

Guidance for reporting in accordance with the Client Asset Requirements issued by the Irish Financial Services Regulatory Authority (“Financial Regulator”) in November 2007.

This guidance is issued by the Association of Chartered Certified Accountants in September 2008 to assist members on the nature and extent of work to be undertaken when reporting on compliance with Client Asset Requirements issued by the Financial Regulator.

| | <i>Contents</i> | <i>Paragraph</i> |
|-------------------|---|-------------------------|
| Section 1 | Introduction | 1 – 9 |
| Section 2 | Client assets reporting | 10 – 16 |
| Section 3 | Planning the client assets reporting engagement | 17 – 28 |
| Section 4 | Client financial instruments | 29 – 45 |
| Section 5 | Client funds | 46 – 65 |
| Section 6 | Reporting | 66 – 72 |
| Section 7 | Where no client assets are held | 73 – 75 |
| | | Page |
| <i>Appendix 1</i> | <i>Principles applicable to auditors’ reports to regulators</i> | 20 |
| <i>Appendix 2</i> | <i>Example wording for auditors’ reports on compliance with the Financial Regulator Client Asset Requirements</i> | 21 |
| <i>Appendix 3</i> | <i>Derivation Table</i> | 27 |

This guidance does not constitute an auditing standard. Professional judgement should be used in its application. No responsibilities for loss occasioned to any person acting or refraining from action as a result of any material in this publication can be accepted by the Association.

Introduction

1. The purpose of this Guidance is to provide guidance to auditors¹ of a firm² that holds client assets on the nature and extent of work to be undertaken when reporting on compliance by such an entity with the Client Asset Requirements issued by the Financial Regulator.
2. The Financial Regulator is responsible for the regulation of financial services in Ireland and was established on 1 May 2003 as a distinct component of the Central Bank and Financial Services Authority of Ireland, with clearly defined regulatory responsibilities.
3. This Guidance has been prepared in consultation with the Financial Regulator and is based on the legislation and regulations in effect at **1 June 2008**. It should be read in conjunction with the Client Asset Requirements issued by the Financial Regulator in November 2007, see <http://www.financialregulator.ie/>.
4. The Markets in Financial Instruments Directive 2004/39/EC (“MiFID”) replaced the Investment Services Directive with effect from 1 November 2007.
5. Statutory Instrument (SI) No 60 of 2007 - European Communities (Markets in Financial Instruments) Regulations 2007 (“MiFID Regulations”), transposes MiFID into Irish legislation as and from 1 November 2007 and certain firms that were previously authorised under the Investment Intermediaries Act, 1995 (“the IIA”) are now authorised under Regulation 11 of the MiFID Regulations and are subject to the regulations contained therein. The Stock Exchange Act, 1995 was repealed and all stock exchange member firms are now similarly authorised under the MiFID Regulations. The IIA remains in force and firms that provide non-MiFID services remain authorised under Section 10 of the IIA and therefore may be subject to Section 52 of the IIA if they hold client assets.
6. In order to instruct firms to implement this regulation, the Financial Regulator issued the ‘Client Asset Requirements’ in November 2007. This Instructions Paper supercedes the ‘Client Money Requirements’ previously issued by the Financial Regulator in February 2004. In order to assist auditors in the audit of ‘Client Assets’ ACCA has issued this updated M47. Please see Appendix 3 for derivation table of the ‘Client Asset Requirements’ from the ‘Client Money Requirements’.

Legislative framework

7. Regulation 144(1) of MiFID and Section 33(10)(c) of the IIA grant the Financial Regulator the right to request the auditor of any firm to furnish a report stating whether or not, in his opinion, the firm has complied with the Client Asset Requirements. The Financial Regulator may require the auditor of any firm to supply it with such information as it may specify in relation to the audit of the firm or any condition or requirement set out in or imposed by the MiFID Regulations and/or the IIA.

¹ The report is described in the Client Asset Requirements as an auditor’s report and must be prepared by the firm’s registered auditors hence the expression “auditor’s report” is used throughout this document. It is not to be confused with the auditor’s report on the statutory financial statements as required by the Companies Acts

² As defined in the Client Asset Requirements

8. Regulation 79 of the MiFID Regulations, stipulates that ‘any requirements imposed by the Financial Regulator under Section 52 of the IIA or Section 52 of the SEA which were in force immediately prior to 1 November 2007, continue to apply to firms as if those requirements were imposed under the MiFID Regulations’. Regulation 79 also provides that the Financial Regulator may impose additional requirements to those in the Regulations. The Financial Regulator has done so by issuing the Client Asset Requirements.

Scope

9. Firms which hold client assets must ensure that their auditor report on the firm’s compliance with the issued ‘Client Asset Requirements’³ is submitted to the Financial Regulator. This Guidance applies to all such reports. The Client Asset Requirements do not apply to firms which exercise control over but do not hold client assets. The IIA has been updated to reflect this.

Client asset reporting

10. The main purpose of the Client Asset Requirements is to ensure that the firm makes adequate arrangements to safeguard clients’ ownership rights in the event of the firm’s insolvency. This is achieved by segregating these from the firm’s own assets appropriately. In the event of insolvency of the firm, client assets are protected from the claims of its general creditors and from any right of set off by institutions which hold the assets [Requirement 3.1.1].
11. The Client Asset Requirements issued by the Financial Regulator oblige the firm to maintain a high standard of custodianship and associated record keeping. The Client Asset Requirements set out “General Requirements”⁴ which require a firm to ensure that it:
- is regarded as holding client assets on behalf of and for the benefit of the relevant client /clients;
 - keeps such records and accounts as are necessary to enable it at any time and without delay to distinguish assets held for one client from assets held for any other client;
 - holds client assets separately from its own assets;
 - holds client assets in a qualifying money market fund⁵ or a client account with an eligible credit institution⁷, relevant party⁶, qualifying money market fund or eligible custodian⁷ which the firm considers to be safe repositories for those assets;
 - holds units in money market funds in accordance with the requirements for holding financial instruments belonging to clients, where a firm deposits client assets in a qualifying money market fund;
 - provides clients with the right to oppose the placement of their funds in a qualifying money market fund;
 - lodges promptly client funds to a client account;
 - does not allow one client’s assets to be used to fund another client’s transactions or positions except in accordance with a legally enforceable agreement such as a set-off agreement or a securities financing arrangement;

³ Please refer to Section 4.9 of the Client Asset Requirements

⁴ See Client Asset Requirements, Section 3 ‘General Requirements’

⁵ As specified in Regulation 160 (1) of the Regulations

⁶ Relevant party means an exchange, clearing house, intermediate broker, OTC counterparty, member firm or investment business firm as defined in the Client Asset Requirements

