The Investor Compensation Company Limited

Funding Arrangements of the Investor Compensation Scheme

August 2013 to July 2016

Issue date 31 May 2013

Contents

1 Introduction

1.1. Background

In October 2012, the Investor Compensation Company Limited ["ICCL" or "Company"] consulted with Industry and Representative Bodies regarding the bases and rates for levying participant firms to the Investor Compensation Scheme ["Scheme"] for the period 1 August 2013 to 31 July 2016.

Nineteen submissions were made by both firms and Representative Bodies during the consultation phase. Each of the submissions was considered by the Board of the ICCL ["the Board"] and a response document was published by the Company in May 2013.

The ICCL remains acutely aware of the impact of the current economic and regulatory climate on firms. The Board has sought to strike a balance between the legislative requirement to have adequate funds available to pay claims and the capacity of participant firms to fund the Scheme.

The ICCL, having consulted with the Central Bank of Ireland ["the Bank"], has now agreed the bases and rates which will apply for each of the three funding years to 31 July 2016. Specific details are provided in section 2 of this document for Fund A and Fund B firms.

This document also provides other information which the ICCL considers relevant and useful to participant firms in understanding the funding operations of the Scheme.

1.2. Funding Targets and Projections

The ICCL has sought to steadily build the reserves of the Scheme and the Board acknowledges the support given by participant firms. However, the Funding Consultation paper issued in October 2012 clearly highlighted the negative impact that the continuing decrease in the number of participant firms has had on Fund Reserve levels over the past three funding years. Over that period the number of authorised investment firms required to pay a levy to Fund A has fallen by 18% while the number required to pay a levy to Fund B has fallen by 20%.

The significance of the decrease in the number of participant firms poses a particular challenge to the longer term funding of Fund A reserves following the failure of Custom House Capital Limited (in Liquidation) ["CHC"] in late 2011.

The W&R Morrogh (2001) and CHC cases have demonstrated how reserves can be quickly depleted and emphasise the need for alternative liquidity options to enable the Scheme to swiftly put in place the funds required to meet the legislative requirements of the Compensation Scheme.

Target fund reserves have been considered on the expectation that the Excess of Loss Insurance policy continues to be placed on acceptable terms of excess, coverage and renewal premium throughout the duration of these Funding Arrangements.

Notwithstanding the ICCL's established policy of consulting on, and agreeing, levy rates over a 3-year cycle, investment firms should be aware that circumstances could arise which would require the Board to carry out an interim review.

The circumstances which could arise include:

- a further significant failure(s),
- significant changes to the Excess of Loss Insurance policy,
- significant changes to the structure of the market, and/or,
- significant legislative changes, particularly arising from changes at EU level.

Funding Targets

Fund A

In its current Funding Arrangements, agreed in 2009, the ICCL had targeted a minimum Fund Reserve of €30 million for Fund A. The failure of CHC, and resulting loss provisions, has effectively prevented the achievement of that target. The ICCL, having particular regards to:

- previous claims experience
- the legislative requirement to have an adequately funded Scheme,
- the current funding capacity of the industry, and
- the submissions to the consultation process,

has concluded that it is not practical to seek to build the reserves of Fund A to the €30 million target level over the course of the new funding arrangements. Accordingly, the ICCL, having consulted with the Bank, has agreed that the Company should seek to rebuild Fund A Reserves to a target level of €25 million over the life of these Funding Arrangements based on the assumptions outlined in the Funding Consultation paper.

The assumptions underlying the projections are:

- A 5% decrease year on year in the number of participant firms with no clients;
- A decrease of one medium sized participant firm with clients year on year;
- Interest income of 1% per annum based on opening reserves;
- Excess of Loss Insurance policy is renewable at a premium which is not materially higher than the current level;
- No significant bad debts are incurred.

The identification of an adequate long-term target Fund Reserve for Fund A is under active consideration by the ICCL. One factor which will directly impact on these considerations will be any decision to increase the minimum compensation threshold via an amendment of the Investor Compensation Scheme Directive ["ICSD"] (see paragraph 35 of the Funding Consultation paper). Other factors that may affect the calculation of a longer term target Fund Reserve include measures to strengthen the regulatory environment, the number of active participant firms in the Scheme and the ability of participant firms to fund the Scheme's reserves.

Fund B

The ICCL, having consulted with the Bank, has agreed a longer term target Fund Reserve of €30 million for Fund B. The ICCL considers it is prudent that Fund B continues to gradually build its reserves over time while also achieving greater proportionality between the income levels of participant firms and the annual levies payable. Accordingly, the ICCL, having consulted with the Bank, has agreed that Fund B Reserves should build steadily towards a target level of €24 million over the life of these Funding Arrangements based on the assumptions outlined in the Funding Consultation paper.

The assumptions underlying the projections are:

- A 5% decrease year on year in the number of participant firms at Levels 1 & 2;
- A 1% decrease year on year in the number of participant firms at all other levels;
- Interest income at 1% per annum based on opening reserves;
- Excess of Loss Insurance policy is renewable at a premium which is not materially higher than the current level;
- Bad debts incurred at €50k per annum.

Section 2 of this document sets out the agreed levy rates and bases to enable an adequate level of funding reserves to be achieved.

