



BERMUDA MONETARY AUTHORITY

CONSULTATION PAPER

**PROPOSED ENHANCEMENTS TO
THE INVESTMENT BUSINESS REGIME:
REGULATIONS AND RULES**

17 SEPTEMBER 2021

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I. INTRODUCTION

1. In June 2021, the Bermuda Monetary Authority (Authority or BMA) issued a Consultation Paper (CP), entitled “*Proposed Enhancements to the Investment Business Regime*” to socialise intended changes in respect of that framework. That CP, and its accompanying illustrative drafts of a proposed Investment Business Amendment Act 2021 (the draft Bill) and Investment Business (Registered and Non Registrable Persons) Order 2022 (the draft Order), outlined various scope-related and other changes proposed to ensure that supervision and regulation of investment business in Bermuda, remain fit for purpose.
2. Among the changes proposed in the aforementioned CP in response to market and regulatory developments, is the expansion of the definition of “carrying on investment business in or from Bermuda” which is intended to provide for more effective oversight by the Authority of Bermuda-formed or incorporated persons who may be carrying on investment activities without maintaining a place of business in Bermuda. Consistent with that change, it has also been proposed that persons categorised as exempt under the current framework, be either redesignated as non-registrable, or be required to register with the Authority and therefore subject to an appropriate degree of regulatory oversight.
3. As previously announced, enhancement of the investment business framework will also require updating of the various supporting legislative and supervisory instruments, to ensure these are aligned with proposals set out in the draft Bill and Order. To that effect, this paper sets out intended revisions to the current set of Regulations administered by the Authority in its oversight of investment business. It also discusses newly proposed Rules to be provided for under section 10A of the draft Bill.
4. Intended changes to the remaining ancillary instruments, being the regulatory Codes, Statement of Principles (SOP) and Guidance will be consulted on in short order, in time for readiness of the complete package of legislative and supervisory instruments to take effect by 1 January 2022.
5. Industry and other stakeholders are invited to submit their feedback to the proposals set out in this paper, by emailing their comments to policy@bma.bm no later than 11 October 2021.

II. PROPOSED INTRODUCTION OF NEW RULES

6. The Authority is proposing to pursue rulemaking powers in respect of the investment business regime, akin to those which were developed to support an Alternative Investment Fund Managers (AIFM) regime, and which exist in other regulated sectors. The draft Bill identified three technical areas in which rulemaking powers are to be introduced, being: net assets, liquidity, and financial

statements. It is expected that facility to establish those requirements in technical Rules as against other legal instruments will, among other things, provide for greater ease and flexibility to amend those requirements. Such powers are also desirable in the context of the additional proposal to also grant the Authority discretionary power to modify or dis-apply obligations established in rules, appropriate with specific circumstances.

7. Further to this proposal, the Authority is developing draft “Investment Business (Capital, Net Assets, Liquidity, Statements and Returns) Rules 2022” to encapsulate the technical requirements being proposed in respect of each of those areas. These rules will serve to consolidate and codify expectations previously set out by the Authority between the SOP and in guidance. Clarity regarding the manner in which the Authority proposes to act in respect of the Rules, and its expectations of investment providers in relation to same, will continue to be provided via relevant sections of updated versions of the SOP and guidance. Because of the interdependency of these instruments, the Authority intends to consult on all three documents together, with this process expected to commence in October.

III. PROPOSED ENHANCEMENTS TO THE SUITE OF REGULATIONS

8. Both the Investment Business Regulations 2004 (the IB Regulations), and the Investment Business (Client Money) Regulations 2004 (the CM Regulations), have been proposed for update in line with key changes being made to the framework (including the accommodation of new classes of registered persons¹), as well as to reflect changes in industry practice since those Regulations took effect. While the IB Regulations are proposed to undergo only minor updates, more fundamental changes are proposed for the CM Regulations, the most significant of which is to transpose these into rules which will be issued by the Authority.