⁷ As defined in the Client Asset Requirements

- has maintained satisfactory systems of control and kept proper accounting records in relation to client assets;
 - arranges to register promptly a client’s registrable financial instruments in the name of the client ;
 - reconciles client assets regularly and on a timely basis;
 - acts honestly, fairly and professionally in accordance with the best interest of its clients, when providing investment services to its client ;
 - notifies promptly the Financial Regulator in writing of notifiable reconciling items;
 - treats funds received from a client as client funds on receipt and it treats funds sent to a client as client funds until the cheque or order is presented and paid by the qualifying money market fund or eligible credit institution;
 - provides retail clients⁸ with general information⁹ if the firm holds client assets on behalf of the client; and
 - sends at least annually a statement of financial instruments and funds held to each client.
12. Compliance with the Client Asset Requirements is part of maintaining “satisfactory systems of control” as set out in General Principle 3.1.8.
13. Paragraphs 24 to 26 and 52 of this Guidance note that small firms will differ in terms of scale, sophistication and the degree of segregation of duties from larger firms and that this does not necessarily mean that the business has weak controls.
14. Paragraphs 34 and 53 of this Guidance note that management has a responsibility to design and implement systems of control to meet the control objectives set out in the Client Asset Requirements. The auditor should make enquiries of management as to how they meet these control objectives and gather sufficient appropriate evidence to support their report. The procedures set out below are examples only and the details will vary between firms.
15. Paragraphs 38 and 39 of this Guidance list factors to be considered in the context of safe custody as including;
- a separate custodian area staffed by people independent of any other operations,
 - qualifications and experience of managers,
 - strong boxes,
 - fire-proof rooms/safes,
 - restricted access.
- The specific safeguards/processes are not prescribed for all circumstances in the Client Asset Requirements but should be considered in the context of the requirement to “maintain satisfactory systems of control”.
16. Client assets controlled but not held by the firm are not subject to the Client Asset Requirements. Certain firms are not permitted, under the terms of their authorisation by the Financial Regulator to hold client assets and some as a matter of policy will not hold client assets. The auditor should be familiar with the terms of the authorisation and policy of the firm.

⁸ As defined in Part 2 of the Regulations

⁹ As detailed in 4.11.1 and 4.12 of the Client Asset Requirements

Planning the Client Assets reporting engagement

17. The auditors work in relation to reporting on compliance with the Financial Regulator's requirements for client assets will be planned as appropriate to the type of firm concerned. The obligations on auditors to report on client assets, are set out in paragraph 4.9.1 of the Client Asset Requirements. A single report, which deals with all client assets received, held and/or paid out by the firm on behalf of clients, will satisfy the requirements of paragraphs 4.9.1.
18. This Guidance considers:
 - Client Financial Instruments (paragraphs 29 to 45 of this document)
 - Client Funds (paragraphs 46 to 65 of this document).
19. Each section sets out the relevant planning considerations and is intended to assist in determining the scope of the work for each individual client assets assignment¹⁰. However it is not intended to restrict individual judgement, initiative, and vigilance. The typical procedures that management have in place are designed to meet the Client Asset Requirements relevant to the particular situation. However the precise details of these procedures are a matter for the judgement of management. Auditors should make themselves familiar with, and obtain an understanding of, the provisions of the Client Asset Requirements.
20. When undertaking a client assets assignment, auditors need to be alert to the statutory duty to report in writing to the Financial Regulator where they have reason to believe there are material defects in the client assets internal control system. A separate technical guidance document sets out legislative provisions under which the auditor has a duty to report to the Financial Regulator.
21. The firm is required to ensure that its auditors, on an annual basis or more frequently as required by the Financial Regulator:
 - “(a) examine the books and records of the firm in relation to client assets,*
 - (b) review the systems and procedures employed by the firm in relation to the safe-keeping of, and accounting for, client assets, and*
 - (c) examine compliance by the firm with these requirements¹¹**on an annual basis, or more frequently as required by the Financial Regulator, and report in a format acceptable to the Financial Regulator stating whether, in their opinion, these requirements have been complied with.”*
22. The auditor is required to report in formats agreed with the Financial Regulator on an annual basis or more frequently as required by the Financial Regulator stating whether, in his opinion, the firm has complied with the Client Asset Requirements. Some example reports are set out in Appendix 2. The auditor also considers the timing of the issue of this report in the context of the auditors' responsibilities under Regulation 144 (1) of the MiFID Regulations or Section 33(10) of the IIA.

¹⁰ The report is described in the Client Asset Requirements as an auditor's report and must be prepared by a firm of registered auditors. It is not to be confused with the statutory financial statements audit prepared under company law.

¹¹ The Client Asset Requirements

Control Objectives

23. The control objectives that a firm administering or holding client assets or collateral will need to meet, are outlined below.
24. Small firms will differ in terms of scale, sophistication and the degree of segregation of duties from larger firms. In consequence, not all the evidential factors set out in the Client Asset Requirements of operation of a satisfactory system of control, may be present in every business.
25. This does not necessarily mean that the business does not have a satisfactory system of control or that there is insufficient evidence for the auditors to give an opinion. The business may have a satisfactory system of control arising from close supervision by its management and which is sufficiently evidenced to enable the auditor to give an opinion.
26. In some cases, therefore, auditors may place greater reliance on observation and enquiry for their evidence than inspection of documentation. In doing so, auditors need to bear in mind that informal systems are more prone to error and fraud, and that their presence and enquiries may influence the manner in which procedures are operated at that time. If the auditor believes that there is an inherent scope limitation and that the entity cannot provide objective and verifiable evidence then the appropriate auditor response is to recognise the scope limitation and report thereon.

This Guidance sets out the primary areas of concern for auditors when carrying out a client asset reporting engagement. The layout follows the requirements as set out in the Client Asset Requirements.

Banks carrying out investment business

27. Where a bank provides investment services through one or more subsidiaries, those subsidiaries are themselves required to be authorised in accordance with the MiFID Regulations as appropriate.
28. Where a bank operates client accounts for those subsidiaries providing investment services, it does so in its capacity as the firm's banker under its banking licence. Accordingly the provisions of the Regulations do not apply to the bank in that instance.

Client Financial Instruments

29. Auditors refer to the definitions of the term "financial instruments" provided in the Client Asset Requirements. "Client financial instruments" are financial instruments, which in the course of carrying on its investment business a firm receives, holds or pays out for, or on behalf of, clients. Client funds held as units in a qualifying money market fund are audited in accordance with the requirements for holding financial instruments belonging to clients.
30. For the purposes of the Client Asset Requirements, client financial instruments can include, but are not limited to, the following principal categories:
 - (a) shares and stock in the capital of a company,
 - (b) debentures,
 - (c) government and public securities,
 - (d) warrants or other instruments entitling the holder to subscribe for investments,

- (e) swaps, futures, forward contracts, options and hybrids of these instruments,
- (f) certificates representing securities (e.g. ADRs),
- (g) units in a collective investment scheme,
- (h) insurance policies,
- (i) tracker products,
- (j) client funds held in a qualifying money market fund,

any of which belong to the client of a firm.

31. Management is responsible for ensuring compliance with the Client Asset Requirements. The Client Asset Requirements set out the following primary areas in relation to client financial instruments to be considered when maintaining a satisfactory system of control:

- (a) segregation, registration and handling of client financial instruments or collateral (see paragraphs 35 to 37 of this document),
- (b) safe custody including the use of qualifying money market fund or eligible custodians or relevant parties (see paragraphs 38 to 39 of this document),
- (c) communication with clients (see paragraphs 40 to 42 of this document),
- (d) reconciliations and notifications to the Financial Regulator (see paragraphs 43 to 45 of this document)
- (e) client statements and general information for clients (see paragraphs 41(g) and 41(j) and 42(d) and 42(c)).

