

**APPLICATION FOR AUTHORISATION UNDER
SECTION 10 OF THE INVESTMENT
INTERMEDIARIES ACT, 1995 (as amended)**

**GUIDANCE NOTES ON SUBMITTING AN
APPLICATION**

**Financial Institutions and Funds Authorisation
Irish Financial Services Regulatory Authority
May 2005**

Location of Documentation

The following documents are available on the Financial Regulator's website <http://www.ifsra.ie/>.

It should be noted that the addresses detailed do not constitute links to the Financial Regulator's website.

Application Documents

- The application form for authorisation under the IIA
- Guidance notes on submitting an application for authorisation under the IIA
- Individual Questionnaire

can be accessed at:

[www.ifsra.ie/industry/investment services/authorisation process](http://www.ifsra.ie/industry/investment%20services/authorisation%20process)

Codes and Requirements

- Client Money Requirements for Investment Business Firms
- Code of Conduct for Investment Firms
- Handbook for Investment and Stockbroking firms

can be accessed at:

[www.ifsra.ie/industry/codes and requirements/ investment firms](http://www.ifsra.ie/industry/codes%20and%20requirements/investment%20firms)

Legislation

- Investment Intermediaries Act, 1995
- Other relevant legislation

can be accessed at:

[www.ifsra.ie/industry/investment services/legislation](http://www.ifsra.ie/industry/investment%20services/legislation)

Capital Requirements

- Capital Adequacy Directive Notice
- Capital Contribution Agreement
- Perpetual Loan Subordination Agreement
- Loan Subordination Agreement- Maturity > 5 years

can be accessed at:

[www.ifsra.ie/industry/investment services/ other documents.](http://www.ifsra.ie/industry/investment%20services/other%20documents)

Other Documentation

- UCITS Notices
- Non-UCITS Series of Notices

can be accessed at:

[www.ifsra.ie/industry/funds/legislation&UCITSNotices/ legislation documents](http://www.ifsra.ie/industry/funds/legislation&UCITSNotices/legislation%20documents)

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<p>NB: These guidance Notes and the related application form are intended for applicants <u>other than</u> Restricted Activity Investment Product Intermediaries</p>

Introduction

In May 1993, the European Council adopted the Investment Services Directive (93/22/EEC) ('ISD') as part of the programme to create a single market for financial services in the European Union (EU). The key element of the ISD is that it requires an EU firm whose business is to provide certain specified 'investment services' to be authorised to do so by the competent authority of the State in which it has its head office and, furthermore, enables such firms to carry on business covered by their authorisation throughout the EU (either directly or through branches) without seeking further authorisation in the other member States. Firms, which are covered by the ISD, are obliged to meet capital requirements outlined in an associated directive, the Capital Adequacy Directive (93/6/EEC) ('the CAD').

The Stock Exchange Act, 1995 (SEA)¹ and the Investment Intermediaries Act, 1995² ('IIA') together transpose obligations arising from both the ISD and the CAD into Irish law. The more detailed provisions of the ISD and the CAD have been implemented by way of a series of administrative notices. The Irish Financial Services Regulatory Authority ('the Financial Regulator') is the competent authority for firms covered by the legislation.

The IIA introduced a comprehensive regulatory regime for investment activities in Ireland and in fact some investment business services and investment instruments not covered by the ISD fall within this legislation. Part I of the IIA defines investment business firms, investment business services, investment advice and investment instruments, while Part II deals with the authorisation of investment business firms. Parts I and II of the IIA must be examined to determine whether or not authorisation under the legislation is required. The legislation is complex and firms are advised to seek legal advice if in any doubt about its scope. Firms are advised to contact the

¹ As amended by the Central Bank Act 1997, the Investor Compensation Act, 1998, the Insurance Act 2000, the Pensions (Amendment) Act 2002, the Central Bank and Financial Services Authority of Ireland Acts 2003 & 2004

Financial Regulator at an early stage should they consider that their proposed activities require authorisation. It is an offence to act as an investment business firm unless authorised to do so³.

In order for a firm to be authorised under Section 10 of the IIA, a firm must be providing investment advice and/or one or more investment business services in one or more investment instruments to third parties on a professional basis. A fundamental facet of the legislation is that the services must be provided to third parties on a professional basis. Hence, firms providing services to other members within their groups are excluded. While these are the basic principles, there are certain exclusions from the requirement to be authorised - these are outlined in Section 2(6)⁴ of the IIA.

Section 10(5) of the IIA sets out the requirements, which must be satisfied in order for an authorisation to be granted. Applicants must therefore have regard to these provisions. In addition to the IIA, regulations implementing Directive 95/26/EC (the “post-BCCI” Directive)⁵ set out further criteria which the Financial Regulator must consider in relation to an application.

Applicants seeking authorisation for the provision of investment business service (g), ‘the administration of collective investment schemes, including the performance of valuation services or fund accounting services or acting as transfer agents or registration agents for such funds’, must in addition to the requirements set out in the Guidance Notes, have regard to the UCITS and the Non-UCITS Series of Notices which impose conditions on firms providing services to such schemes, (including but not limited to capital requirements). These Notices are available on the Financial Regulator’s website.

² As amended by the Central Bank Act, 1997, the Investor Compensation Act, 1998, the Insurance Act 2000, the Pensions (Amendment) Act 2002, the Central Bank and Financial Services Authority of Ireland Acts 2003 & 2004

³ See Section 9 of the IIA.

⁴ See Appendix 1.

⁵ SI No. 267 of 1996 (Supervision of Credit Institutions, Stock Exchange Member Firms and Investment Business Firms Regulations, 1996) was signed by the Minister for Finance on 9 September 1996.