Details of the changes proposed in respect of both of those Regulations are outlined below.

Proposed Enhancements to the Investment Business Regulations 2004

9. The current Schedule containing the application form (Form of Application for an Investment Business Licence) which is prescribed by the Minister, is proposed for repeal and removal from the Regulations. Going forward, application forms for licensing as well as registration will be maintained on the Authority’s website for both ease of access by prospective applicants, and of update by the Authority.

¹ The term “registered person” has been defined in the draft Bill as either “a Class A Registered Person or a Class B Registered Person”, in reference to the two new categories of persons which will be required to register with, and be supervised by the Authority.

10. In order to align with industry trends, the requirements for issuance of portfolio statements are being changed to require at least quarterly instead of half-yearly statements, unless otherwise agreed in writing with clients.
11. The use of the term “confirmation note” is proposed for amendment to “contract note”, for consistency with other framework instruments. In addition, the timeframe for issuance of a contract note in respect of each trade will be shortened from seven days, to require issuance by the next business day. The minimum particulars for inclusion in each contract note, which are currently prescribed in the Regulations, will remain unchanged.
12. Also among the modifications proposed for the IB Regulations, is the recognition of “registered persons”, where appropriate, consistent with the Authority’s planned move towards expanding the scope of the definition of “carrying on investment business in or from Bermuda” and scaling of requirements for different classes of investment business undertakings. Accordingly:
 - (i) the Regulations are being amended to refer to licences or registration, as appropriate; and
 - (ii) provision is being proposed for a Class A Registered Person to maintain copies of accounting and other records required for inspection by the Authority, at the office of its Senior Representative. The Authority also proposes to include the office address of each Class A Registered Person’s Senior Representative, among the information to be published on its website.
13. Consistent with definitions in the draft Bill, the term “investment provider” in the Regulations will refer to persons who are either licensed or registered by the Authority to conduct investment business.

Proposed Enhancements to the Investment Business (Client Money) Regulations 2004

14. While client money requirements were not identified in the draft Bill as being among the areas proposed for inclusion within rulemaking, the Authority has assessed the merits of also seeking the ability to make rules relating to client money requirements. As such, the most fundamental change proposed in respect of the CM Regulations is one of form, to transpose them into rules, which may be set and varied by the Authority. As would be the case with introducing rules for other areas, this would allow the Authority greater speed in modifying client money requirements when conditions and circumstances warrant, and provide ability for requirements to be varied or dis-applied, as deemed appropriate. The Authority therefore intends to request that the existing CM Regulations be repealed by the Minister of Finance and replaced by a new set of “Investment Business (Client Money) Rules 2022”. (This change would require further amendment to section 40

of the existing Act, under which the Minister has issued the current CM Regulations.)

15. Beyond the proposed change to the nature of instrument in which client money requirements are established, the Authority also intends to modify the definition of “client money” to emphasise, via the proposed insertion in red below, that client money is not limited to monies being held in a bank account, but also includes money received from a client in connection with an investment agreement.

Specifically, it is proposed that:

*“client money is money in any currency which, in the course of carrying on investment business, an investment provider **receives from, or holds** (whether in Bermuda or elsewhere) in respect of, an investment agreement entered into, or to be entered into with or for a client.”*

16. The Authority is also of the view that the criteria for determination of “sophisticated persons” whose money would not be considered “client money” under law, and therefore not subject to protections, should be amended. Currently, this definition accommodates both “high net worth private investors” and “high income private investors”, without further requirement for demonstration of understanding by these persons, of the risks being undertaken in investment transactions.
17. The Authority is of the view however, that it is necessary for all persons falling within the classification of “sophisticated persons” to satisfy appropriate knowledge as well as means criteria, to warrant exclusion from client money protections. To that effect, it is deemed unsuitable for “high net worth private investors” and “high income private investors” to be treated as “sophisticated persons”, where they do not also demonstrate a degree of knowledge of financial matters.
18. It has therefore been proposed for “high net worth private investors” and “high income private investors” to be removed from the definition of “sophisticated investors”. In replacement, a new category of “approved investor” will be introduced within “sophisticated investors” to denote individual investors who possess both knowledge and means to be appropriately excluded from client money requirements.