1.3. Related documents

1.3.1. Funding Consultation Paper – October 2012

1.3.2. Responses to Consultation Paper – May 2013

2 Fund Specific Information

2.1. Fund A

2.1.1. Basis of Assessment

The ICCL will continue to operate a self-assessment model for participant firms to determine the appropriate individual annual levy. The annual levy payable by a Fund A firm is based upon its number of eligible clients. *(Refer to Appendix 2)* The ICCL advises the Bank of these figures which may then be subject to verification by the Bank as part of its ongoing supervisory process. *(Refer to 3.7 and 3.8.2 below)*

2.1.2. Period of Assessment

The period of assessment will continue to be the participant firm's financial year which ended immediately prior to the commencement of the ICCL funding year. (e.g. where a participant firm's financial year ends on 31 March 2013, this financial data should be used for the ICCL Funding Year commencing 1 August 2013.)

2.1.3. Levy Rates

The levy rates for participant firms are set out in Tables 1 to 3 below.

Table 1 – Fund A rates effective 1 August 2013 to 31 July 2014

Band	Number of eligible clients	1 August 2013 to 31 July 2014
0	Zero	€4,460
A	1 – 9	€14,950
B	10 – 499	€23,900
C	500 – 2,499	€48,770
D	2,500 – 4,999	€102,380
E	5,000 – 24,999	€163,140
F	25,000 – 49,999	€170,930
G	Over 50,000	€273,280

Table 2 – Fund A rates effective 1 August 2014 to 31 July 2015

Band	Number of eligible clients	1 August 2014 to 31 July 2015
0	Zero	€4,910
A	1 – 9	€16,970
B	10 – 499	€27,130
C	500 – 2,499	€55,350
D	2,500 – 4,999	€116,200
E	5,000 – 24,999	€185,160
F	25,000 – 49,999	€194,010
G	Over 50,000	€310,170

Table 3 – Fund A rates effective 1 August 2015 to 31 July 2016

Band	Number of eligible clients	1 August 2015 to 31 July 2016
0	Zero	€5,400
A	1 – 9	€18,670
B	10 – 499	€29,840
C	500 – 2,499	€60,890
D	2,500 – 4,999	€127,820
E	5,000 – 24,999	€203,680
F	25,000 – 49,999	€213,410
G	Over 50,000	€341,190

2.1.4. Section 2(5) Exemption

Certain Fund A firms may be exempt from the ICCL Scheme if they satisfy both of the criteria set out in section 2(5) of the Investor Compensation Act, 1998, (as amended) ["the Act"].

Section 2(5)(a) is satisfied where a firm does not meet the definition of an authorised investment business firm under the Markets in Financial Instruments Directive 2004/39/EC (MiFID) i.e. the firm is exempt from regulation under MiFID by virtue of Article 2 of MiFID.

Section 2(5)(b) is satisfied where the **only** activities that the firm is authorised to carry on under the Investment Intermediaries Act 1995 (as amended) are either:

- Administration of collective investment schemes, or,
- Undertaking custodial responsibilities involving the safekeeping and administration of investment instruments of or relating to collective investment schemes.

It is the responsibility of the investment firm to apply for the exemption for each funding year. Where a firm no longer meets the criteria to avail of the exemption during any funding year, it is the responsibility of the firm to notify the ICCL and to pay the appropriate levy.

A guidance note in relation to the exemption is available from the ICCL website – www.investorcompensation.ie

2.2. Fund B

2.2.1. Basis of Assessment

The ICCL will continue to operate a self-assessment model for participant firms to determine the appropriate individual annual levy. The annual levy payable by a Fund B firm is based on its income derived from investment and insurance business. The ICCL advises the Bank of these figures which may then be subject to verification by the Bank as part of its ongoing supervisory process. (Refer to 3.7 and 3.8.2 below)

2.2.2. Period of Assessment

The period of assessment will continue to be the participant firm's financial year which ended immediately prior to the commencement of the ICCL funding year. (e.g. where a participant firm's financial year ends on 31 March 2013, this financial data should be used for ICCL Funding Year commencing 1 August 2013.)

2.2.3. Levy Rates

The levy rates for participant firms are set out in Tables 4 to 6 below.

Important Note:
Firms are requested to note the following changes from the June 2010 Funding Arrangements when self-assessing their levy and making the necessary annual return to the ICCL:

- Level 1 – income threshold has been increased from €60,000 to €75,000;
- The old Level 3 representing income between €150,001 and €700,000 has been split into two new bands, the new Levels 3 and 4, to achieve greater proportionality.
- The old Level 8 representing income greater than €15 million has also been split into two new bands, Levels 9 and 10, to achieve greater proportionality.