32. For the particular firm, the auditors obtain an explanation from the client of what may constitute client financial instruments. Auditors assess the responses in the light of their knowledge of the business and the Financial Regulator's Client Asset Requirements. Although the firm may consider that a particular activity is not covered by the Client Asset Requirements relating to client financial instruments, the auditors are alert to possible misinterpretations where the firm is in breach of the Client Asset Requirements as a result.

33. In completing their work, auditors need to consider whether the firm has satisfactory systems of control and proper accounting records in relation to client financial instruments. The Client Asset Requirements do not define what constitutes a "satisfactory system of control". The client may have other appropriate controls in place.

34. Management has a responsibility to design and implement systems of control to meet the control objectives set out in the Client Asset Requirements. The auditor should make enquiries of management as to how such control objectives are met and gather sufficient appropriate evidence to support their report. The procedures set out in this document are examples only and the precise nature and details will vary from client to client.

Segregation, registration and handling of client financial instruments and collateral

Segregation, registration and handling of client financial instruments and collateral – Control Objectives

35. Firms are required to treat financial instruments as client financial instruments until they cease to be client financial instruments. They are required to ensure that one client's financial

instruments or collateral¹² are not used for another client's transactions or positions except in the case of securities financing transactions carried out in accordance with the Client Asset Requirements or the use of off-set pursuant to legally enforceable agreements. Further they are required to register client financial instruments promptly in the name of the client or otherwise in accordance with the Client Asset Requirements.

36. Typical procedures management will implement to achieve these control objectives include:

- (a) procedures for the physical and accounting segregation of client financial instruments from the assets of the firm and of safe-keeping investments from collateral and assets held on margined accounts,
- (b) procedures for the registration of client financial instruments in the name of the client or in accounts designated in accordance with the Client Asset Requirements with the advance written consent of the client,
- (c) the maintenance of accounting records to identify the balance in a pooled account that relates to each individual client and details of movements in that balance,
- (d) the requirement to inform others when passing client financial instruments to them that they are to be so treated,
- (e) controls to ensure that prior written consent is obtained from a client before client financial instruments are held outside of Ireland,
- (f) controls to ensure that, when the firm gives instructions to a relevant party or qualifying money market fund or eligible custodian to pass client financial instruments to another person, the instructions are validated by a second member of staff with the appropriate level of authority,
- (g) procedures for the holding and movement of client financial instruments received as collateral in accordance with the Client Asset Requirements, the daily monitoring and the arrangements to top up any shortfall in the value of the collateral.

Segregation, registration and handling of client financial instruments and collateral – evidence

37. The evidential factors to be considered include:

- (a) written instructions from clients stating the manner in which their investments are to be registered, these instructions may be set out in standard client documents,
- (b) written procedures setting out the process for registration in accordance with client instructions,
- (c) where client financial instruments are registered in the name of a nominee company, that an appropriate record of the interests of individual clients is maintained,
- (d) clear segregation of documents of title to client financial instruments from other financial instruments,
- (e) evidence that documents of title are recorded immediately on receipt,
- (f) evidence that documents of title are not released from the firm to clients, registrars, brokers etc. without the records being amended,
- (g) records kept in respect of any document clearly setting out the date of receipt and despatch of the document, the nature of the document, the client to whom the document relates and the nature, amount and nominal value of the investment instrument to which the document relates,
- (h) evidence that correspondence from clients querying statements and any other queries have been dealt with properly and promptly,

¹² See foot note on CAR 4.10 re exception for certain clients arising from Recital 27 of the MiFID Directive.

- (i) evidence that benefits such as dividends or scrip issues are collected and correctly allocated to each client,
- (j) evidence that when moving client financial instruments the firm adequately identifies them to the recipient as client financial instruments or instructs them to be held in accounts designated for clients of the firm,
- (k) evidence in the form of written instructions from clients where client financial instruments have been passed to third parties. These instructions may be set out in standard client documents,
- (l) evidence that the required validation of instructions which pass client financial instruments from relevant parties and qualifying money market fund or eligible custodians to third parties is being performed and at the appropriate level of authority,
- (m) evidence that accounts maintained at qualifying money market funds or eligible custodians or relevant parties are appropriately labelled,
- (n) separate registers or records of client financial instruments held as collateral,
- (o) evidence of appropriate authority to engage in securities financing transactions arrangements, given to the firm by the clients concerned,
- (p) separate records of all securities financing transactions sufficient to show the details of the financial instruments effected at any time and the collateral held,
- (q) written procedures for the calculation and receipt of initial and daily variation margin where margin-lending services are provided by the firm.

Safe custody including the use of custodians or relevant parties

Safe custody including the use of custodians or relevant parties – Control Objectives

38. Typical procedures management will implement to achieve this control objective include:

- (a) satisfactory arrangements for the physical custody of client financial instruments including bearer instruments, appropriate to the value and risk of the instruments, and adequate controls designed to safeguard them from damage, misappropriation or other loss,
- (b) the undertaking of an appropriate and continuing risk assessment of the relevant party¹³ or qualifying money market fund or eligible custodian,
- (c) arrangements to ensure that client financial instruments are only passed to a relevant party or qualifying money market fund or eligible custodian on foot of instructions from the client concerned,
- (d) the designation of accounts to which client financial instruments are lodged as client accounts in the records of the relevant party or qualifying money market fund or eligible custodian,
- (e) the provision by the qualifying money market fund or eligible custodian or relevant party of the statements required at least monthly and with the content specified by the Client Asset Requirements,
- (f) the use of custodian agreements which are compliant in terms of minimum content with the Client Asset Requirements,
- (g) procedures for providing the notification to the Financial Regulator which arises on the happening of an event of default by a qualifying money market fund or eligible custodian or relevant party containing the elements prescribed by the Client Asset Requirements,
- (h) appropriate procedures for the prompt moving of assets into and out of accounts of the firm which conform to the Client Asset Requirements,

¹³ See CAR 6.1.1(a) & (b) for requirements in this regard.

- (i) procedures for the operation of margined accounts in compliance with the Client Asset Requirements.

Safe custody including the use of qualifying money market funds, custodians or relevant parties – Evidence

39. The evidential factors to be considered include:

- (a) a separate custodian area staffed by people independent of any other operations,
- (b) qualifications and experience of managers,
- (c) strong-boxes, fire-proof rooms and safes, restricted access via password controlled doors or limited access keys,
- (d) evidence of spot checks of the custody area by compliance or internal audit departments,
- (e) written procedures stating how custody staff must process the movement of assets and documents and what is required in the form of authorisation from the client and from officers of the firm,
- (f) physical segregation of bearer securities held for clients from those belonging to the firm and, where practicable, segregation among individual clients,
- (g) evidence of procedures for the selection of external custodians to ensure that they are eligible and suitable,
- (h) results of a regular risk assessment process including external information on credit rating, financial results etc. and internal information on customer service received,
- (i) letters of agreement or contracts with custodians stating the terms under which they are operating,
- (j) files of statements or correspondence from the custodians to evidence how the accounts are designated in their records and to evidence the provision of statements,
- (k) correspondence with the Financial Regulator notifying them of the default of a custodian during the period under review if such default took place.

Communication with clients

Communication with clients – Control Objectives

40. Client financial instruments received, held or paid out by the firm are to be regarded as held by the firm on behalf of and for the benefit of the relevant client /clients. When providing investment services or, where appropriate, ancillary services to its client a firm shall act honestly, fairly and professionally in accordance with the best interest of its clients.

