 2017 to 30 June 2018 one third of the applicable filter or deduction shall be applied;

(c) during the 01 July 2018 to 30 June 2019 two thirds of the applicable filter or deduction shall be applied.

Own Funds Breaches or Potential Breaches

96. (1) Fund administrators must be able to demonstrate compliance with their own funds requirement at all times.

(2) Fund administrators must immediately notify the Bank if any of the following situations arise:

(a) at any time between reporting dates the fund administrator breaches its own funds requirement;

(b) at any time between reporting dates a change in the fund administrator's financial position means that it is likely that the fund administrator will breach its own funds requirement in the future;

(c) at any time between reporting dates the amount by which the fund administrator's own funds exceeds its own funds requirement reduces by twenty per cent.

(3) In relation to points (a) and (b) of paragraph (2), the fund administrator must simultaneously take any necessary steps to rectify its own funds position.

Fund Administrator Eligible Assets

97. (1) A fund administrator shall have at all times an amount of eligible assets at least equal to its own funds requirement. In order for assets to be classified as eligible assets they must meet the criteria set out in paragraphs (2) and (3).

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(2) The assets must be easily accessible and free from any liens or charges and maintained outside the fund administrator's group.

(3) The assets must be held in an account that is separate to the account(s) used by the fund administrator for the day-to-day running of its business.

(4) Eligible assets are calculated by subtracting the items set out in points (a) to (k) from total assets:

- (a) fixed assets;
- (b) intangible assets;
- (c) cash or cash equivalents held with group entities;
- (d) debtors;
- (e) bad debt provisions;
- (f) prepayments;
- (g) gross intercompany assets;
- (h) loans;
- (i) investment funds which are not daily dealing;
- (j) investment funds promoted by other group entities or to which other group entities provide services;
- (k) any other assets which are not easily accessible not included in points (a) to (j) above.

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Signed for and on behalf of the

CENTRAL BANK OF IRELAND
on this the [ ] day of [ ] [ ]

___________________________ [ ]
Deputy Governor (Financial Regulation)

SCHEDULE 1

A-1 – Fund Administrator

Data item	Frequency & due date
Annual audited accounts (upload)	Annual 4 months after firm reporting year end
Annual audited accounts (data entry)	Annual 4 months after firm reporting year end
Investor Money Examination	Annual 4 months after financial year end
Management / interim accounts (upload)	Annual 2 months after firm reporting half-year end
Management / interim accounts (data entry)	Annual 2 months after firm reporting half-year end
Minimum Capital Requirement Report	Biannual 1. Submitted with Audited accounts 4 months after firm reporting year end 2. Submitted with Interim Accounts 2 month after firm interim accounts reporting period
Bank statements	Biannual 1. Submitted with Audited accounts 4 months after firm reporting year end 2. Submitted with Interim Accounts 2 month after firm interim accounts reporting period
Non-Irish Authorised Funds Return	Quarterly 20 working days after calendar quarter end
Annual Ownership Confirmation	Annual 1 month after calendar year end

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Aggregate information of all investment funds under administration within each base currency category: - Domicile of the investment funds; - Number of investment funds; - Number of unitholders; - Total net asset value.	Quarterly 20 working days after calendar quarter end

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A-2 - IIA non-retail investment business firms

Data item	Frequency & due date
Annual audited accounts (upload)	Annual 6 months after firm reporting year end
Annual audited accounts (data entry)	Annual 6 months after firm reporting year end
Management / interim accounts	Annual 20 working days after firm year end
Capital adequacy statement	Bi-Annual 20 working days after firm year end and 20 working days after firm half year end
Annual Ownership Confirmation	Annual 6 months after firm reporting year end
Related Party Annual Accounts	Annual 6 months after firm reporting year end
ICCL Report	Annual 20 working days after calendar year end
Asset Concentration Disclosure	Annual 20 working days after calendar year end
Monthly Metrics Report	Monthly 20 working days after calendar month end

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A-3 - Investment business firms subject to the Central Bank's Client Asset Regulations

Data item	Frequency & due date
CAR Audits (Client Asset Examination)	Annually 4 months after periodend
Monthly Client Assets Report	Monthly: 20 working days after calendar month end

SCHEDULE 2

B-1 - An investment firm authorised under the European Communities (Markets in Financial Instruments) Regulations 2007

Data item	**Frequency & due date**
Annual Audited Accounts	Annual 6 months after firm year end
Annual Audited Accounts (upload)	Annual 6 months after firm year end
Management / interim accounts	Quarterly 20 working days after calendar quarter end
Management / interim accounts (upload)	Quarterly 20 working days after calendar quarter end
Annual Ownership Confirmation	Annual 6 months after firm year end
Monthly Metrics Report	Monthly 20 working days after calendar month end
Investor Compensation Company Limited report	Annual 20 working days after calendar year end
Annual Conduct of Business Return	Annual 3 months after calendar year end

MiFID firms subject to Client Asset Regulations	
CAR Audits (Client Asset Examination)	Annually; 4 months after period end
Monthly Client Assets Report	Monthly; 20 working days after calendar month end