This Guidance Notes should be read in conjunction with the IIA as appropriate.

Copies of the IIA are available on the Financial Regulator's website or may be obtained from the Government Publications Sales Office, Sun Alliance House, Molesworth Street, Dublin 2. Please note that the IIA has been amended by the following acts; the Central Bank Act 1997, the Investor Compensation Act 1998, the Insurance Act 2000, the Pensions (Amendment) Act 2002 and the Central Bank and Financial Services Authority of Ireland Acts 2003 and 2004.

Application documentation relating to an application for authorisation, for example an application form and Individual Questionnaires are available from the Financial Institutions and Funds Authorisation Department of the Financial Regulator.

Applying for Authorisation under Section 10 of the IIA

Applicants should become familiar with the relevant legislation and the requirements, which have been set out by the Financial Regulator by way of administrative notices i.e. Client Money Requirements, Anti-Money Laundering Guidance Notes, the Capital Adequacy Directive Notice ('CAD Notice') and the Handbook for Investment and Stockbroking Firms ('the Handbook'), which can all be accessed on the Financial Regulator's website.

Applications for authorisation **must** comprise the following:

- As applicable, certified copies of Certificate of Incorporation, Certificate of Incorporation on Change of Name, Memorandum and Articles of Association, partnership agreement or registration of business name. A certified document is one that is stamped, signed and dated as being a true copy of the original *at a particular date in time* by a party independent of the firm. Please note that the certification stamp must be present *on* the relevant document. Please note also that the date of certification should be as close to the date of application as possible. If the documents are amended at any stage during the application process, an up to date certification of the document must be submitted along with certified copies of any special resolutions amending the document;
- A completed application form, which must include an original signed declaration, in the name of the applicant that is seeking authorisation. See page 12 of this document for guidance;
- Information as set out in section 5 regarding qualifying shareholders;
- Completed individual questionnaires, where relevant⁶;

⁶ Individual questionnaires must be completed by the applicant's Managing Director, Compliance Officer, directors (including shadow directors) and all individual qualifying shareholders. Individual questionnaires must be submitted for the trustees, settlors and beneficiaries of any trust holding a qualifying shareholding.

Declarations where applicable should be completed by an individual who is currently an approved person by the Financial Regulator and who has previously completed an Individual Questionnaire. An individual who was previously an approved person but is not currently approved by the Financial Regulator may not be required to complete a new Individual Questionnaire but should contact the Financial Regulator in this regard.

- A detailed business plan setting out the applicant's proposed regulated/unregulated activities, with the focus being on the proposed activities for which authorisation is being sought;
- Financial projections for the first 3 years of operations as an investment business firm including detailed profit and loss accounts and balance sheets,
- Audited accounts for the previous three years if applicable;
- Draft copies of any agreements – client agreements/service level agreements (if available at the time of submission of the application);
- Details of group structure, if applicable.

Please note that all of the above must be submitted (where applicable) in order to constitute a complete application and the Financial Regulator will **not** begin its review process until a complete application has been received. Once an applicant *is in a position* to submit the above material it should contact the Financial Regulator in order to arrange a preliminary meeting. Please note that if copies of any relevant agreements i.e. clients agreements/service level agreements etc. are not available initially they must be submitted for review during the application process.

Specific Requirements under Section 10 (5) of the IIA

The Financial Regulator cannot authorise an investment business firm unless it has satisfied the Financial Regulator as to all of the provisions set out in Section 10(5)(a) to (j) of the IIA. The Financial Regulator will advise the applicant of any additional information or clarification required having reviewed the initial documentation submitted.

Section 10(14) of the IIA provides that a proposed investment business firm shall be informed whether or not authorisation has been granted-

- (a) within six months of the date of receipt of the application or
- (b) where additional information has been sought within six months after the receipt of that additional information or the period of twelve months after the receipt of the application, whichever is the sooner.

The time scale for considering applications depends upon the quality of the application material provided. The speed of the applicant's response to comments issued by the Financial Regulator, the complexity of its application, the complexity of its group structure (if applicable) and the speed of responses to references requests, regulatory and other checks will all impact on the authorisation process.

Revocation of Authorisation by the Financial Regulator

The provisions of Section 16 of the IIA should be borne in mind when considering whether or not to submit an application for authorisation. Section 16(1)(b)(i) of the IIA provides that the Financial Regulator may revoke an authorisation where an authorised investment business firm has failed to operate as such within 12 months of the date on which it was authorised.

Guidance Notes On Completing an Application Form

All applicants must complete the 'Application for Authorisation' form available on the Financial Regulator's website. This appendix provides assistance when answering some of the questions on the application form. Please note that the numbering sequence below corresponds to that of the application form.

Part A: Particulars of the Applicant

Q.1 Applicant Name – Full name should be the registered name of the applicant at the date of submission of the application.

Q.2 Legal Status – Documentation must be provided evidencing the applicant's legal status. Please refer to section 1 'Structure' and section 2 'Memorandum & Articles of Association' on pages 13 & 14 of this document.

Q. 5 Head Office – Please see section 9 'Head Office Requirement' on pages 29-30 of this document.

Q.6 Contact Details – The contact details referred to must be those of one of the principals of the applicant in the State.

Q.8 Company Application - Please outline in the table provided whether directors are executive, non-executive or other. Written confirmation is required from each non-executive director that he/she is aware of the obligations and duties of a director of an investment business firm under the IIA and of a director of a company under the Companies Acts. Please ensure that each section of the table provided is complete. Please note that in the interests of good corporate governance an applicant should consider appointing a balance of executive and non-executive directors.