An “approved investor” will be *“an individual who is a sophisticated private investor (as defined in the draft Order²) and also either a high net worth private investor or a high income private investor.”*

² Both the draft Order and the proposed Rules define a “sophisticated private investor” as “an individual who has such knowledge of, and experience in, financial and business matters as would enable him to properly evaluate the merits and risks of a prospective purchase of investments.”

IV. CONCLUSION

19. It is anticipated that the totality of intended modifications outlined in this paper, in conjunction with other changes proposed in the draft Bill and Order, will support modernisation and future growth of Bermuda's investment sector while ensuring that Bermuda's reputation as a leading international financial services centre, remains protected.

- END -

BR /2004

INVESTMENT BUSINESS ACT 2003

2003:

AMENDMENT TO INVESTMENT BUSINESS REGULATIONS 2004

In exercise of the powers conferred upon the Minister of Finance by sections 18, of the Investment Business Act 2003, the following Regulations are hereby made—

Citation

1 These Regulations which amend the Investment Business Regulations 2004 (the “principal Regulations”), may be cited as the Investment Business Amendment Regulations 2022.

Interpretation

2 In these Regulations, "the Act" means the Investment Business Act 2003.

Revokes Regulation 3

3 Regulation 3 of the principal Regulations is revoked.

Revokes and replaces Regulation 4

4 Paragraph 4 of the principal Regulations is revoked and replaced as follows —

“Publication of licence or registration information

Authority to publish investment provider information

4 For the purposes of section 18(4) of the Act, the Authority shall publish on its website at www.bma.bm, the following particulars in respect of each investment provider—

- (a) the name of the investment provider;
- (b) his address, or where the investment provider is a firm, its address;
- (c) where the investment provider is a body corporate—

- (i) the address of its registered office whether in Bermuda or outside Bermuda; and
 - (ii) the address of its principal office whether in Bermuda or outside Bermuda;
 - (iii) where a person is a Class A Registered Person, the address of its senior representative in Bermuda.
- (d) the date of grant of the licence or registration;
 - (e) where limitations or conditions are imposed on the licence or registration, particulars of the limitations or conditions and where applicable date of imposition;
 - (f) where limitations are varied, particulars of the variation and date of variation;
 - (g) where a licence or registration is revoked, the date of revocation of the licence or registration.
 - (h) where a licence has been surrendered, the date accepted by the Authority of the surrender;
 - (i) where a temporary licence has been issued, the date of expiration of the licence.”.

Amends Regulation 5

5 Regulation 5 of the principal Regulations is amended by deleting “and complexity” and inserting the words “nature, scale and complexity”.

Amends Regulation 6

6 Regulation 6 of the principal Regulations is amended—

- (a) in the title by deleting “confirmation” and substituting the word “contract”;
- (b) by revoking and replacing subparagraph (1) as follows—

“(1) Except as provided in paragraph (2), an investment provider shall provide each client with a contract note containing the particulars specified in paragraph (3) not later than one business day following the date each transaction is effected and carried out by the investment provider.”.

- (c) in subparagraphs (2) and (3) by deleting “confirmation” and substituting the word “contract where it occurs.

Revokes and replaces Regulation 7 (2)

7 Regulation 7 (2) of the principal Regulations is revoked and replaced as follows—

“(2) An investment provider shall provide the first portfolio statement within a period of three months beginning with the date of the opening of the client's account, and thereafter shall provide a quarterly, unless otherwise requested by, and agreed to in writing with the client.”.