MiFID firms with portfolio management authorisation	
Assets under Management	Quarterly

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data	20 working days after calendar quarter end

B-2 - An investment firm authorised for [MiFID services 3 or 6]

Data item	**Frequency & due date**
CRD IV COREP individual	Quarterly; 42 days after calendar quarter end
CRD IV COREP Large Exposures individual	Quarterly; 42 days after calendar quarter end
Leverage Individual	Quarterly; 42 days after calendar quarter end
ICAAP Report	Annual – 20 working days after calendar quarter in which ICAAP is reviewed
Related Party Annual Accounts	Annually; 6 months after firm year end
Pillar 3 Disclosure Data	Annually; 6 months after firm year end
Assets under Management	Quarterly; 20 working days after calendar quarter end
CAR Audits (Client Asset Examination)	Annually; 4 months after period end
Asset Encumbrance Individual	Quarterly; 42 days after calendar quarter end
The data items below apply to a firm in this category which is subject to consolidated supervision	
Annual Audited Consolidated Accounts	Annual - 6 months after firm year end
Annual Audited Consolidated Accounts (upload)	Annual - 6 months after firm year end
Asset Encumbrance Consolidated	Quarterly - 42 days after calendar quarter end
CRD IV COREP Consolidated	Quarterly - 42 days after calendar quarter end
CRD IV COREP Large Exposures Consolidated	Quarterly - 42 days after calendar quarter end
Leverage Consolidated	Quarterly - 42 days after calendar quarter end

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B-3 - An investment firm authorised under the European Communities (Markets in Financial Instruments) Regulations 2007 for MiFID service 5

Data item	Frequency & due date
CRD IV COREP Individual	Quarterly - 42 days after calendar quarter end
CRD IV COREP Large Exposures Individual	Quarterly - 42 days after calendar quarter end
Leverage Individual	Quarterly - 42 days after calendar quarter end
ICAAP Report	Annual – 20 working days after calendar quarter end in which ICAAP reviewed
Related Party Annual Accounts	Annual – 6 months after firm year end
Pillar 3 Disclosure data	Annual – 6 months after firm year end
Asset Encumbrance Individual	Quarterly - 42 days after calendar quarter end
Asset Concentration Disclosure	Annual – 20 working days after calendar year end
Management Letter Upload	Annual – 6 months after firm year end
The data items below apply to a firm in this category which is subject to consolidated supervision	
Annual Audited Consolidated Accounts	Annual - 6 months after firm year end
Annual Audited Consolidated Accounts (upload)	Annual - 6 months after firm year end
Asset Encumbrance Consolidated	Quarterly - 42 days after calendar quarter end
CRD IV COREP Consolidated	Quarterly - 42 days after calendar quarter end
CRD IV COREP Large Exposures Consolidated	Quarterly - 42 days after calendar quarter end

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Leverage Consolidated	Quarterly - 42 days after calendar quarter end
Consolidated Stockbroker Interim Accounts	Biannually – 20 working days after reporting date

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B-4 - All other CRD IV investment firms

Data item	Frequency & due date
CRD IV COREP Individual	Quarterly - 42 days after calendar quarter end
ICAAP Report	Annual – 20 working days after calendar quarter end in which ICAAP reviewed
Related Party Annual Accounts	Annual – 6 months after firm year end
Pillar 3 Disclosure data	Annual – 6 months after firm year end
Asset Encumbrance Individual	Quarterly - 42 days after calendar quarter end
Asset Concentration Disclosure	Annual – 20 working days after calendar year end
The data items below apply to a firm in this category which is subject to consolidated supervision	
Annual Audited Consolidated Accounts	Annual - 6 months after firm year end
Annual Audited Consolidated Accounts (upload)	Annual - 6 months after firm year end
Asset Encumbrance Consolidated	Quarterly - 42 days after calendar quarter end
CRD IV COREP Consolidated	Quarterly - 42 days after calendar quarter end

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B-5 - Investment firms authorised under the European Communities (Markets in Financial Instruments) Regulations 2007 [for MiFID services 2 and or 4] and not subject to CRD IV

Data item	Frequency & due date
ICAAP Report	Annual; 20 working days after calendar quarter end in which the ICAAP is reviewed
Related Party Annual Accounts	Annual; 6 months after firm year end
Pillar 3 Disclosure data	Annual; 6 months after firm year end
Asset Concentration Disclosure	Annual; 20 working days after calendar year end
The data items below apply to a firm in this category which is subject to consolidated supervision	
Annual Audited Consolidated Accounts	Annual - 6 months after firm year end
Annual Audited Consolidated Accounts (upload)	Annual - 6 months after firm year end
CRD III COREP Consolidated	Quarterly; 42 days after calendar quarter end

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B-6 - [CRD-exempt MiFID firms]

Data item	Frequency & due date
Capital Adequacy Statement	Bi-annual; 20 working days after firm year end and 20 working days after firm half year end
Asset Concentration Disclosure	Annual; 20 working days after calendar year end

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