41. Typical procedures management will implement to achieve this control objective include:

- (a) procedures to ensure compliant client agreements or other forms of written consent are in place before safe-keeping facilities are provided to or collateral is accepted from a client dealing at a minimum with the matters specified in Requirement 6.3.
- (b) arrangements to notify clients of, and to explain the meaning and implications of, pooling and to procure client consent in writing for the holding of client financial instruments in pooled form prior to providing the service to the client or after it can demonstrate that every reasonable effort was made to procure consent,
- (c) disclosure of the holding of client financial instruments with group entities where it arises or of the name of the qualifying money market fund or eligible custodian on request,

- (d) procedures for the return of client financial instruments to clients who indicate that they are not satisfied to have client financial instruments held with a particular custodian,
- (e) procedures to notify a client of the holding of client financial instruments outside Ireland and to advise that the legal and regulatory regime might be different both on an ongoing basis and in the event of a default,
- (f) disclosure in the terms of business or investment management agreement as appropriate of the extent of the firm's liability in the event of the default of a qualifying money market fund or eligible custodian or relevant party with whom client financial instruments are held,
- (g) the provision of periodic statements with the frequency and with the minimum content prescribed in the Client Asset Requirements,
- (h) procedures for procuring written client consent to securities financing in compliance with the Client Asset Requirements,
- (i) the provision of the notification and the procurement of the written consent of the client in the case of clients using margined accounts to the minimum standards specified in the Client Asset Requirements including provisions regarding the return of collateral other than the original collateral provided,
- (j) the provision of general information¹⁴ to retail clients¹⁵ if the firm holds financial instruments or client funds on behalf of the client.

Communication with clients – Evidence

42. The evidential factors to be considered include:

- (a) written correspondence or standard agreements with clients covering the notifications and consents appropriate to the services being provided as specified by the Client Asset Requirements. Securities financing and margin accounts have very specific disclosure and consent requirements and auditors will include such accounts in their testing if these services are provided by the firm,
- (b) evidence of the return of assets to clients who do not consent to the holding of their client financial instruments with a specified custodian,
- (c) systems or files to evidence that statements are sent to clients at required intervals and that such statements properly reflect the firm's records and that they contain the information set out in the Client Asset Requirements for both trading and margin accounts,
- (d) systems or procedures and controls (e.g. completed checklist) which ensure that all clients receive a statement (where required). In this context the auditors may consider obtaining direct confirmation from clients.

Compliance with reconciliation and notification requirements

Compliance with reconciliation and notification requirements to the Financial Regulator – Control Objectives

43. Firms are required to carry out reconciliations of client financial instruments held directly, held with qualifying money market fund or eligible custodians at least monthly and within ten business days of the date to which the reconciliation relates. The Client Asset Requirements specify how the counts and reconciliations are to be conducted. Firms are obliged to notify the

¹⁴ As detailed in 4.11.1 and 4.12 of the Financial Regulator Client Asset Requirements

¹⁵ As defined in Part 2 of the Regulations

Financial Regulator of differences other than timing differences, which are material or recurrent in nature.

44. Typical procedures management will implement to achieve this control objective include:
- (a) procedures to ensure that client financial instruments are reconciled on a timely basis,
 - (b) procedures to count all client financial instruments physically held by the firm and to reconcile that count to the records of client financial instruments held in its possession,
 - (c) the retention of hard copy reconciliations for those reconciliations completed electronically,
 - (d) procedures for the notification of material or recurring reconciliation differences to the Financial Regulator within one business day of the completion of the reconciliation,
 - (e) timely clearance of reconciling items and appropriate arrangements for the rectification of reconciliation differences following their identification,
 - (f) notification in writing to the Financial Regulator of the failure or inability to perform reconciliations within the time-frame permitted by the Client Asset Requirements,
 - (g) appropriate procedures for the reconciliation of client financial instruments held as units of qualifying money market funds.

Compliance with reconciliation and notification requirements to the Financial Regulator – Evidence

45. The evidential factors to be considered include:
- (a) detailed instructions for the counting of physically held client financial instruments,
 - (b) an independent function carrying out the counts and reconciliations,
 - (c) sufficient time and resources dedicated to the counts and reconciliations,
 - (d) full and clear documentation of the counts and reconciliations, especially those reconciliations performed electronically,
 - (e) evidence that the counts and reconciliations are carried out at the frequency required by the Client Asset Requirements,
 - (f) adequate explanations and hard copy records for the reconciling items,
 - (g) evidence of the completion of the reconciliations within time limits set out in the Client Asset Requirements,
 - (h) evidence of timely notification to the Financial Regulator of material or recurring reconciling items or of the failure/inability to complete reconciliations if appropriate.

Client Funds

46. Client funds are funds, which, in the course of carrying on investment business, a firm receives, holds or pays out for or on behalf of clients. Funds, in turn includes cash, cheques or other payable orders together with current and deposit accounts maintained with credit institutions or relevant parties. Funds sent to a client by cheque or other payable order does not cease to be client funds until the cheque or other payable order is redeemed by the client.
47. For the particular firm, the auditors obtain an understanding of what may constitute client funds. They consider situations and transaction types that may be entered into by the firm. Although the firm may consider that particular funds are not covered by the Client Asset Requirements relating to client funds, the auditors are alert to situations where this is incorrect and the firm is in breach of the Client Asset Requirements as a result.

Client bank accounts

48. When a firm holds or expects to hold client funds then it must open one or more client bank accounts. These must be at an eligible institution, relevant party or eligible custodian (as defined in the Client Asset Requirements) in Ireland or overseas. Certain disclosures may need to be made to and consent obtained from clients whose funds are to be held in overseas accounts before their funds are paid into such accounts. Client funds held as units in a qualifying money market funds are audited in accordance with the requirements for holding financial instruments belonging to clients.
49. Before a client bank account is opened the firm should carry out a risk assessment on the credit institution, relevant party or eligible custodian. An appropriate and ongoing risk assessment should be carried out while the credit institution, relevant party or eligible custodian continues to hold client funds. This should include both external information such as financial statements or credit ratings and internal information such as customer service received from an eligible credit institution, relevant party or eligible custodian in the administration of the account.
50. The Client Asset Requirements stipulate that client accounts held with an eligible credit institution, relevant party or eligible custodian must have the term 'client account' included in its title. Before client funds are lodged to a client account with an eligible credit institution, relevant party or eligible custodian, there are certain requirements in respect of the institution and the firm has to make certain disclosures to the client. Written consent is required from retail clients where client funds are to be held outside of Ireland.

Planning the Client Funds work

51. The control objectives that the auditors would expect to see in a business holding client funds, the evidence from which the auditors seek to draw reasonable conclusions, and the procedures they may perform are outlined below. They are only indicative and will not be applicable to all businesses holding client funds.
52. Small firms will differ in terms of scale, sophistication and the degree of segregation of duties from larger firms. In consequence, not all the evidential factors set out in the Client Asset Requirements of operation of a satisfactory system of controls may be present in every business.

53. Management is responsible for ensuring compliance with the Client Asset Requirements. The Client Asset Requirements set out the following primary areas in relation to client funds are to be considered when maintaining a satisfactory system of controls:

- segregation, designation and handling of client funds (see paragraphs 55 to 57 of this document),
- use of eligible credit institutions, relevant parties and eligible custodians, (see paragraphs 58 to 59 of this document),
- communication with clients (see paragraphs 60 to 62 of this document),
- daily calculations, reconciliations and notifications to the Financial Regulator (see paragraphs 63 to 65 of this document).