Amends Regulation 8

8 Regulation 8 (4) of the principal Regulations is amended by deleting “either at the investment provider’s principal office or registered office” and substituting “at its principal office or registered office; or in the case of a Class A Registered Person, at the office of its senior representative”.

Schedule revoked

9 The Schedule to the principal Regulations is revoked.

Dated this day 1st day of January, 2022.

Minister of Finance

BR xx/2022
INVESTMENT BUSINESS ACT 2003

: 34

**THE INVESTMENT BUSINESS (CLIENT MONEY)
RULES 2022**

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The Bermuda Monetary Authority, in exercise of the power conferred by section 10A of the Investment Business Act 2003, makes the following Rules:

PART 1 INTRODUCTION

Citation and commencement

1. These Rules may be cited as the Investment Business (Client Money) Rules 2022.

Interpretation

2. In these Rules —

“Act” means the Investment Business Act 2003;

“approved bank”, in relation to a client bank account, means —

- (a) where the account is opened in Bermuda, an institution licensed under the Banks and Deposit Companies Act 1999;
- (b) where the account is opened elsewhere —
 - (i) a bank within the same group as an institution in paragraph (a), licensed to conduct banking business in that country or territory; or
 - (ii) a bank licensed to conduct banking business in that country or territory which, in the opinion of the Authority, is subject to supervision equivalent to the supervision of banks licensed in Bermuda;

“approved investor” means an individual who is a sophisticated private investor and also either a high net worth private investor or a high income private investor;

“business day” means any day other than a Saturday, Sunday, Christmas Day, Good Friday or a day appointed as a Bermuda public holiday;

“client bank account” means an account at an approved bank which —

- (a) is a current or deposit account;
- (b) is in the name of an investment provider; and

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- (c) includes the words 'client' or an appropriate description to distinguish the account as an account containing client money, from an account containing money belonging to the investment provider;

“client money” has the meaning given in paragraph 5 of these Rules;

“default” means the commencement of liquidation or any insolvency proceedings in any jurisdiction;

"high income private investor" means an individual who has had a personal income in excess of \$200,000 in each of the two years preceding the current year or has had a joint income with that person's spouse in excess of \$300,000 in each of those years, and has a reasonable expectation of reaching the same income level in the current year; and "current year" means the year in which he purchases an investment;

"high net worth private investor" means an individual whose net worth or joint net worth with that person's spouse in the year in which he purchases an investment exceeds \$1,000,000, excluding the value of that person's residence and any benefits or rights under a contract of insurance; and "net worth" means the excess of total assets at fair market value over total liabilities;

"investment fund has the meaning given in Section 3 of the Investment Funds Act 2006;

“intermediary” means a person —

- (a) to whom any client money held by the investment provider has been passed; or
- (b) from whom any money is owed to the investment provider which, once received by him, will be client money;

in respect of the carrying out of transactions on behalf of clients of the investment provider;

“investment agreement” means any agreement the making or performing of which by either party constitutes an investment activity;

"investment services" means investment activities undertaken in the course of carrying on investment business;

"market intermediary" means a person who engages or holds himself out as engaging in the business of dealing in investments as principal or agent on an investment exchange;

“money” includes cheques and other payable orders in any currency;

“pooling event” has the meaning given in paragraph 13 of these Rules;

"sophisticated private investor" means an individual who has such knowledge of, and experience in, financial and business matters as would enable him to properly evaluate the merits and risks of a prospective purchase of investments.

Application

3. These Rules shall apply to all investment providers, other than an investment provider which is also an institution licensed under the Banks and Deposit Companies Act 1999, insofar as it holds money on behalf of its clients in an account with itself.

General overview

4. (1) These Rules apply to money held by an investment provider—
- (a) which is client money; and
 - (b) until the fiduciary duty imposed by these Rules is discharged.
- (2) Where these Rules apply, an investment provider —
- (a) must keep client money separate from its own money in accordance with paragraph 7(2); and
 - (b) must hold client money as a fiduciary for the client in accordance with the purpose trust established by Part III; and
 - (c) must account for the money properly in accordance with paragraphs 17 and 18.