Table 4 – Fund B rates effective 1 August 2013 to 31 July 2014

Level	Income from Investment and Insurance Business	1 August 2013 to 31 July 2014
1	***< €75,000***	€200
2	***€75,001 - €150,000***	€250
3	***€150,001 - €400,000***	€400
4	***€400,001 - €700,000***	€550
5	€700,001 - €1.5m	€980
6	€1,500,001 - €3m	€1,700
7	€3,000,001 - €6m	€3,090
8	€6,000,001 - €15m	€11,900
9	**€15m – €25m**	€19,470
10	**> €25m**	€23,500

Table 5 – Fund B rates effective 1 August 2014 to 31 July 2015

Level	Income from Investment and Insurance Business	1 August 2014 to 31 July 2015
1	***< €75,000***	€200
2	***€75,001 - €150,000***	€250
3	***€150,001 - €400,000***	€400
4	***€400,001 - €700,000***	€550
5	€700,001 - €1.5m	€1,010
6	€1,500,001 - €3m	€1,750
7	€3,000,001 - €6m	€3,180
8	€6,000,001 - €15m	€12,260
9	**€15m – €25m**	€20,050
10	**> €25m**	€24,210

Table 6 – Fund B rates effective 1 August 2015 to 31 July 2016

Level	Income from Investment and Insurance Business	1 August 2015 to 31 July 2016
1	***< €75,000***	€200
2	***€75,001 - €150,000***	€250
3	***€150,001 - €400,000***	€400
4	***€400,001 - €700,000***	€550
5	€700,001 - €1.5m	€1,040
6	€1,500,001 - €3m	€1,800
7	€3,000,001 - €6m	€3,280
8	€6,000,001 - €15m	€12,630
9	**€15m – €25m**	€20,650
10	**> €25m**	€24,940

3 General Information for all Firms

3.1. Levy Obligation

Section 21 of the Act provides that authorised investment firms, including insurance intermediaries, ["firms"] shall pay to the ICCL, such levy as the ICCL may specify from time to time.

(The annual levy amounts for the period 1 August 2013 to 31 July 2016 are specified in Tables 1 to 6 of this document)

Firms are required to comply with section 21 of the Investor Compensation Act, 1998, (as amended). Firms that do not comply with section 21 and fail to pay their due levy will be referred by the ICCL to the Bank. The ICCL may take legal recovery proceedings against such firms. (Refer to section 3.8.1 below) The Bank may also take additional regulatory action against firms reported to it by the ICCL

3.2. Authorisation Change

There will be no adjustment of levy to reflect any changes in authorisation (excluding firms availing of the exemption documented at section 2.1.4) which occur during the funding year. The new rate of levy will apply from the following funding year on the basis of the firm's authorisation status at that time.

3.3. Newly Authorised Firms

Firms which are authorised during the ICCL's funding year (i.e. subsequent to the ICCL's annual invoicing process which takes place in August each year), will be required to pay the annual levy calculated on a pro-rata basis.

Where eligible client numbers or income figures are not available at the time of raising the first invoice, the first invoice will be raised at the lowest band/level of the appropriate Fund. In other circumstances, where eligible client numbers or income figures are available, the levy rate should be self-assessed by the firm on a case by case basis.

3.4. Revocation of Authorisation

Firms that have paid the annual levy in full and whose authorisation is revoked during the ICCL's funding year (i.e. subsequent to the ICCL's annual billing process which takes place in August each year), will be invited to claim a pro-rata refund of the annual levy they have paid.

The refund will be calculated on a pro-rata basis for each calendar month during which the firm was no longer authorised. On receipt of notification from the Bank that the firm is no longer authorised, the ICCL will initiate the refund request. The refund application must be received within six months of the date of revocation.

3.5. Invoicing process

Annual levy invoices are normally issued in August each year (i.e. the first month of the ICCL's financial year). Invoices are issued in hardcopy format to the principal business address as registered by the firm with the Bank.

E-Invoicing

The ICCL is currently considering the feasibility of introducing an E-invoicing facility to replace the issue of hard copy invoices to firms. All relevant submissions received in response to the ICCL's funding consultation process supported the introduction of such a facility. Firms will be informed of the outcome of these considerations in advance of the relevant annual invoicing process.

3.6. Payment Methods

The ICCL offers a number of payment methods to facilitate the payment of the annual levy in a timely and efficient method. Payment methods include direct debit, electronic funds transfer, debit/credit card on-line or by phone and cheque or bank draft.

3.7. Verification of self-assessed returns

All firms will be required to self-assess and return their eligible client numbers or income level for each funding year. In circumstances where a firm fails to submit the self assessment return of their eligible client numbers or income figures, payment will be deemed to constitute a return. (Refer to 3.8.2 below)

3.8. Non-compliance

3.8.1. Unpaid annual levies

Penalty Interest

Section 21(4) of the Act, provides that interest at a rate of 1.25% per month shall apply to overdue balances.

Reporting to the Central Bank of Ireland

Firms, that fail to pay their annual levy, will be reported to the Bank for failing to comply with their obligations under the Act.

Legal Recovery of unpaid annual levies

Section 21(5) of the Act provides that any sums due to the Scheme are recoverable as a simple contract debt in any court of competent jurisdiction. The ICCL has successfully taken legal action to recover unpaid levies. Details of judgments obtained are published in Stubbs Gazette, notified to the Bank and published on the ICCL website. Published judgments can be viewed at http:// www.investorcompensation.ie/judgmentsobtained.php

3.8.2. Incorrect self-assessed returns

Section 43(7) of the Act provides that any person who provides misleading information, (e.g. in relation to self assessment of eligible client numbers or total investment and insurance income), in purported compliance with its obligations under the Act will be committing an offence. In circumstances where a firm fails to submit the self assessment return of their eligible client numbers or income figures, payment will be deemed to constitute a return. Summary proceedings in relation to an offence under section 47 may be brought and prosecuted by the Director of Public Prosecutions or by the Bank.