54. In completing their work, auditors need to consider whether the firm has satisfactory systems of control and proper accounting records in relation to client assets. Management should be able to demonstrate that the systems are satisfactory and compliant with the provisions of the Client Asset Requirements. Such systems are required to ensure that the balance on the firm's client accounts is not less than the amount it should be holding on behalf of clients.

Segregation, designation and handling of Client Funds

Segregation, designation and handling of Client Funds– Control Objectives

55. Firms are required to treat funds as client funds until they cease to be client funds. They are required to ensure that one client's funds are not used for another client's transactions unless a legally enforceable set-off agreement is in place. All client funds must be promptly lodged to a client account. The Financial Regulator may direct the firm to lodge its own funds into a client account or the firm may deem it prudent in the interests of the protection of clients to do so.

56. Typical procedures management will implement to achieve this control objective include:

- (a) the physical and accounting segregation of client funds from the assets of the firm and from assets held in respect of margined transactions,
- (b) procedures for the lodgement of client funds into client fund accounts within one business day of receipt,
- (c) the maintenance of accounting records to identify the balance in a pooled account that relates to each individual client and details of movements in that balance,
- (d) the requirement to inform others when passing client funds to them that they are to be so treated,
- (e) controls to ensure that, when the firm gives instructions to a relevant party or qualifying money market fund or eligible custodian to pass client funds to another person, the instructions are validated by a second member of staff with the appropriate level of authority,
- (f) the holding and movement of client funds received as collateral in accordance with the Client Asset Requirements, the daily monitoring and the arrangements to top up any shortfall in the value of the collateral,
- (g) procedures for handling mixed remittances in accordance with the Client Asset Requirements; for accepting funds by automated transfer; and for redirecting funds inadvertently lodged by clients directly to firm accounts. All such transactions must be lodged to the appropriate client account within one business day,

- (h) procedures for the lodgement of firm funds to a client account where the firm deems it prudent to do so,
- (i) procedures for the removal of fees and commissions from client accounts in accordance with the Client Asset Requirements,
- (j) all withdrawals from client bank accounts are made only for prescribed purposes, in accordance with client mandates and with due consideration of when funds cease to be client funds.

Segregation, designation and handling of Client Funds– Evidence

57. The evidential factors to be considered include:

- (a) adequate details of the day to day entries of funds paid into and out of the client bank accounts and individual client accounts including:
 - dates of receipts and payments,
 - name of the client,
 - name of the person from whom funds were received or to whom funds were paid, if other than the client,
 - sub-ledgers with individual client accounts,
 - evidence of designation from a client .
- (b) written internal instructions setting out the procedures to be followed in dealing with any potential client funds,
- (c) suitable levels of staff (i.e. with appropriate training and experience) responsible for establishing client funds accounts and identifying client funds within the firm,
- (d) lodgements are made regularly and promptly,
- (e) lodgements to client funds accounts comprise client funds only except as otherwise permitted,
- (f) lodgements to non-client funds accounts do not include client funds and where they do so inadvertently, that the funds are transferred to a client funds bank account within one day,
- (g) withdrawals are properly authorised and for purposes consistent with the Client Asset Requirements,
- (h) records of the interest earned on the client funds bank accounts, the determination of the interest payable to clients and the dates and amounts of interest actually paid to clients,
- (i) records are maintained on a timely basis,
- (j) the records maintained comply with the Client Asset Requirements,
- (k) to provide third party evidence of client balances (except settlement balances), the auditors may consider obtaining direct confirmation from clients. In practice, this may be combined conveniently with testing the accuracy of statements of investments sent to clients,
- (l) appropriate titles are given to accounts maintained at eligible custodians or related parties,
- (m) written internal instructions setting out the procedures to be followed for internal approval for the opening of new client funds accounts,
- (n) ensure that fees and commissions are levied on clients in accordance with the firm's terms and conditions and in accordance with the investment management agreement with the client,
- (o) procedures to ensure mixed remittance is lodged fully into a client account in accordance with the Client Asset Requirements.

Use of eligible credit institutions, relevant parties and eligible custodians

Use of eligible credit institutions, relevant parties and eligible custodians - Control Objectives

58. Typical procedures management will implement to achieve this control objective include:

- (a) the undertaking of an appropriate and continuing risk assessment of the eligible credit institution, relevant party or eligible custodian,
- (b) arrangements to ensure that client funds are only passed to an eligible credit institution, relevant party or eligible custodian on foot of instructions from the client concerned,
- (c) the designation of accounts to which client funds are lodged as client accounts in the records of the eligible credit institution, relevant party or eligible custodian,
- (d) the provision by the eligible credit institution, relevant party or eligible custodian of the statements required with the frequency and with the content specified by the Client Asset Requirements,
- (e) the existence of confirmation in respect of client accounts from eligible credit institutions, relevant parties or eligible custodians that such accounts are maintained in accordance with the minimum content of the Client Asset Requirements,
- (f) procedures for providing the notification to the Financial Regulator which arises on the happening of an event of default by an eligible custodian or relevant party containing the elements prescribed by the Client Asset Requirements,
- (g) procedures for the operation of margined accounts in accordance with clients' written consent and in compliance with the Client Asset Requirements.

Use of eligible credit institutions, relevant parties and eligible custodians – Evidence

59. The evidential factors to be considered include:

- (a) documentation of the procedures for opening new accounts,
- (b) an up to date list of all bank accounts which identifies those that are client bank accounts,
- (c) documented evidence of the conduct and results of the risk assessment process,
- (d) letters from eligible credit institutions, relevant parties and eligible custodians agreeing to the required conditions,
- (e) evidence of the client's consent to holding any funds overseas,
- (f) qualification and experience of managers,
- (g) evidence of spot checks of the area by compliance or internal audit departments,
- (h) evidence of procedures for selection of external custodians to ensure they are eligible and suitable,
- (i) scrutiny of individual client ledger accounts to ensure that they are not overdrawn,
- (j) evidence that where requested by the client, the name of the eligible credit institution, relevant party, or eligible custodian is provided to the client,
- (k) evidence that the name of the eligible credit institution, relevant party, or eligible custodian is provided to the client when the firm is a member of the same group.

Communication with clients

Communication with clients - Control Objectives

60. Client funds received, held or paid out by the firm are to be regarded as held by the firm on behalf of and for the benefit of the relevant client/clients. Firms must be fair and open with clients in relation to the operation of their accounts.
61. Typical procedures management will implement to achieve this control objective include:
- (a) provision of receipts where funds are received in the form of cash, cheque or other payable order,
 - (b) arrangements to notify the client and the procurement of client consent in writing for the holding of client funds in a pooled form before first services are provided,
 - (c) procedures to notify clients where client accounts are placed with a credit institution, relevant party or eligible custodian who is a member of a group of which the firm is also a member,
 - (d) procedures for the return of client funds to clients who indicate that they are not satisfied to have client funds held with a particular eligible credit institution, relevant party or eligible custodian,
 - (e) procedures to notify a client of the holding of client funds outside Ireland and to advise that the legal and regulatory regime might be different both on an ongoing basis and in the event of a default,
 - (f) disclosure in the terms of business or investment management agreement as appropriate of the extent of the firm's liability in the event of the default of an eligible credit institution, relevant party or eligible custodian with whom client funds are held,
 - (g) the provision of periodic statements with the frequency and with the minimum content prescribed in the Client Asset Requirements,
 - (h) the provision of the notification and the procurement of the written consent of the client in the case of clients using margined accounts to the minimum standards specified in the Client Asset Requirements including provisions regarding the return of collateral other than the original collateral provided,
 - (i) procedures to ensure that the firm lodges client funds in the currency of receipt unless it has received the client's consent in writing for the holding of it in a different currency,
 - (j) disclosure in the terms of business or investment management agreement as appropriate of the arrangements for lodging client funds other than in the currency of receipt and a general statement relating to exchange risk.