PART II GENERAL MEANING OF “CLIENT MONEY”

5. (1) Subject to this paragraph, client money is money in any currency which, in the course of carrying on investment business, an investment provider receives from, or holds (whether in Bermuda or elsewhere) in respect of, an investment agreement entered into, or to be entered into with or for a client.

- (2) Money is not client money if —
- (a) it is immediately due and payable to the investment provider for its own account —

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- (i) in respect of fees and commissions in a manner which satisfies subparagraph (3); or
 - (ii) otherwise, though not, in such a case, if the obligation of the investment provider in respect of which the money is so payable to the investment provider has not yet been performed; and
 - (b) it is not held in (or it is properly withdrawn from) a client bank account.
- (3) Money is not regarded for the purposes of subparagraph (2) as due and payable in respect of fees and commissions claimed to be payable to the investment provider unless –
- (a) the fees or commissions have been accurately calculated and are in accordance with a formula or on a basis agreed to in writing by the client;
 - (b) 14 business days have elapsed since a statement showing the amount of those fees or commissions has been delivered to the client, and the client has not questioned the sum specified; or
 - (c) the amount of the fees or commission has been agreed in writing with the client, or has been finally determined by a court or arbitration.
- (4) Money is not client money if the investment provider holds it on behalf of a client and the investment provider and the client have agreed that the money (or money of that type) is to be held by the investment provider for the intrinsic value of the metal which constitutes the money.

Money of sophisticated persons

6. (1) Subject to this paragraph, money is not client money if –
- (a) an investment provider holds it on behalf of or receives it from a sophisticated person; and
 - (b) the investment provider has given a clear warning to a sophisticated person that –
 - (i) his money will not be subject to the protections conferred by these Rules;
 - (ii) as a consequence his money will not be segregated from the money of the investment
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provider, and may be used by the investment provider in the course of its business; and

- (iii) the sophisticated person has given his written consent to the treatment of his money by the investment provider outside these Rules; and
 - (iv) the Authority has consented to the money being so treated.
- (2) The Authority shall give its consent if, and shall withhold its consent unless, it is satisfied that the investment provider has such systems and controls in place as would ensure that monies held or received on behalf of sophisticated persons by the investment provider are identifiable at all times.
- (3) Where a sophisticated person whose money has been treated under subparagraph (1) as money which is not client money instructs the investment provider to treat that money and any money which it may hold for him, as client money, the investment provider must, within 10 business days of receipt of that person's instruction –
- (a) treat all money held for that person as client money in accordance with these Rules, and confirm to him that his money is being held as client money; or
 - (b) return the money which it holds for that person to him and ensure that no further investment business is carried on with or for that person which may give rise to the investment provider holding client money on his behalf.
- (4) “sophisticated person” means a person falling within any of the following classes of persons –
- (a) an approved investor;
 - (b) investment funds;
 - (c) bodies corporate, each of which has total assets of not less than five million dollars, where such assets are held solely by the body corporate or held partly by the body corporate and partly by one or more members of a group of which it is a member;
 - (d) unincorporated associations, partnerships or trusts, each of which has total assets of not less than five million dollars, where such assets are held solely by the association, partnership or trust or held partly by it and partly by one or more members of a group of which it is a member;
 - (e) bodies corporate, all of whose shareholders fall within one or more of the subparagraphs of this paragraph, except subparagraph (d);
 - (f) partnerships, all of whose members fall within one or more of the subparagraphs of this paragraph, except subparagraph (d);
 - (g) trusts, all of whose beneficiaries fall within one or more of the subparagraphs of this paragraph, except subparagraph (d).
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Segregation of client money

7. (1) An investment provider shall pay all client money which it holds or receives into a client bank account.

(2) Client money and money belonging to the investment provider must be kept separate from one another.