3.9. Refund Policy

The ICCL continues to operate a refund policy which is set out in more detail on our website, www.investorcompensation.ie. The ICCL will regularly review the appropriateness of the policy and make necessary amendments as deemed appropriate by the Board.

The amount of annual levy to be paid in any year to the ICCL is calculated by the participant firm on a self-assessment basis by reference to the agreed funding categories and number of eligible clients in the case of Fund A participant firms (refer to section 2.1 above) or income bands in the case of Fund B participant firms (refer to section 2.2 above).

Firms may submit a request for a refund of overpaid levy on the basis that they have overstated eligible client numbers or income. The ICCL will process such refund requests where they are made within the same funding year as the relevant annual levy fell due for payment. Refund requests in respect of previous years will only be considered in exceptional circumstances.

The main justifications for this approach are:

- The ICCL is acting on trust and in good faith on information supplied to it by professional firms with regard to their eligible client numbers or income.
- The ICCL predicates its funding position and requirements on this data and pays out compensation in failure cases on the basis that those funds are available to it.
- Once levies are credited to a particular Fund, the Act (section 19) places restrictions on the extent to which payments, other than compensation payments, may be made from such funds.

3.10. A Branch joining the Investor Compensation Scheme of a Host Member State

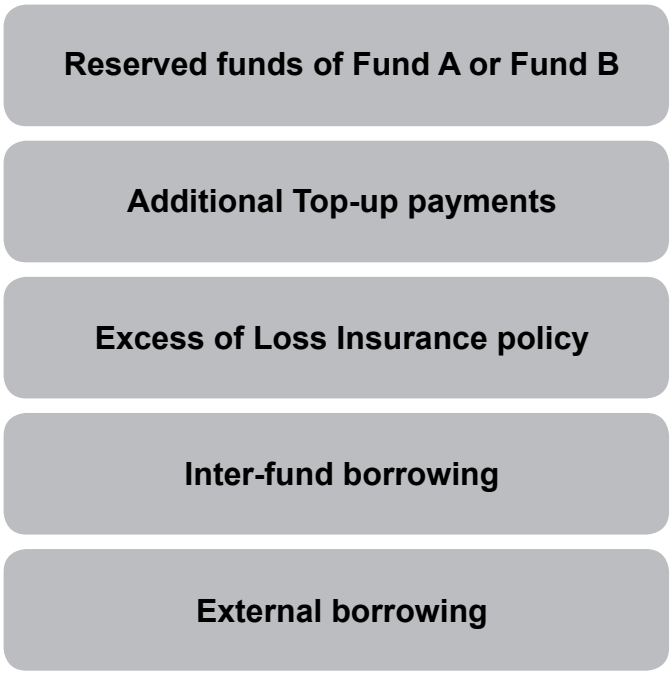
Investment firms should note that, in accordance with the requirements of the ICSD (Article 7, para. 1), an investment firm which establishes a branch in a host Member State may join the local investor compensation scheme where the level or scope of that scheme exceeds the minimum provided in the investment firm's home Member State. An investment firm seeking to avail of this provision should inform the ICCL in advance.

4 Appendices

4.1. Appendix 1 – Funding of Compensation Payments – Cascade Model

ICCL has developed a 'Cascade model' as the framework for funding the Scheme and ensuring sufficient liquidity in the event that a failure of an authorised investment firm gives rise to compensation under the Act. The Cascade model represents a prioritised approach to be taken by the ICCL, depending on the seriousness of the failure, to access funds for the purpose of making compensation payments. This approach is supported by the finding in the EU Commission's study that the availability of multiple sources of funding, even if never activated, enhances the viability of a scheme.

The ICCL model consists of the following capital and synthetic funding elements (not necessarily in the order presented below):



The implementation sequence of the individual elements of the cascade model is determined by the Board depending on circumstances prevailing at the time of the failure.

The ICCL Cascade model has been significantly strengthened with the addition of an "Excess of Loss" Insurance policy. However, the Board is aware of the difficulties that may be encountered in renewing this policy on an annual basis. The ICCL's Excess of Loss Insurance policy is a "specie" insurance policy with

annual renewal subject to detailed preparations by the Company and lengthy negotiations and discussions with our brokers and Lloyds Underwriters. Significant difficulties were experienced in the 2012/2013 renewal cycle due to perceived increased underwriting risks following the failure of investment firms, not only in Ireland, but internationally e.g. MF Global and Phoenix.

Recent Use of the Cascade Model

In respect of the failure of CHC in 2011, the Board deployed the Cascade model in the following manner:

- €15 million will be paid directly from the reserved funds of Fund A;
- The potential additional €4.7 million will be met from the Excess of Loss Insurance policy;

The decision of the Board not to require additional top-up payments was based on the following criteria:

- Sufficient reserves were available to meet the Excess of Loss Insurance policy excess of €15 million;
- No new failures had arisen that would have given rise to significant claims for compensation;
- The timely restoration of the Fund A reserves to a target level of €25 million over the life of these Funding Arrangements (Refer to section 1.2 above).