Q.9 Company Application – Please ensure to list *all* qualifying shareholders, both *direct* and *indirect*, up to and including the ultimate parent. Please see section 5 'Suitability of Qualifying Shareholders' on pages 18-22 of this document.

Q.12 Company Application – Please see section 8 ‘Ability to supervise firm’ on page 26-28 of this document. Please ensure that the group diagram referred to is in respect of *all* group entities.

Q.13 Partnership Application – Please submit a certified copy of the partnership agreement.

Q.17 Sole Trader Application – Please submit a certified copy of the registration of business name, if applicable.

Part B: Staff and Business Profile

Q.21 Current Employees - Please note that this should not include individuals employed by another entity who are/ will be providing services to the firm.

Q.22 Proposed Employees - Please list the number of staff the firm *proposes* to employ upon authorisation.

Q.23 Distribution of Staff – Please note that all executive directors are considered to be employees of the firm. If an individual is involved in the provision of investment business services please specify the investment business services that he/she will provide as set out under Section 2 of the IIA. Please note that a proposed Compliance Officer and Managing Director would be involved in the provision of investment business services by virtue of their roles.

Q.24 Service Level Agreements – Please note that the Financial Regulator requires that a Service Level Agreement be put in place in respect of individuals employed by another entity providing services to the applicant, which must contain at a minimum the following 4 provisions:

- The respective rights, duties and responsibilities of the individual entities concerned;
- The basis on which fees will be charged for the services provided;

- An express provision that the employing entity will provide the Financial Regulator with access to its employment records in respect of persons providing services to the serviced entity; and
- An express provision that the entity providing services to the serviced entity will provide both the serviced entity and the Financial Regulator with access to all books and records and other documents in respect of the activities of the serviced entity.

Q.29 Activities – Please note that the applicant must only indicate the investment business services and investment instruments (including investment advice if applicable) that it has *firm plans* to provide upon authorisation. Please note that an investment business firm may seek an extension to its authorisation from the Financial Regulator following initial authorisation if required.

Q.33 Clients – An applicant should refer to Part 7 of the CAD Notice for requirements regarding large exposures. The CAD Notice is available on the Financial Regulator’s website.

Q.34 Advertising - Please see the Advertising Requirements section of the Handbook.

Q.35 Discretionary management of client assets – An applicant that proposes to exercise discretion in the management of client assets may be subject to the Financial Regulator’s Client Money Requirements in particular Section E ‘Accounts over which the firm exercises control’. The requirements are set out in the following document ‘Requirements Issued Under Section 52 of the Stock Exchange Act, 1995 and the Investment Intermediaries Act, 1995 – Client Money Requirements’ which is available on the Financial Regulator’s website.

Q.36 Client Breakdown - Please refer to Appendix 1 (FESCO PAPER 00-FESCO-A) of the Handbook regarding the categorisation of investors. Please note that where

a firm wishes to treat a client as a professional client it must do so in accordance with the definition of a professional client as set out in the Handbook and it must maintain a written record of the required assessment.

Q.41 Sole Trader – Please note that an Individual Questionnaire may be required in respect of such an individual.

Part D: Advisors and Accounts

Please note that client accounts incorporates both client money and client premium accounts.

Q.44 Operation of client money accounts– If the applicant proposes to operate client money accounts and/or proposes to hold other client assets, it must submit detailed procedures that reflect the Financial Regulator’s client money requirements.

Q.45 Operation of client premium accounts - If the applicant proposes to operate client premium accounts please see the Premium Handling Requirements as set out under Part V of the Handbook for Restricted Activity Investment Product Intermediaries, which is available on the Financial Regulator’s website.

Q.47 Location of accounting records – Please see the Books and Records Requirements as set out in the Handbook.

Part E: Compliance and Administrative Arrangements

Q.52 Details regarding Compliance Officer, Finance Officer, Money Laundering Reporting Officer and Internal Audit Officer – An individual questionnaire must be submitted in respect of the applicant’s proposed Compliance Officer. Please note that the Financial Regulator would not expect any one staff member to carry out all of the roles referred to above.

Q.54 Authorised Signatories – Please note that the Financial Regulator considers it best practice to have two signatories in place in respect of *all* payment instructions.

Part F: Financial information

Q.55 Capital Requirements – Please note that the most recent audited financial statements alone will not suffice in the event of any additional injection of capital having been made since the financial year-end to satisfy the Financial Regulator’s capital requirements. Documentation evidencing the injection of capital must also be submitted to the Financial Regulator.

Please note that applicants that fall within the remit of the ISD are subject to the CAD. In this context please see Part 1 of the CAD Notice. Please note that the Financial Regulator cannot authorise an applicant until it has received evidence that the applicant has satisfied its initial capital requirement.

Please note that if the applicant proposes to use a Capital Contribution Agreement(s) and/or Subordinated Loan Agreements in order to satisfy its capital requirements the agreements must be in the Financial Regulator’s standard format, which are available on the Financial Regulator’s website.

The Financial Regulator will require evidence of the items used to meet the initial capital requirement, for example, certified copy of share register (name of applicant must be on the share register), evidence of funds being lodged etc.

Please note that ISD applicants should also refer to Part 3 of the CAD Notice as investment business firms are subject to an Expenditure Requirement i.e. they are required to hold capital equivalent to one quarter of their preceding year’s fixed overheads. In the case of applicant firms an estimated Expenditure Requirement will be based on the financial projections submitted by the applicant.

Please note that some applicants may be subject to Trading Book Requirements as set out in Parts 4-9 of the CAD notice.