Client bank accounts

8. (1) Where an investment provider holds client money on behalf of a client, it must ensure that the money is held in a client bank account with an approved bank and that the title of the account sufficiently distinguishes the account from any account containing money that belongs to the investment provider.

(2) Where an investment provider opens a client bank account, the investment provider must give or have given notice to the approved bank requiring the bank to acknowledge to it in writing —

- (a) that all money standing to the credit of the account is held by the investment provider as trustee;
- (b) the bank is not entitled to combine the account with any other account or to exercise any right of set-off or counterclaim against money in that account in respect of any sum owed to it on any other account of the investment provider.

Payments into client bank accounts

9. (1) Where an investment provider holds client money it must either —

- (a) pay it as soon as possible (and in any event, not later than the next business day after so beginning) into a client bank account; or
- (b) pay it out or pay it over in a manner which secures under paragraph 10 that it is no longer client money (for example by endorsing a cheque).

(2) Where client money is received by the investment provider in the form of an automated transfer, the investment provider must ensure that —

- (a) where possible, the money is transferred into a client bank account; and
 - (b) in the event that the money is transferred into the investment provider's own account, the money is paid
-

into a client bank account no later than the next business day after the transfer.

(3) Where an investment provider receives a 'mixed remittance' (that is an aggregate sum of money which is in part client money and in part other money) it must pay the full sum into the relevant client bank account, but must then ensure that, except to the extent that it represents fees and commissions due to the investment provider, the other money is paid out of the account within one business day of the day on which the investment provider would normally expect the remittance to be cleared.

Discharge of fiduciary duty

10. Money ceases to be client money if it is paid —

- (a) to the client;
- (b) to a third party on the instruction of the client;
- (c) into a bank account in the name of the client (not being an account which is also in the name of the investment provider); or
- (d) to the investment provider itself, where it may properly be so paid under these Regulations.

PART III DEFAULT OBLIGATIONS

Purpose of this Part

11. (1) This Part applies to all client money held by an investment provider so as to create —

- (a) a fiduciary relationship between the investment provider and the client, under which the client money is in the legal ownership of the investment provider but in the beneficial ownership of the client; and
- (b) a system of pooling of the beneficial interests of different clients once there has been a "pooling event".

(2) Paragraph 12 applies whether or not there has been a "pooling event", and paragraphs 13 and 14 apply after there has been such a pooling event.

Client purpose trust

12. (1) Whenever the circumstances are that client money is held by an investment provider in the course of investment business carried on in Bermuda, the client money is held in accordance with these Rules by the investment provider on trust —

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- (a) upon the terms and for the purposes set out in these Rules;
 - (b) subject to subparagraph (a), for the respective clients for whom that client money is held, according to their respective shares in it; and
 - (c) after all valid claims under subparagraph (b) have been met, for the investment provider itself.

(2) The duties of an investment provider holding client money under these Rules pursuant to subparagraph (1) shall take the place of the corresponding duties which would be owed by it as a trustee under the general law.

Pooling events

13. (1) The power of an investment provider, in accordance with Part II, to pay money into and out of the accounts in which client money is held is interrupted by the occurrence of a pooling event specified in subparagraph (2).

(2) The pooling events are —

- (a) the default of the investment provider;
- (b) the default of an intermediary;
- (c) the coming into force of a direction by the Authority in respect of all client money held by the investment provider; or
- (d) the default of any approved bank with which any client money held by the investment provider is deposited, in which case paragraph 15 applies,

(3) Notwithstanding subparagraph (2), a pooling event will not occur, and paragraph 15 will not apply, if, on the default of an approved bank or intermediary, the investment provider repays to its clients or pays into a client bank account an amount equal to the amount of client money held on their behalf with that bank or passed to that intermediary.

(4) An investment provider shall inform the Authority and all affected clients of any pooling event, as soon as practicable after its occurrence.