Reserved Funds of Fund A and Fund B

Table 7 - Fund A Projected Reserve levels

Year	Levy Income (€ million)	Interest Income (€ million)	Fund Reserve (€ million)
End-2012*	-	-	10.395
2013	3.635	0.195	13.677
2014	4.115	0.137	16.931
2015	4.594	0.169	20.698
2016	4.960	0.207	24.868

*** reference made to actual year-end fund reserve and includes a net €15 million in respect of CHC**

Table 8 - Fund B Projected Fund Reserve levels

Year	Levy Income (€ million)	Interest Income (€ million)	Fund Reserve (€ million)
End-2012*	-	-	19.051
2013	1.615	0.191	20.318
2014	1.364	0.203	21.332
2015	1.349	0.213	22.344
2016	1.336	0.223	23.352

*** reference made to actual year-end fund reserve**

Additional Top-up Payments

Most of those participant firms and representative bodies, which made submissions in response to the ICCL's funding consultation process, expressed the view that the Scheme's ability to meet its payment obligations should be funded mainly by annual levies, supplemented as appropriate by the Excess of Loss Insurance policy and borrowings, such that the liability burden can be smoothed over time. This is a particular concern in the context of the small number of firms with eligible clients in Fund A. Those firms wished to avoid open-ended additional top-up levies in the event of significant claims arising.

In the event of the failure of a firm which gives rise to a very substantial liability to the Company and which would place an unacceptable strain on the other elements of the Cascade Model, as described above, the ICCL may have no practical alternative other than to require firms to pay an additional top-up payment.

The arrangements which will apply in the event of a top-up being required are as follows:

- Should the default be attributable to a participating firm with declared eligible clients in Fund A, additional funding will be obtained through a special levy and/or increases in the annual levies payable by participating firms in Fund A with eligible clients pro-rata to their annual levy for the previous year.

- Should the default be attributable to a participating firm in Fund A, which had declared no eligible clients, additional funding will be obtained through a special levy and/or increases in the annual levies payable by all participating firms in Fund A, including firms with no eligible clients, pro-rata to their annual levy for the previous year.

- Should the default be attributable to a participating firm in Fund B, additional funding will be obtained through a special levy and/or increases in the annual levies payable by all participating firms in fund B pro-rata to their annual levy for the previous year.

In such a scenario the ICCL would seek to cap any additional top-up to twice the annual levy rate. However, given the legislative obligations[1] placed upon it, the Board considers that a cap could only be introduced if, for example:

- The Excess of Loss Insurance policy continues to be placed on acceptable terms with adequate reserves in place to meet initial claims.

- A watertight, last resort borrowing arrangement is in place that would guarantee the ability of the Scheme to make its statutory compensation payments on time.

Given its statutory obligations, the ICCL reserves the right to make alternative arrangements to those proposed above should the circumstances warrant it. Participant firms will be consulted should such circumstances arise.

Excess of Loss Insurance policy

Over the years, the ICCL regularly explored the option of purchasing insurance to cover compensation events as one method of capping the exposure of participants in the Scheme. In October 2010, an Excess of Loss Insurance policy was successfully arranged through the Lloyds market which provided a further level of cover in cases where the aggregate level of compensation exceeded €15 million in a policy year. The Board understands that the ICCL is the only EU Investor Compensation Scheme to successfully negotiate and maintain such cover.

Successfully negotiating and renewing the policy requires a significant undertaking from both the ICCL and a specialist Irish brokering team. The ICCL and the Broking Team compile extensive data covering participant firms and claims events annually, together with an actuarial assessment and a detailed analysis of the firms covered by the Scheme. The Excess of Loss Insurance policy, which was initially placed in October 2010, was renewed on 1 October 2011 and again on 1 October 2012.

The failure of CHC which is expected to lead to the first claim under the policy, is expected to cost the ICCL €15 million (anticipated claims compensation cost of €19.7 million less insurance recovery of €4.7 million from that Excess of Loss Insurance policy) based on the Administrator's latest estimates. Tables 9 & 10 below provide some quantitative detail on the Excess of Loss Insurance policy for Fund A & B respectively.

[1] Section 22(3) of the Act requires the Company to ensure that it is in a position to meet any reasonably foreseeable obligations under the Act and that it maintains a sufficient balance in all funds maintained by it which will enable it to meet such obligations.

Table 9 – Fund A: Quantitative detail regarding the ICCL Excess of Loss Insurance policy

Fund A					
Policy Year	**Policy Excess**	**Coverage over excess**	**Claims**	**Estimated Recovery**	**Premium**
Oct '10 – Sep '11	€15,000,000	€50,000,000	1	€4,700,000	€330,880
Oct '11 – Sep '12	€15,000,000	€50,000,000	0	0	€330,880
Oct '12 – Sep '13	€15,000,000	€50,000,000	0	0	€404,923

Table 10 - Fund B: Quantitative detail regarding the ICCL Excess of Loss Insurance policy

Fund B					
Policy Year	**Policy Excess**	**Coverage over excess**	**Claims**	**Estimated Recovery**	**Premium**
Oct '10 – Sep '11	€15,000,000	€10,000,000	0	0	€49,650
Oct '11 – Sep '12	€15,000,000	€10,000,000	0	0	€49,650
Oct '12 – Sep '13	€15,000,000	€10,000,000	0	0	€53,827

It is clear from the above tables that the negotiation and placing of the Excess of Loss Insurance policy has already proved extremely beneficial to participant firms of Fund A in helping to meet the potential compensation costs associated with the failure of CHC.