Communication with clients – Evidence

62. The evidential factors to be considered include:
- (a) evidence of disclosure to clients as to whether interest is to be paid and on what terms,
 - (b) procedures to ensure that fees and commissions have been calculated accurately in accordance with the investment management agreement with the client and have met the criteria stipulated in the Client Asset Requirements for recognition as due and payable to the firm,
 - (c) evidence of disclosure to clients for the holding of client funds in pooled accounts,
 - (d) written correspondence or standard agreement with clients covering the notifications and in accordance with the firm's terms and conditions and consents appropriate to the services being provided as specified by the Client Asset Requirements. Securities

financing and margin accounts have very specific disclosure and consent requirements and auditors will include such accounts in their testing if these services are provided by the firm,

- (e) systems or files to evidence that statements are sent to clients at required intervals and that such statements properly reflect the firm records and that they contain the information set out in the Client Asset Requirements for both trading and margin accounts,
- (f) systems or procedures and controls (e.g. completed checklist) which ensure that all clients receive a statement (where required). In this context, the auditors may consider obtaining direct confirmation from clients,
- (g) evidence of the return of assets to clients who do not consent to the holding of their client funds with a specified credit institution, relevant party or custodian.

Compliance with daily calculation, reconciliations and notification to the Financial Regulator

Compliance with daily calculation, reconciliations and notification to the Financial Regulator - Control Objectives

63. Firms are required to carry out reconciliations of client funds held with eligible credit institutions, relevant parties and eligible custodians on a daily basis by the end of the following business day. Every business day a firm is required to ensure that its internal records confirm that the amount held in client bank accounts as appropriate is at least equal to the amount it should be holding for clients. The firm is also required to maintain an amount equivalent to 8% of the average level of settled debtors over the five days preceding the Client asset calculation¹⁶. In addition, where it would be prudent in the interest of protecting clients, firm must deposit their own funds in client accounts.

64. Typical procedures management will implement to achieve this control objective include:

- (a) the daily client funds calculation is carried out in accordance with the Client Asset Requirements and that, where set-off has been used, the criteria set out in Requirement 4.2.8 have been fulfilled,
- (b) procedures are in place to ensure that client funds are reconciled daily by the end of the following business day,
- (c) the retention of hard copy reconciliations for those reconciliations completed electronically,
- (d) procedures for notifying the Financial Regulator where any deposit exceeds 0.5% of the daily calculations as set out in the Client Asset Requirements,
- (e) procedures for the notification of appropriate reconciliation differences to the Financial Regulator within one business day of the completion of the reconciliation,
- (f) timely clearance of reconciling items and appropriate arrangements for the rectification of reconciliation differences following their identification,
- (g) notification in writing of the Financial Regulator of the failure or inability to perform reconciliations or of the making of a top-up to the client fund bank accounts within the time-frame permitted by the Client Asset Requirements,

¹⁶ See Client Asset Requirements section 5.3.

Compliance with daily calculation, reconciliations and notification to the Financial Regulator - Evidence

65. The evidential factors to be considered include :

- (a) an up to date list of the accounts held that agrees with the accounts being reconciled,
- (b) evidence of an independent preparation and review of these reconciliations,
- (c) reconciliations being carried out regularly over the period under review,
- (d) the daily client funds calculation is carried out in accordance with the Client Asset Requirements and, where set-off is used, the appropriate documentation has been retained,
- (e) sufficient time and resources dedicated to the reconciliations,
- (f) balance of each such client funds accounts, as recorded by the firm is reconciled with the relevant statement or other form of confirmation or similar document as defined in the Client Asset Requirements,
- (g) the reconciliations are properly prepared and adequate explanations given for reconciling items, which should be cleared without delay,
- (h) systems are in place to ensure that appropriate transfers are made from the firm's own bank accounts into the client settlement accounts and/or client margined transaction accounts, should the reconciliations demonstrate that these are necessary,
- (i) records are retained of the dates and results of the prescribed reconciliations;
- (j) evidence that the reconciliations are carried out at the frequency required by the Client Asset Requirements,
- (k) evidence of the completion of the reconciliations within time limits set out in the Client Asset Requirements.

Reporting

66. Example wordings for auditors' reports on the Financial Regulator Client Asset Requirements compliance are included in Appendix 2.

Qualification of the auditor's report

67. If an auditor needs to qualify his opinion, his report sets out the reason(s) for and a sufficiently detailed explanation of the qualification. In particular, where the qualification relates to a specific requirement in the Client Asset Requirements or section of legislation, the reference to the requirement will be stated in the report.

68. In considering any matter indicating a possible breach of any condition imposed by the Financial Regulator Client Asset Requirements, auditors analyse the circumstances in order to identify its cause, and establish the action management has taken or intends to take to correct the matter. If the matter leads to an opinion that the firm has not complied with any condition of the requirements which are the subject of the report and appropriate effective action to correct the matter has been taken (and the auditor is satisfied that this is so), they may choose to report this fact to the Financial Regulator so as to ensure the Financial Regulator is fully informed about the likelihood of any repetition of the breach in question. However, the prime responsibility for reporting corrective action rests with management. The fact that management have corrected the situation does not impact on whether the auditor issues a qualified or unqualified opinion.

69. Where trivial breaches are discovered, for example minor errors noted as a result of reconciliations that are promptly corrected, this of itself would not necessarily require the

auditors to qualify their opinion on the reconciliation of investments, the adequacy of the system or compliance with the Client Asset Requirements.

70. Auditors exercise care in forming a judgement as to whether a particular breach is trivial, bearing in mind the overriding objective of issuing an appropriate report relating to the firm's compliance with the Client Asset Requirements on safeguarding client assets. Steps will be taken to ensure that staffs involved in the assignment are aware that the judgement of whether a particular matter is trivial depends on different criteria to a quantitative measure of materiality which may be applied to the audit of the firm's financial statements.

Duty to report matters of 'material significance'

71. Matters giving rise to a qualification in the auditor's report, particularly where significant risk of loss to investors exists, may also require a report to the Financial Regulator under the statutory duty to report specified matters ('matters of material significance') direct to the Financial Regulator.

Protection to Auditors

72. The IIA offers protection to auditors in their communications with the Financial Regulator, stating that no duty to which an auditor of a firm may be subject shall be regarded as contravened and no liability to the firm, or to its shareholders, creditors, investors, clients or other interested parties of any firm shall attach to the auditor by reason of his compliance with any obligation imposed on him by the applicable legislation. Regulation 144(3) of the MiFID regulations states that a disclosure in good faith does not constitute a breach of any contractual or legal restriction on disclosure of information and the person or persons making the disclosure are not, because of the disclosure in good faith, liable in any way or to any person.