Please note that all investment business firms are subject to capital requirements. Investment business firms that are not subject to the provisions of the ISD are subject

to capital requirements that are set by the Financial Regulator e.g. an applicant which proposes to provide investment advice only is subject to an initial capital requirement of €10,000 while an applicant which proposes to act as a manager of a designated investment fund within the meaning of the Designated Investment Funds Act, 1985 (i.e. act as a BES fund manager) is subject to an initial capital requirement of €50,000 and would also be subject to an Expenditure Requirement as referred to above. Please note that all other applicants whose activities would not fall within the remit of the ISD should contact the Financial Regulator in respect of their applicable capital requirements.

Q.58 Insurance and Indemnity – Please note that the Financial Regulator considers it best practice to have professional indemnity insurance in place.

Declaration

Please ensure that *at least two* directors, including the Managing Director, sign the declaration to the application form. Please note that only original signatures will suffice.

General

Please note that the applicant must have a code of conduct in place reflecting the provisions of the Financial Regulator's Code of Conduct as set out in the Handbook. This need not be submitted as part of the application but must be available for inspection by officers of the Financial Regulator.

Information Required in the Application Documentation

1. Structure

Section 10(5)(a) of the IIA: ‘A proposed investment business firm shall not be authorised by the Financial Regulator under this section unless - it is a company incorporated by statute or under the Companies Acts, or is incorporated outside the State or is a company made under Royal Charter or it draws up a partnership agreement, where it is constituted as an unincorporated body of persons, if such an agreement does not already exist, or is an industrial provident society, or is a sole trader and the proposed investment business firm has made arrangements to ensure that its activities will be carried out in such a manner that the requirements of Article 3(3) of Council Directive No. 93/22/EEC of 10 May 1993⁷, are complied with,’

Documentation to be submitted by applicants:

- (a) Certified copy of Certificate of Incorporation, and
- (b) Certified copy of Certificate of Incorporation on Change of Name if applicable
or
- (c) Certified copy of relevant Charter, or
- (d) Certified copy of partnership agreement, or
- (e) For sole traders, certified registration of business name if applicable and details of ‘continuity’ arrangements.

⁷Article 3(3) is reproduced in Appendix 2.

2. Memorandum and Articles of Association

Section 10(5)(b) of the IIA: ‘A proposed investment business firm shall not be authorised by the Financial Regulator under this section unless - it satisfies the Financial Regulator that, where applicable, the Memorandum of Association and Articles of Association of the proposed investment business firm contain sufficient provisions so as to enable it to operate in accordance with this Act, and in accordance with any condition or requirement, or both, as the Financial Regulator may impose,’

Documentation to be submitted by Incorporated Applicants:

- (a) A certified copy of the applicant’s Memorandum of Association,
- (b) A certified copy of the applicant’s Articles of Association,
- (c) Certified copies of any special resolutions amending the Memorandum and Articles of Association.

It is the applicant’s responsibility to ensure that the scope of its Memorandum of Association is sufficiently wide to meet the conditions set out in Section 10(5)(b) of the IIA.

3. Capital

Section 10(5)(c) of the IIA: 'A proposed investment business firm shall not be authorised by the Financial Regulator under this section unless - it has the minimum level of capital which shall be specified by the Financial Regulator'

Financial projections covering a period of three years must be submitted and should include:

- (a) Detailed projected profit and loss accounts,
- (b) Detailed projected balance sheets.

Applicants currently trading must provide copies of their annual or audited accounts for the preceding 3 years and their most recent management accounts.

The audited accounts must be sufficiently detailed to demonstrate compliance with initial capital requirements and the ability to meet capital requirements on an ongoing basis (see also section 8 in respect of consolidated capital requirements). Capital requirements are prescribed depending on the nature of the proposed business. To ascertain its initial capital requirement an applicant should refer to sections 1.5 to 1.8 of the CAD Notice.

An applicant should refer to section 1.9 of the CAD Notice to determine the criteria to be used to meet initial capital requirements and ongoing capital requirements.

Investment business firms that are not subject to the provisions of the ISD are subject to capital requirements that are set by the Financial Regulator.

4. Probity and Competence of Directors and Managers

Section 10(5)(d) of the IIA: ‘A proposed investment business firm shall not be authorised by the Financial Regulator under this section unless - it satisfies the Financial Regulator as to the probity and competence⁸ of each of its directors⁹ and managers,’

A completed Individual Questionnaire¹⁰ for each proposed appointee must be submitted (this must include the compliance officer). In relation to completion of the form, please note:

- (a) All questions must be answered fully.
- (b) If a question does not apply insert ‘not applicable’.
- (c) There must be no gaps regarding information provided in respect of the individual’s work experience and/or educational details
- (d) Note that question 4.21 of the Individual Questionnaire should only be answered by those having a shareholding in the applicant firm (see also section 5).
- (e) Referees provided (see question 7.1 of the Individual Questionnaire) should be relevant for the purposes of considering the probity and competence of an individual in respect of a position in a firm seeking authorisation to provide

⁸ Section 2(3) of the IIA states that ‘**Competence**’ in relation to any director or manager means competence in respect of matters in which such director or manager concerned would be expected to be competent in the discharge of his professional responsibilities.

⁹ ‘**Director**’ is defined to include ‘any person occupying the position of director by whatever name called and any person who effectively directs or has a material influence over the business of an authorised investment business firm and includes a shadow director within the meaning of the Companies Act, 1990’. Section 2(4)(b) states that ‘references to “director” shall be construed as references to every member, officer, partner or other person holding any proprietary voting or other interest in the body of persons concerned and includes any person who effectively directs or has a material influence over the business of the body of persons concerned’.

¹⁰ Available from the following website, www.ifsra.ie

investment advice or investment business services. References must contain the referee's opinion of the applicant's character. References which merely contain a record of service are not acceptable. Two referees must not be provided from the one entity.