Inter-fund Borrowing

In circumstances where the ICCL considers it necessary to make use of the inter-fund borrowing facility, the Board of the ICCL continues to believe that the following criteria should be applied:

- no margin rates should apply (i.e. the return to the lending fund should be revenue neutral);
- the amount available for borrowing should be a maximum of one third of the funds held in the Fund; and
- the maximum repayment timeframe should be three years.

External Borrowing

There are acknowledged difficulties for the ICCL in gaining access to 'other borrowing facilities'. These difficulties can be summarised as follows:

Commercial Borrowing

i) Under current legislation, the ICCL is permitted to borrow[2] from commercial lending institutions. Such borrowing would be required in extreme circumstances where compensation payments could not be met through a combination of reserves, top-up levies, the Excess of Loss insurance policy and/or inter-fund borrowing.

ii) Following a comprehensive tender process, in 2007, the ICCL negotiated and put in place a €50 million standby credit facility. The annual charge for this facility, which extends to 2017, is €65,000. While the ICCL carries out regular reviews of this facility to ensure that it continues to meet ICCL's requirements it is noted that market conditions have changed significantly since 2007 such that the cost and terms of the current facility are quite favourable to the Company.

State Guarantees for ICCL borrowing

i) The Investor Compensation Act, 1998 (as amended), which governs the conduct of the ICCL, does not provide statutory State guarantee in relation to any borrowing of the ICCL. In discussions with the Department of Finance and the Central Bank, Article 86 (1) of the EC Treaty was highlighted as potentially prohibiting the granting of State guarantees to a public undertaking to underwrite commercial borrowings.

ii) In response to enquiries from the ICCL, the EU Commission, in July 2007, indicated that State guarantees might contravene articles 87 and 88 of the EC Treaty but suggested that the specific circumstances of each case would have to be looked at before making a final determination.

The ICCL remains committed to finding workable solutions to issues relating to establishing borrowing facilities which would allow the Scheme to manage the unlimited liability of the ICCL's participant firms in extreme circumstances. Notwithstanding the above, the ICCL will also continue to advocate the need for State or other guarantees for borrowing to enable the Investor Compensation Schemes to manage the potentially unlimited liability of firms to fund the scheme.

[2] Subject to the approval of the Bank in accordance with S.13(1) of the Act.

4.2. Appendix 2 – Basis of Assessment (FAQ's)

THE ASSESSMENT OF ELIGIBLE CLIENT NUMBERS FOR FUND A FIRMS

The levy rate for participant firms in Fund A has, since the establishment of the ICCL, been based on broad bands to minimise the need for detailed logging and verification of eligible client numbers.

The following guidelines and answers to frequently asked questions are intended to clarify certain issues in respect of which clarification has been requested by participating firms. These guidelines may be varied or added to in the future as the ICCL considers necessary.

Guidelines:

The following fundamental principles should be used when assessing if a client should be counted as "an eligible client":

- the assessment should be done annually
- the period of assessment will be the participant firm's financial year which ended immediately prior to the commencement of the ICCL funding year. (e.g. where a participant firm's financial year ends on 31 March 2013, this financial data should be used for the ICCL Funding Year commencing 1 August 2013.)
- the participant firm should count all clients who at any stage throughout the firm's financial year met the definition of eligible investor under section 2 of the Investor Compensation Act, 1998 (the Act). This will include "execution only" clients.

In effect, the ICCL's definition of "eligible client" means a person, not being an "excluded investor", who has entrusted money or investment instruments to an investment firm in connection with the provision of investment business services by the investment firm.

The answers to the frequently asked questions outlined below should be of further assistance to firms in determining if clients of the firm should be counted as "eligible clients" for the purposes of calculating the appropriate annual levy to the ICCL. The ICCL will continue to be available to give guidance to participants where there is any question of doubt or uncertainty.

1. **Should execution-only clients be included?**

   Yes, an execution-only client, not being an excluded investor, who has transacted business with the participant firm during the period of assessment should be included, regardless of whether there is any residual balance remaining on the client's account.

2. **Should a client who invests or redeems a once-off lump sum with a Product Producer via the participant firm be included?**

   This client should be included in "eligible client" numbers in the year(s) in which the lump sum is invested or redeemed.

3. **Should Employment and Investment Incentive Scheme (EIIS) and/or Business Expansion Scheme (BES) clients be included?**

   You should include eligible clients who have entered or exited the EIIS and/or BES scheme during the year in question.

4. **Should a client who deals with more than one entity within a group be included?**

   Yes. You should include eligible clients for whom a receipt and transmission service was provided by one group entity even if the order was passed to another group entity for execution.

5. **Why should clients covered for Deposit Protection Scheme purposes also be included in eligible client numbers for the Investor Compensation Scheme?**

   The number of different and separate interactions which entities within a group have with an eligible investor increases the overall risk profile of the group. Therefore, firms must include all relevant interactions with clients for the purposes of calculating eligible clients for the Investor Compensation Scheme.

6. **How should clients investing in Tracker bonds be dealt with?**

   Tracker bonds are investment instruments for the purposes of the Investment Intermediaries Act, 1995 and investment services in regard to these instruments may be provided by firms authorised under that Act. Firms authorised under the European Communities (Markets in Financial Instruments) Regulations 2007 (the MiFID Regulations) may also be authorised to provide investment services in regard to these instruments. Clients of an authorised investment firm who deal in these instruments could be eligible to claim compensation in respect of tracker bonds should that firm fail. On this basis, these clients must be included when determining the number of eligible clients of each firm.