Where no client assets are held

73. Where a firm is subject to the Financial Regulator's Client Asset Requirements but in a particular period the directors state that no sums of client funds or financial instruments have been held a restricted report from the auditor is required. Such a report addresses findings from:
- (a) procedures undertaken to assess the existence and adequacy of client procedures relating to potential client funds or financial instruments that may be held by the firm, including adequacy of the processes for handling client funds and financial instruments if received;
 - (b) review of the client account(s) and related bank or other statements received from third parties with whom assets may be held;
 - (c) procedures carried out on a test basis in relation to transactions recorded in the firm's records to determine the absence of client funds and financial instruments.
74. The auditor also obtains confirmation in writing from the directors that the firm did not receive client funds or financial instruments during the period.
75. The report to the Financial Regulator should indicate that no client funds were received by the firm and it may be appropriate to set out the scope of work undertaken in the Basis of Opinion section of the report.

Appendix 1 Principles applicable to auditors' reports to regulators¹⁷

Some general principles useful to auditors in making reports to regulators are as follows:

- Auditors plan the work to be undertaken in relation to the regulatory report so as to perform that work in an effective manner, taking into account their other reporting responsibilities.
- Auditors familiarise themselves with the requirements of the regulator.
- Auditors comply with the rules of professional conduct issued by their relevant professional bodies and any relevant ethical guidance (e.g. APB Ethical Standards).
- Auditors agree the terms of the engagement with the firm and/or regulator and record them in writing.
- Auditors undertake their work with an attitude of professional scepticism and carry out procedures designed to obtain sufficient appropriate evidence on which to base their opinions or carry out procedures as agreed for the engagement in question.
- When using the work of others, auditors assess their objectivity and competence and obtain sufficient appropriate evidence that such work is adequate for the purposes of the report.
- Auditors obtain written confirmation of appropriate representations from management where appropriate before their report is issued.
- Auditors record in their working papers:
 - (a) details of the engagement planning;
 - (b) the nature, timing and extent of the procedures performed in relation to their report to the regulator, and the conclusions drawn; and
 - (c) their reasoning and conclusions on all significant matters which require the exercise of judgment.
- Auditors consider the matters, which have come to their attention while performing their procedures, and whether they should be included in a report to those charged with governance or management.
- If the auditors become aware of matters of material significance to the regulator, they make a report direct to the regulator. In addition, when issuing their report to the regulator, auditors:
 - (a) consider whether there are consequential reporting issues affecting their opinion which arise from any report previously made direct to the regulator in the course of their appointment; and
 - (b) assess whether any matters encountered in the course of their work indicate a need for a further direct report.
- Auditors take steps to ensure that any delegated work is directed, supervised and reviewed in a manner which provides reasonable assurance that such work is performed competently.
- Auditors consider materiality and its relationship with the risk of material misstatement in the report to the regulator in planning their work and in determining the effect of their findings on their report.

¹⁷ Source: Practice Note 21 - *The Audit of Investment Businesses in the United Kingdom Appendix 1 - Illustrative Examples of Auditor's Reports*

- Where appropriate and agreed as part of the terms of an engagement, auditors perform procedures designed to obtain sufficient appropriate evidence that all material subsequent events up to the date of their report to the regulator, which require adjustment or disclosure, have been identified and properly reflected in the report.

Appendix 2 - Example wordings for auditors' reports on the Financial Regulator Client Asset Requirements compliance

Example 1 – Requirements imposed under Regulation 79 of the European Communities (Markets in Financial Instruments) Regulations, 2007 on investment firms that hold client assets.

Name

Title: Head of Function of Investment Service Providers Supervision Department

The Financial Regulator

P.O. Box 9138

College Green

Dublin 2

Dear [Sir/Madam]:

Auditors' Report on Compliance by [insert name of investment firm] with the requirements imposed under Regulation 79 of the European Communities (Markets in Financial Instruments) Regulations, 2007 ('the Regulations') on investment firms that hold client assets ("the Client Asset Requirements").

In addition to our audit of the financial statements for the period ended [insert date], we have examined the records of [name] in relation to client assets for that period.

Respective responsibilities of directors and auditors under the Client Asset Requirements

The Directors are required to:

- (a) designate all accounts containing funds entrusted or received by it for or on account of a client a "Client Asset Account" in all financial records maintained by it;
- (b) hold client funds in an account or accounts with an institution or type of institution as may be specified by the Financial Regulator (if applicable);
- (c) comply with the Client Asset Requirements issued by the Financial Regulator under Regulation 79 of the Regulations on firms that hold client assets;
- (d) keep at an office or offices within the State books and records (including books of account) in respect of client funds and client financial instruments specified by the Financial Regulator and notify the Financial Regulator of the address of every office at which such books are kept; and
- (e) obtain reports from the entity's auditors on matters and at intervals specified by the Financial Regulator.

By their nature, any procedures can only provide reasonable but not absolute assurance of compliance.

For the purposes of this report it is our responsibility as auditors to examine the books and records of the firm in relation to client assets, review the systems and procedures employed by the firm in relation to the safekeeping of and accounting for client assets and examine compliance by the firm with the provisions of the Regulations and the Client Asset Requirements [include in year 1 only: which came into effect on 1 November 2007]. We are required to report to the Financial Regulator stating whether in our opinion the firm has complied with the provisions of the Regulations and the Client Asset Requirements.

Basis of opinion

We conducted our examination having regard to the Guidance issued by ACCA. Our examination included obtaining evidence on a test basis from the books and records of *[insert name of investment firm]* in relation to client assets. We also reviewed evidence on the existence and implementation of systems and procedures by the firm in relation to the safekeeping of and accounting for client assets and assessed the adequacy of those systems and procedures as a basis for securing compliance by the firm with the provisions of the Regulations and the Client Asset Requirements and any subsequent amendments thereto and carried out whatever procedures we considered necessary for the purposes of this report. We have obtained such information and explanations as we considered necessary for the purposes of this report.

Opinion

Based on the examination set out above, in our opinion *[insert name of investment firm]* has complied with the provisions of the Client Asset Requirements in respect of the year ended *[date]* except insofar as concerned:

- (a) certain trivial breaches due to clerical errors or mistakes in bookkeeping all of which were rectified on discovery and none of which, we are satisfied, resulted in any loss of any kind;
- (b) the matters set out in the First Schedule attached to our report, in respect of which we have not been able to satisfy ourselves for the reasons stated therein;
- (c) the matters set out in the Second Schedule attached, in respect of which it appears to us that *[insert name of member firm]* has not complied with the provisions of the Client Asset Requirements

Our report is prepared solely for the confidential use of *[name of member firm]* and the Financial Regulator. It may not be relied upon by *[name of member firm]* for any other purpose whatsoever. Our report must not be recited or referred to in whole or in part in any other document. Our report must not be made available, copied or recited to any other party without our express written permission. *[Name of audit firm]* neither owes nor accepts any duty to any other party and shall not be liable for any loss, damage, or expense of whatsoever nature which is caused by reliance on our report.