- (f) Where applicable one referee must be provided from the individual's immediate previous employer and the referee in question should be a senior person in the relevant entity.
- (g) The declaration to the Individual Questionnaire must be endorsed on behalf of the firm by a director of the firm. Original signatures are required in this regard. Please note that an individual **cannot** endorse his/her own Individual Questionnaire.

5. Suitability of Qualifying Shareholders

Section 10(5)(e) of the IIA: ‘A proposed investment business firm shall not be authorised by the Financial Regulator under this section unless - it satisfies the Financial Regulator as to the suitability of each of its qualifying shareholders¹¹’

A **qualifying shareholder** is defined by the IIA as ‘a person who has or controls a qualifying holding’. A **qualifying holding** is defined as ‘a direct or indirect holding of shares or other interest in a proposed investment business firm or an authorised investment business firm which represents 10 per cent or more of the capital or of the voting rights, or any direct or indirect holding of less than 10 per cent, which, in the opinion of the Financial Regulator, makes it possible to control or exercise a significant influence over the management of the proposed investment business firm or authorised investment business firm in which a holding subsists.’. (See also footnote 15 for a definition of ‘close links’.)

This means ‘looking through’ the proposed direct shareholder in the applicant and each subsequent indirect shareholder to identify both the intermediate and ultimate legal and beneficial shareholders including those who are in a position to control or influence the applicant firm.

Proposed complex structures will only be approved where the Financial Regulator is satisfied that the ultimate registered/beneficial shareholders have been identified and that the structure does not prevent the effective supervision of the firm.

The following sections list the documentation to be submitted by different types of qualifying shareholders:

¹¹ Section 2(4)(c) states that ‘references to “shareholder” and “qualifying shareholder” shall be construed as references to any partner, member or other person holding any proprietary, voting or other interest in the body of persons concerned’.

Qualifying Shareholder - Individuals

Where a qualifying shareholder is an individual (natural person) he or she must submit:

- (a) Completed 'Individual Questionnaire' in accordance with the guidelines set out in Section 4;
- (b) Regulatory Status of the individual – that is whether or not the individual is regulated, or registered with a regulatory body and if so, the name of that body;
- (c) Documentation evidencing the fact that the individual is the registered holder of the shares (for example, a certified copy of the share register);
- (d) Written confirmation from the individual that he/she is the *beneficial* owner of the shares.

Qualifying Shareholder - Company

Where a qualifying shareholder is an incorporated entity, it must submit:

- (a) Description of activities;
- (b) Whether or not company is regulated and if regulated, by which authority;
- (c) Most recent audited accounts if applicable. If not available most recent management accounts;
- (d) Details of proposed interaction with the applicant;
- (e) Documentation evidencing the fact that the company is the registered holder of the shares, i.e. certified copy of the share register;
- (f) Written confirmation that the company is the *beneficial* owner of the shares.

Qualifying Shareholder - Nominee Company:

Where a company holds 10% or more of the shares in an applicant firm on behalf of third parties¹², it must submit details relating to the proposed nominee holders of the shares including:

- (a) Documentation evidencing the fact that the nominee is the registered holder of the shares, i.e. certified copy of the share register;
- (b) Documentation evidencing the ownership of the nominee company, i.e. certified copy of the share register;
- (c) Audited accounts of the nominee company;
- (d) Identity of the beneficial owners of the shares;
- (e) Details regarding what object is intended to be served by using such a nominee company, rather than holding the shares directly;
- (f) Appropriate declarations in respect of the nominee holding the shares in trust for the beneficial owners, including formal confirmation from the nominee itself that the relevant declarations of trust remain valid and in force.

Qualifying Shareholder - Trusts:

Where a qualifying shareholder is a trust, the trustees must submit:

- (a) Documentation evidencing the fact that the trust is the registered holder of the shares, i.e. certified copy of the share register;

¹² The Financial Regulator may require that all nominee holders (i.e., including those which do not have a qualifying holding) be identified to ascertain that those individual holdings when added to other direct or indirect holdings do not amount to a qualifying holding.

- (b) Copies of the trust deed and any other documentation constituting the trust or relating to the trust in some other way including any supplemental or ancillary deeds, documents or agreements or side letters;
- (c) Completed Individual Questionnaires for the settlors of the trusts;
- (d) Completed Individual Questionnaires for the trustees of the trusts;
- (e) Completed Individual Questionnaires for the beneficiaries of the trusts (including details of age for minors) and those of all persons who are within the class of prospective beneficiaries;
- (f) Most recent audited accounts (if available) or other relevant financial information in relation to the trusts;
- (g) Reasons for structure;
- (h) A signed undertaking is required to ensure that the requirements of the IIA in relation to the qualifying shareholders are met on a continuous basis. The undertaking must contain provisions to provide the Financial Regulator with:
 - advance notice of any acquiring transactions or disposals as defined in Section 38 of the IIA;
 - advance notice of any proposed change in the beneficiaries to the trust, the trust deeds, or the trust's governing law;
 - and must be signed by all Qualifying Shareholders including the trustee(s) and the applicant firm.
- (i) Legal opinion confirming the validity and efficacy of the undertaking as drafted to suit the circumstances of any particular qualifying shareholder trust.

Qualifying Shareholder - Partnerships:

Where a qualifying shareholder is a limited liability partnership ('LLP'), the partners must submit:

- (a) Description of the LLP itself (including names of general and limited partners and details of respective roles);
- (b) Descriptions of activities of the LLP;
- (c) Whether or not the LLP is regulated and by which authority;
- (d) Most recent audited accounts if applicable. If not available most recent management accounts;
- (e) Details of proposed interaction with applicant;
- (f) Documentation evidencing the fact that the LLP is the registered holder of shares (if this is the case);
- (g) Written confirmation that the LLP is the beneficial owner of the shares;
- (h) The Financial Regulator will require a copy of the partnership deed and any relevant agreement between the general and limited partners.