Tracker Deposit Investors should be included in eligible client numbers, including at the initial investment and maturity stages.

7. Should Professional clients be included in eligible client numbers?

Professional and institutional clients are specifically excluded under section 2 of the Act. A professional client has the meaning given by the MiFID Regulations. Schedule 2 of the MiFID Regulations states that "A professional client is a client who possesses the experience, knowledge and expertise to make its own investment decisions and properly assess the risks that it incurs."

In determining eligible client numbers for the purposes of calculating the appropriate ICCL levy, firms should exclude professional clients as set out in Schedule 2 of the MiFID Regulations.

8. Should Bed and Breakfast clients be included?

Bed and Breakfast clients must be included in eligible clients unless the firm does not at any time hold/control money or investment instruments.

9. Should accountants be included in eligible client numbers?

Yes. An accountant should be included unless:

9.1. the accountant is acting as a provider of investment business services, or
9.2. the accountant is a professional investor as referred to in question 7 above.

10. Should clients which have been referred by an accountant be included?

Yes. Clients which are referred by accountants to participant firms, do qualify to be treated as eligible investors by the participant firm and should be included in the assessment of eligible client numbers by the participant firm.

11. Should solicitors be included in eligible client numbers?

Yes. A solicitor should be included unless:

11.1. the solicitor is acting as a provider of investment business services, or
11.2. the solicitor is a professional investor as referred to in question 7 above.

12. Should clients which have been referred by a solicitor be included?

Yes. Clients which are referred by solicitors to participant firms, do qualify to be treated as eligible investors by the participant firm and should be included in the assessment of eligible client numbers by the participant firm.

13. How should investment clubs be treated?

A club is an association or grouping without legal personality within the meaning of Section 37(3) of the Act. Therefore, each investment club should be treated as a single eligible client.

14. Are pension funds excluded investors and therefore should they be excluded from eligible client numbers?

In general, Pension Funds meet the definition of professional and institutional clients as referred to in question 7 above. However, for the purposes of calculating eligible client numbers, individuals operating a personal retirement account should be included.

15. How should members of Employee Share Ownership Plans (ESOPs) be treated when determining eligible client numbers?

Due to the variety of ESOP arrangements which exist, firms should adopt a 'principles' based approach when deciding how to calculate eligible client numbers in relation to their ESOP arrangements. Firms should count all ESOP members who at any stage throughout the firm's financial year met the definition of eligible investor under section 2 of the Act, including execution-only clients.

In general, ESOPs comprise three elements:

- an Employee Share Ownership Trust (ESOT – a trust),
- an Approved Profit Sharing Scheme (APSS – a trust), and,
- Beneficiaries.

When shares are transferred from an ESOT to an APSS, participants become beneficially entitled to the shares with immediate effect irrespective of any procedural delays which might occur in effecting the transfer of shares from the APSS to beneficiaries.

Therefore, the following bases should be used in determining the number of eligible clients a firm has in relation to an ESOP – unless the clients would otherwise fall to be 'excluded investors' under section 2(1) of the Act:

- The Trustee(s) of the ESOT should be counted as a single eligible client.
- The APSS Trustee(s) should be treated as a single eligible client if the Trust holds shares which are not attributable to particular beneficiaries.
- Each beneficiary, either to whom the APSS has transferred shares or on behalf of whom the Trustee(s) of the APSS holds shares, should be counted as individual eligible clients.

A key issue with regard to whether an ESOP, or, in particular, an ESOT / APSS, constitutes one eligible client or whether some, or all, of their individual members constitute eligible clients depends on whether each such ESOP / ESOT / APSS / individual member meets the definition of eligible investor.

Any such determination should be undertaken on a case by case basis for any given ESOP situation.

16. How should the firm treat insurance-only clients?

Insurance-only clients should be included in a participant firm's calculation of eligible client numbers except where the insurance-only client falls under the definition of an 'excluded investor' under Section 2(1) of the Act.

17. How should the firm treat clients to whom the firm provides an investment business service and an insurance business service?

An eligible client whom a participant firm identifies as both an investment and insurance client should be counted only once for the purpose of calculating the firm's eligible client numbers.

18. Does the Markets in Financial Instruments Directive (MiFID) have an impact on the calculation of eligible clients?

MiFID offers clarification with regard to a participant firm's classification and treatment of its clients. Essentially, a different standard of service can be provided to the three classifications of client (retail, professional and eligible counterparty). A participant firm's systems must be able to identify and classify each client and each client's transactions in order to ensure that the relevant rules are met.

For the purposes of MiFID, some clients may be classified as professional in respect of specific investment services or transactions or products and be classified as retail in respect of other investment services or transactions or products. Further guidance in professional clients is provided under question 7 earlier.

For the purpose of determining the appropriate levy to the ICCL, a participant firm should include all eligible clients, even those who are only eligible in respect of a certain investment service, transaction or product. The fact that the client is classified as professional in respect of all other services, transactions or products would not exclude them from the calculation of eligible client numbers.