Address: _____

Signature: _____

Firm Description: _____

Date: _____

Example 2 - Section 52 - Investment Intermediaries Act, 1995

Name

Title: Head of Function (relevant supervisory department)

The Financial Regulator

P.O. Box 9138

College Green

Dublin 2

Dear [Sir/Madam]:

Auditors' Report on Compliance by [insert name of investment firm] with Section 52 of the Investment Intermediaries, Act 1995 ('the Act')

In addition to our audit of the financial statements for the period ended [insert date], we have examined the records of [name] in relation to client assets for that period.

RESPECTIVE RESPONSIBILITIES OF DIRECTORS AND AUDITORS UNDER SECTION 52 OF THE ACTS

The Directors are required to:

- (a) designate all accounts containing funds entrusted or received by it for or on account of a client a "Section 52 Account" in all financial records maintained by it;
- (b) hold client funds in an account or accounts with an institution or type of institution as may be specified by the Financial Regulator (if applicable);
- (c) comply with the requirements issued by the Financial Regulator under Section 52 of the Act (the Client Asset Requirements);
- (d) keep at an office or offices within the State books and records (including books of account) in respect of client funds and client financial instruments specified by the Financial Regulator and notify the Financial Regulator of the address of every office at which such books are kept; and
- (e) obtain reports from the entity's auditor on matters and at intervals specified by the Financial Regulator.

By their nature, any procedures can only provide reasonable but not absolute assurance of compliance.

For the purposes of this report it is our responsibility as auditors to examine the books and records of the firm in relation to client assets, review the systems and procedures employed by the firm in relation to the safekeeping of and accounting for client assets and examine compliance by the firm with the provisions of Section 52 of the Act and the Client Assets Requirements [*include in year 1 only*: which came into effect on 1 November 2007]. We are required to report to the Financial Regulator stating whether in our opinion the firm has complied with the provisions of Section 52 of the Acts and the Client Assets Requirements.

BASIS OF OPINION

We conducted our examination having regard to guidance issued by ACCA. Our examination included obtaining evidence on a test basis from the books and records of [insert name of investment firm] in relation to client assets. We also reviewed evidence on the existence and implementation of systems and procedures by the firm in relation to the safekeeping of and accounting for client assets and assessed the adequacy of those systems and procedures as a basis for securing compliance by the firm with the provisions of Section 52 of the Act and the Client Assets Requirements issued by the Financial Regulator and any subsequent amendments thereto and carried out whatever

procedures we considered necessary for the purposes of this report. We have obtained such information and explanations as we considered necessary for the purposes of this report.

OPINION

Based on the examination set out above, in our opinion [*insert name of investment firm*] has complied with the provisions of Section 52 of the Act and the Client Assets Requirements in respect of the year ended [*date*] except insofar as concerned:

- (a) certain trivial breaches due to clerical errors or mistakes in bookkeeping all of which were rectified on discovery and none of which, we are satisfied, resulted in any loss of any kind;
- (b) the matters set out in the First Schedule hereto in respect of which we have not been able to satisfy ourselves for the reasons stated therein;
- (c) the matters set out in the Second Schedule hereto, in respect of which it appears to us that [*insert name of investment firm*] has not complied with the provisions of Section 52 of the Investment Intermediaries Act, 1995 and/or the requirements imposed under Section 52 of the Investment Intermediaries Act, 1995 [Client Assets Requirements].

Our report is prepared solely for the confidential use of [*name of investment firm*] and the Financial Regulator. It may not be relied upon by [*name of investment firm*] for any other purpose whatsoever. Our report must not be recited or referred to in whole or in part in any other document. Our report must not be made available, copied or recited to any other party without our express written permission. [*Name of audit firm*] neither owes nor accepts any duty to any other party and shall not be liable for any loss, damage, or expense of whatsoever nature which is caused by reliance on our report.

Address: _____

Signature: _____

Firm Description: _____

Date: _____

Appendix 3 – Derivation Table

| New Client Asset Requirements | | Previous Client Money Requirements | |
|--|----------|---|----------------|
| Title | Ref | Title | Ref |
| Introduction | 2 | Introduction | Page 3 |
| Scope of the Requirements | 2.1 | Scope of Requirements | Page 3 |
| General Principles | 3 | General Principles | Page 5 |
| Safeguarding Clients' Rights Relative to Financial Instruments | 3.1 | n/a | n/a |
| General Requirements | 4 | General Requirements | A |
| Financial Instruments and Funds | 4.1 | Money and Investment Instruments | 1 |
| Segregation | 4.2 | Segregation | 2 |
| Assets to be held in a Client Account | 4.3 | Assets to be held with an Eligible Credit Institution, Relevant Party or Eligible Custodian | 3 |
| Default of Qualifying money market, Eligible Credit Institution, Relevant Party or Eligible Custodian | 4.4 | Default of an Eligible Credit Institution, Relevant Party or Eligible custodian | 4 |
| Reconciliations | 4.5 | Reconciliations | 5 |
| Failure to perform reconciliations | 4.6 | Failure to perform reconciliations | 6 |
| When Assets Cease to be Client Assets | 4.7 | When Assets Cease to be client Assets | 7 |
| Client Statements | 4.8 | Client Statements | 8 |
| Auditor's Report | 4.9 | Auditors' Report | 9 |
| Transactions involving collateral margined transactions | 4.10 | Transactions involving Collateral including Margined Transactions | 10 |
| General Information for Clients | 4.11 | n/a | n/a |
| Information about Financial Instruments belonging to Retail Clients | 4.12 | n/a | n/a |
| Client Funds | 5 | Client Money | B |
| Payment of Client Funds into a Client Account with a Central Bank, and Eligible Credit Institution, Relevant Party or Qualifying money market fund | 5.1 | Payment of Client Money into a Client Account with an Eligible Credit Institution or Relevant Party | 11 |
| Written Confirmations | 5.2 | n/a | n/a |
| Daily Calculation | 5.3 | Daily Calculations | 12 |
| Failure to Perform Calculations | 5.4 | Failure to Perform Calculations | 13 |
| Interest | 5.5 | Interest | 14 |
| Client Financial Instruments | 6 | Client Investment Instruments | C |
| Depositing Client Financial Instruments | 6.1 | n/a | n/a |
| Safe-Keeping of Client Financial Instruments | 6.2 | Safe-keeping of Client Investment Instruments | 15 |
| Client Agreements | 6.3 | Client Agreements | 16 |
| Registration and Recording of Client Financial Instruments | 6.4 | Registration and Recording of Client Investment Instruments | 17 |
| Custodian Agreement | 6.5 | Custodian Agreement | 18 |
| Securities Financing | 7 | Other | D |
| Securities Financing Transactions | 7.1 | Securities Lending | 19 |
| Securities Financing Records | 7.2 | n/a | n/a |
| Security Financing on behalf of Retail Clients | 7.3 | n/a | n/a |
| Collateral Held for Securities Lending | 7.4 | n/a | n/a |
| n/a | n/a | Accounts over which the firm exercises control | E |
| n/a | n/a | General Requirements | 20 |
| n/a | n/a | When Assets in Accounts over which the firm Exercises Control Cease to be Client Assets | 21 |
| n/a | n/a | Client Statements | 22 |
| n/a | n/a | Auditors' Report | 23 |
| Definitions | 8 | Definitions | Page 39 |
| Note: New terms are in blue font for example Client Funds is now used instead of Client Money | | | |