Pooling

14. (1) Save as described in this paragraph, where a pooling event occurs, money held in all the investment provider's client bank accounts is pooled, and must be made available to meet the claims of clients in respect of

whom client money is or should be held in those accounts on a pari passu basis.

(2) Where, at the time when a pooling event occurs, client money from a client bank account is in the hands of an intermediary, it shall, on its return to the client bank account, be pooled in accordance with subparagraph (1).

(3) Where client money referred to in subparagraph (2) cannot be returned within one month after the pooling event, the investment provider may make distributions from the account in advance of that date if he makes provision for the possibility of such money not being returned.

(4) If any surplus remains in the pool created by the operation of subparagraph (1) after all the valid claims of clients to money in that pool have been met, that surplus shall be distributed to the investment provider.

(5) Where an investment provider receives money from a client after a pooling event which, but for that event, would fall to be paid into a client bank account, that money —

- (a) shall be placed in a new client bank account duly opened after the pooling event; and
- (b) shall not be pooled with the money held in the investment provider's client bank accounts at the time of the pooling event.

Pooling on default of approved bank or intermediary

15. (1) Where client money is held by an approved bank or an intermediary which defaults or which, following a pooling event by an investment provider, fails to recognize that the money is client money held in accordance with these Rules —

- (a) the money shall —
 - (i) be pooled separately;
 - (ii) be made available to satisfy the separate claims of the separate clients pari passu; and
 - (iii) after the claims described in subparagraph (a)(ii) have been satisfied, be paid into the pool created under paragraph 14 (1); and
- (b) the pool created under that Regulation shall be applied —

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- (i) to meet any claims of separate clients that are not separate claims and the claims of other clients (all ranking equally); and
 - (ii) after the claims described in subparagraph (b)(i) have been satisfied, to meet any unsatisfied separate claims of separate clients.

(2) In this paragraph —

“separate claim” means the claim of a separate client to the value of the money that was or should have been held with the approved bank or intermediary; and

“separate client” means a client whose money was, or should have been, held with the approved bank or intermediary.

PART IV INTEREST AND RECORD KEEPING

Interest on client money

16. An investment provider must clarify in writing with a client whether or not interest is payable to the client in respect of client money, and if so, on what terms.

Accounting for and use of client money

17. (1) An investment provider must account properly and promptly for client money and, in particular, must ensure that —

- (a) save as permitted by these Rules, client money and other money do not become mixed;
- (b) individual transactions can be accurately identified and traced;
- (c) the credit standing to the account of each client is calculated each business day; and
- (d) money belonging to one client is not used for another client.

(2) Wherever the daily calculation referred to in subparagraph (1)(c) reveals an overdraft or that one client’s money has been used for another

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- (a) the investment provider must pay in a sum of money equivalent to the deficit; and
 - (b) money paid in by the investment provider under subparagraph (a) shall be treated as client money and
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must not be withdrawn by the investment provider until the client responsible for the deficit has paid in a sum of money equivalent to the deficit.

Reconciliation of accounts

18. (1) An investment provider shall, not less frequently than once a month

- (a) reconcile the balance on each client bank account, as recorded by the investment provider, with the balance on that account as set out in the statement issued by the approved bank covering the period in respect of which the reconciliation is made; and
- (b) reconcile the total of the balances on each client account with the total of the corresponding balances in respect of each of its clients, (both totals as recorded by the investment provider).

(2) The reconciliation referred to in subparagraph (1) must be performed within 10 business days of the date to which the reconciliation relates, and any differences must be corrected forthwith unless they arise as a result of differences in timing between the accounting and settlement systems of the investment provider and the approved bank.

Record keeping

19. An investment provider must retain accounting records in relation to each client bank account for at least 5 years from the date of the transaction to which it relates.

Consequential amendment

20. The Investment Business (Client Money) Regulations 2004 are revoked.

Made this 1st day of January, 2022

Chairman
Bermuda Monetary Authority