6. Organisation Structure

Section 10(5)(f) of the IIA: ‘A proposed investment business firm shall not be authorised by the Financial Regulator under this section unless - it satisfies the Financial Regulator as to the organisational structure and management skills of the proposed investment business firm and that adequate levels of staff and expertise will be employed to carry out its proposed activities’.

The direction of an applicant’s business must be decided by *at least* two approved personnel who are of sufficiently good repute and are sufficiently experienced to do so.

The following should be submitted:

(a) Proposed organisational structure:

- Reporting lines- including external reporting lines i.e. for firms who may have reporting obligations in respect of operational functions to other group entities;
- Functions;
- Distinction between functions/powers retained by the board and those delegated to management;
- Detailed breakdown of proposed staffing including identity of respective individuals, their proposed role in the firm and any overlapping functions that will be carried out.

(b) Activities/ Business Plan:

- Detailed description of each proposed activity of the applicant;
- Appropriate transaction order flows for each proposed activity showing the relationship between the firm, clients or counterparties, clearing agents, brokers and relevant markets, etc;

- A description of the nature of the proposed relationship with clients, counterparties, etc.;
- Where available - sample customer documentation, details of proposed charges, any proposed promotional material etc.;
- The details provided must indicate the activities that will take place in the applicant firm and those that will take place elsewhere (e.g., via tied agents, other group companies, associated/ related undertakings, non-related companies, etc.);
- Details of how the applicant proposes to identify, monitor and manage risk, if applicable.

Note: The above information must complement other information provided in the business plan - for example please see Sections 6 (a) and 9 of this document.

7. Provision of Information on an Ongoing Basis

Section 10(5)(g) of the IIA: ‘A proposed investment business firm shall not be authorised by the Financial Regulator under this section unless - it satisfies the Financial Regulator that it has and will follow established procedures to enable the Financial Regulator to be supplied with all information necessary for its supervisory functions and to enable the public to be supplied with any information which the Financial Regulator may specify,’

The following must be provided:

- (a) Operating procedures manual including internal controls, staff training and recruitment procedures;
- (b) Risk management procedures. These must reflect provision 2.4 of the General Supervisory and Reporting Requirements as set out in the Handbook;
- (c) The applicant must provide draft copies of any agreements that it intends to enter into upon authorisation. For example in respect of non - discretionary clients a draft terms of business must be submitted which reflects provision 2.2. of the Code of Conduct as set out in the Handbook. In respect of discretionary clients a draft investment management agreement must be submitted which reflects provisions 2.2 and 2.3 of the Code of Conduct as set out in the Handbook;
- (d) In respect of applicants seeking to provide administration services to collective investment schemes, a draft administration agreement must be submitted.

8. Ability to Supervise Firm

Section 10(5)(h) of the IIA: ‘A proposed investment business firm shall not be authorised by the Financial Regulator under this section unless - it satisfies the Financial Regulator that the organisation of its business structure is such that it and any of its associated or related undertakings¹³, where appropriate and practicable, are capable of being supervised adequately by the Financial Regulator,’

S.I. No. 267 of 1996 (Supervision of Credit Institutions, Stock Exchange Member Firms and Investment Business Firms Regulations, 1996)¹⁴ is also relevant here. This requires that authorisation shall not be granted to a firm to provide investment services where the existence of close links¹⁵ between the firm and other persons, or the laws, etc., of a state which is not a Member State of the European Union governing one or more persons with which the firm has close links, or difficulties

¹³ **Associated undertaking** means ‘an associated undertaking within the meaning of Regulation 34 of the European Communities (Companies: Group Accounts) Regulations, 1992 (S.I. 201 of 1992)’ (copy attached). **Related undertaking** means -

- ‘(a) companies related within the meaning of section 140(5) of the Companies Act, 1990, and subsequent amendments thereto [copy attached], or
- (b) undertakings where the business of those undertakings has been so carried on that the separate business of each undertaking, or a substantial part thereof, is not readily identifiable, or
- (c) undertakings where the decision as to how and by whom each shall be managed can be made either by the same person or by the same group of persons acting in concert’.

¹⁴ This statutory instrument transposes the so-called ‘post-BCCI’ directive for credit institutions, stock exchange member firms and investment business firms.

¹⁵ **Close links** is defined by S.I. No. 267 of 1996 as:

- “(a) an arrangement whereby two or more persons are linked by -
 - (i) “participation”, which means the ownership, direct or by way of control, of 20 per cent. or more of the voting rights or capital of an undertaking, or
 - (ii) “control”, which means the relationship between a parent undertaking and a subsidiary undertaking, in all the cases referred to in Article 1(1) and (2) of Directive 83/349/EEC, or a similar relationship between any person and an undertaking and any subsidiary of a subsidiary shall also be considered a subsidiary of the parent undertaking which is at the head of those undertakings, and
- (b) an arrangement whereby two or more persons are permanently linked to one and the same person by a control relationship.”

involved in their enforcement, would prevent the effective exercise by the Financial Regulator of its supervisory functions.

The following information must be provided:

- (a) A complete group structure showing the name of each undertaking within the group, the percentage holdings of each undertaking, the country in which each such undertaking is incorporated and the country in which its head office is located;
- (b) All associated and related undertakings should be identified in the structure;
- (c) A brief description of the activities of all undertakings in the group;
- (d) Audited accounts as required by the Financial Regulator having reviewed the structure;
- (e) Details of the extent of any proposed interaction between group companies and the applicant;
- (f) Details of whether or not any companies in the group are regulated and if so by which authority. In this context note that Article 6 of the Investment Services Directive (ISD) requires consultation with other authorities in certain cases¹⁶;
- (g) The information provided under this heading must be sufficient to determine whether or not a firm is part of a financial holding company group or a mixed activity holding company group.

Consolidated Capital Requirements

The CAD Notice (Article 7 - implemented by Part 10 of the Financial Regulator's notice of 29 December 1995) requires that consolidated supervision applies to

¹⁶ Article 6 of the Investment Services Directive requires that "The competent authorities of the other Member State involved shall be consulted beforehand on the authorisation of any investment firm which is:

- a subsidiary of an investment firm or credit institution authorised in another Member State;
- a subsidiary of the parent undertaking of an investment firm or credit institution authorised in another Member State; or
- controlled by the same natural or legal persons as control an investment firm or credit institution authorised in another Member State".

- “- any institution which has a credit institution within the meaning of Directive 92/30/EEC, an investment firm or another financial institution as a subsidiary or which holds a participation in such an entity, and
- any institution the **parent undertaking**¹⁷ of which is a **financial holding company**¹⁸.”

Where a firm is part of a **mixed activity holding company**¹⁹ the directive also provides that the holding company or investment firm will be required to supply any information relevant for the purposes of supervising the investment firm subsidiaries. Furthermore “where an investment firm, financial holding company or a mixed activity holding company controls one or more subsidiaries which are insurance companies, the competent authorities and the authorities entrusted with the public task of supervising insurance undertakings shall co-operate closely...”.

¹⁷ See Appendix 3 – Definition of Parent Undertaking

¹⁸ See Appendix 4 –Definition of Financial Holding Company

¹⁹ For groups which do not include a credit institution a **mixed activity holding company** is defined as “...a parent undertaking, other than a financial holding company or an investment firm, the subsidiaries of which include at least one investment firm”.

9. Head Office Requirement

Section 10(5)(i) of the IIA: ‘A proposed investment business firm shall not be authorised by the Financial Regulator under this section unless - where the Financial Regulator considers it appropriate, having regard to Council Directive No. 93/22/EEC of 10 May 1993, it satisfies the Financial Regulator that:

- (I) where the proposed investment business firm is a natural person or a partnership, its head office and the place in which it actually carries on its business is in the State,**
- (II) where the proposed investment business firm is incorporated, its registered office and head office are in the State, or**
- (III) it is a branch of an investment business firm which has its head office or its registered office in a country which is not a Member State,’**

Information provided by the applicant must be sufficient to show that the head office is in the State. What constitutes a “head office” is a matter to be determined, given the particular circumstances of each case. In general, the Financial Regulator interprets “head office” to mean the location of the mind and management of the applicant and the place where the day-to-day decisions about the direction of the applicant’s business are taken. While the onus of satisfying the Financial Regulator that adequate and effective control of an entity rests here, and not abroad, lies with an applicant, some guidance of what the Financial Regulator would expect to see is set out below.

This is not intended to be a ‘formula’ for meeting the head office requirement. However, it does provide an indication of what the Financial Regulator would expect to see in this respect. The Financial Regulator would expect a high degree of decision making at board and committee level to take place within the State. In addition, to ensure that central management is located within the head office, its functions should include:

- personnel/human resources/training
- financial control
- internal audit
- legal and compliance
- risk management

It follows that there should be a significant senior management presence in Ireland to ensure that full authority and effective control of the applicant rests with the head office.

10. Other

Section 10(5)(j) of the IIA: ‘A proposed investment business firm shall not be authorised by the Financial Regulator under this section unless - it satisfies the Financial Regulator as to its conduct of business, its financial resources and any other matters as the Financial Regulator considers necessary in the interest of the proper and orderly regulation and supervision of authorised investment business firms or in the interests of the protection of investors’.

Any additional information required to enable the Financial Regulator make a decision under this sub-heading will be notified to the applicant having examined the material provided. In general, the business plan should be sufficiently detailed to make it clear that the applicant has sufficient resources to effectively conduct its business within the requirements of the supervisory regime and it should focus on the proposed activities of the applicant rather than that of the group (if part of group structure). Details of any situations or events of which the applicant is aware which impact or may potentially impact on the applicant in any way should be included in the application.

**Financial Institutions and Funds Authorisation Department
Irish Financial Services Regulatory Authority
May 2005**

APPENDIX 1 – Section 2(6) of the IIA - Exclusions

- (6) Notwithstanding subsection (1) of this section, investment business firm shall not include -
- (a) a person who provides investment business services or investment advice only,
 - (i) to undertakings of which it is a subsidiary or its own subsidiaries or other subsidiaries of the same parent undertaking, or
 - (ii) where those services consist exclusively in the administration of employee equity participation schemes, or
 - (iii) in both of these circumstances, or
 - (b) the Financial Regulator or the National Treasury Management Agency or the Minister for Finance, or
 - (c) firms which provide investment business services consisting exclusively in dealing for their own account on futures or options markets or which deal for the account of other members of those markets or make prices for them and which are guaranteed by clearing members of the same markets, and where responsibility for ensuring the performance of contracts entered into by such firms is assumed by clearing members of the same market, or
 - (d) An Post (including any postmaster acting on its behalf) or the Prize Bond Company Ltd. or any successor to the Prize Bond Company Ltd. as operator of the Prize Bond scheme, when any of the bodies or persons referred to in this subparagraph is acting as an agent of or

otherwise for that purpose on behalf of the Minister or the National Treasury Management Agency, or

- (e) insurance undertakings as defined in Article 1 of Council Directive 73/239/EEC or Article 1 of Council Directive 79/267/EEC or undertakings carrying on the reinsurance and retrocession activities referred to in Council Directive 64/225/EEC, or
- (f) collective investment undertakings and the depositaries and managers of such undertakings, insofar as the activities of the collective investment undertaking or the depositaries or the managers are subject to regulation by the Financial Regulator, or
- (g) persons whose main business is trading in commodities amongst themselves or with producers or professional users of such products and who provide investment business services only for such producers or professional users to the extent necessary for their main business, or
- (h) credit institutions which provide investment business services or investment advice and which, in so doing, do not exceed the terms of authorisations under Directive No. 77/780/EEC of 12 December 1977 as amended by Council Directive 89/646/EEC of 15 December 1989 as amended and extended from time to time, or
- (i) an investment business firm which the Financial Regulator has determined does not require an authorisation because the provision of investment business services is only carried out because it is necessary to the main activities of the investment business firm, and, for these purposes, the determination of the Financial Regulator shall be for a fixed period only and shall be subject to whatever reporting requirements the Financial Regulator deems appropriate, or
- (j) the personal representative of a deceased person in respect of his actions as a personal representative or a trustee in respect of his actions as a trustee of a trust, where 'personal representative' has the same

meaning as it has in the Succession Act, 1965, and 'trustee' has the same meaning that it has in the Trustee Act, 1893, provided that this paragraph shall not apply where the principal objective of the trust is to provide investment services to members of the public, or

- (k) notwithstanding the obligations imposed on liquidators and receivers under this Act, a person appointed as a liquidator or receiver of a company in respect of any activities relating to the liquidation or receivership, or
- (l) any collective investment undertaking including its manager which is not established in the State but which:
 - (i) has received approval from the Financial Regulator, under the powers granted to it under other enactments, to market units of the undertaking in the State; or
 - (ii) has been authorised by the competent authority of another Member State under Council Directive 85/611/EEC, or
- (m) a practising member of an approved professional body, not being a certified person, who holds at his principal place of business, on behalf of clients, share certificates in private limited companies owned by those clients where the member holds the share certificates only in order to facilitate the orderly management of the private limited company's statutory records, where the holding of the share certificates arises from the provision of professional services by the member to the client.

APPENDIX 2 - Article 3(3) of the Investment Services Directive

“3(3) Without prejudice to other conditions of general application laid down in national law, the competent authorities shall not grant authorisation unless:

- an investment firm has sufficient initial capital in accordance with the rules laid down in Directive 93/6/EEC having regard to the nature of the investment service in question,
- the persons who effectively direct the business of an investment firm are of sufficiently good repute and are sufficiently experienced.

The direction of a firm’s business must be decided by at least two persons meeting the above conditions. Where an appropriate arrangement ensures that the same result will be achieved, however, particularly in the cases provided for in the last indent of the third subparagraph of Article 1(2), the competent authorities may grant authorisation to investment firms which are natural persons or, taking account of the nature and volume of their activities, to investment firms which are legal persons where such firms are managed by single natural persons in accordance with their articles of association and national laws.”

APPENDIX 3 – Definition of Parent Undertaking

Parent Undertaking

Defined by Article 1(1) of Directive (83/349/EEC) as an undertaking which:

- “(a) has a majority of the shareholders’ or members’ voting rights in another undertaking (a subsidiary undertaking); or
- (b) has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another undertaking (a subsidiary undertaking) and is at the same time a shareholder in or member of that undertaking; or
- (c) has the right to exercise a dominant influence over an undertaking (a subsidiary undertaking) of which it is a shareholder or member, pursuant to a contract entered into with that undertaking or to a provision in its memorandum or articles of association, where the law governing that subsidiary undertaking permits its being subject to such contracts or provisions. A Member State need not prescribe that a parent undertaking must be a shareholder in or member of its subsidiary undertaking. Those Member States the laws of which do not provide for such contracts or clauses shall not be required to apply this provision; or
- (d) is a shareholder in or a member of an undertaking, and:
 - (aa) a majority of the members of the administrative, management or supervisory bodies of that undertaking (a subsidiary undertaking) who have held office during the financial year, during the preceding financial year and up to the time when the consolidated accounts are drawn up, have been appointed solely as a result of the exercise of its voting rights; or
 - (bb) controls alone, pursuant to an agreement with other shareholders in or members of that undertaking (a subsidiary undertaking), a majority of shareholders’ or members’ voting rights in that undertaking. The Member States may introduce more detailed provisions concerning the form and contents of such agreements

APPENDIX 4 – Definition of Financial Holding Company

Financial Holding Company

For groups which do not include a credit institution, a **financial holding company** is defined as “...a *financial institution* the subsidiary undertakings of which are either exclusively or mainly investment firms or other financial institutions one at least of which is an investment firm”. A *financial institution* is an undertaking other than a credit institution or investment firm, the principal activity of which is to acquire holdings or to carry on one or more of the following activities:

- Acceptance of deposits and other repayable funds from the public
- Lending
- Financial Leasing
- Money transmission services
- Issuing and administering means of payment
- Guarantees and commitments
- Trading for own account or for the account of customers in money market instruments, foreign exchange, financial futures and options, exchange and interest rate instruments, transferable securities
- Participation in share issues and the provision of services related to such issues
- Advice to undertakings on capital structure, industrial strategy and related questions and advice and services relating to mergers and the purchase of undertakings
- Money broking
- Portfolio management and advice
- Safekeeping and administration of services
- Credit reference services
- Safe custody services