4.3. Appendix 3 – Description of Funds and Participant Firm Categories

At inception and following consultation with industry, the ICCL established two funds designated as Fund A and Fund B. The categories of firms which pay a levy to each of these Funds are derived directly from the Bank's authorisations/ registrations and are adapted, as appropriate, where the Bank's categorisation of firms changes.

Fund A

Fund A is intended to meet claims from eligible investors of:

- Investment Firms authorised under the European Communities (Markets in Financial Instruments) Regulations 2007.
- Investment Firms authorised under Section 10 of the Investment Intermediaries Act, 1995 ["IIA"] that are not exempt under Section 2(5) of the Investor Compensation Act, 1998.
- Stockbrokers authorised under the European Communities (Markets in Financial Instruments) Regulations 2007.
- Credit Institutions authorised to provide investment business services.
- Certain certified persons who provide investment business services, which are similar to services provided by Fund A firms, in a manner which is incidental to their main professional activities.
- UCITS management companies, authorised to undertake Individual Portfolio Management Services[3].

In addition to the categories of authorised firms listed above that are currently subject to coverage, the transposition of Directive 2011/61/EU – Alternative Investment Fund Managers Directive, will require the coverage of the Scheme to be extended to meet claims from eligible investors of Alternative Investment Fund Managers authorised to undertake Individual Portfolio Management Services[4&5].

[3] Individual Portfolio Management Services refers to the management of portfolios of investments and discretionary portfolio management services as well as non-core services such as investment advice, safekeeping and administration services.

[4] Article 12(2) of Directive 2011/61/EU – Alternative Investment Fund Managers Directive (AIFMD) – which has a transposition date of 22 July 2013, requires that for each AIFM, the authorisation of which also covers discretionary portfolio management services as referred to in Article 6(4)(a), shall be subject to the provisions of Directive 97/9/EC – Investor Compensation Directive for the services referred to in Article 6(4) of AIFMD.

[5] Individual Portfolio Management Services refers to the management of portfolios of investments and discretionary portfolio management services as well as non-core services such as investment advice, safekeeping and administration services, and receipt and transmission of orders in relation to financial instruments.

Fund B

Fund B is intended to meet the claims of eligible investors of:

- Authorised Advisors authorised under the IIA.
- Multi-Agency Intermediaries authorised under the IIA.
- Insurance Intermediaries registered with the Central Bank of Ireland under the European Communities (Insurance Mediation) Regulations 2005.
- Certain certified persons who provide investment business services, which are similar to services provided by Fund B firms, in a manner which is incidental to their main professional activities.

Determination of appropriate Fund for levy purposes

When establishing the correct fund to which a firm is required to pay a levy, the authorisation of the firm will take precedence over the registration of the firm. (e.g. An authorised MiFID investment firm that is also registered under the European Communities (Insurance Mediation) Regulations 2005 (the IMD Regulations), as an insurance intermediary, will be assessed as a Fund A firm for the purposes of paying a levy to the Scheme.)

4.4. Appendix 4 – Relevant definitions[6]

Investor Compensation Act, 1998

"Authorised investment firm" means –

(a) an authorised investment business firm,

(b) an authorised investment firm, as defined in the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No 60 of 2007),

(c) a credit institution the authorisation of which by the Bank under Directive No. 77/780/EEC of 12 December 1977 and Directive No. 89/646/EEC of 15 December 1989 extends to one or more investment services listed in section A of the Annex to the Investment Services Directive,

(d) an insurance intermediary, or

(e) a management company authorised under the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2003 (S.I. No. 211 of 2003), as amended, to undertake the services referred to in Regulation 16(3) of those Regulations;

"Client" means a person

(a) to whom an investment firm provides investment business services, or

(b) who has entrusted money or investment instruments to an investment firm in connection with the provision of investment business services by the investment firm;

"Eligible investor" means a person, not being an excluded investor, who is a client of an investment firm and has made an application for payment under section 34 of the Act.

"Excluded investor" means a client of an investment firm which has been the subject of a determination by the supervisory authority under section 31 or a ruling and, in relation to that investment firm, is -

(a) a professional or institutional client, including:

i. an investment firm;

ii. an investment firm for the purposes of the Investment Services Directive;

iii. a credit institution as defined in Article 1 of Council Directive No. 77/780/EEC;

iv. a financial institution as defined in Article 1(6) of Council Directive No. 89/646/EEC of 15 December 1989;

v. an insurance undertaking;

vi. an undertaking for collective investment; or

vii. a pension or retirement fund, or

[6] Relevant definitions are consistent with legislation enacted up to 31 May 2013.

(b) a local authority, or
(c) a director, manager or personally liable member of the investment firm, a holder of at least 5 per cent of the capital of the investment firm, a person responsible for carrying out the statutory audit of the investment firm or a client with similar status in a group undertaking, or
(d) a close relative or a third party acting on behalf of a client referred to in paragraph (c), or
(e) another firm in a group undertaking, or
(f) a client who has any responsibility for, or has taken advantage of, facts relating to the investment firm which gave rise to the firm's financial difficulties or contributed to the deterioration of its financial situation, or
(g) a company which is of such a size that it is not permitted to draw up abridged balance sheets under Article 11 of the Fourth Council Directive No. 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies, or
(h) a client specified by the supervisory authority as an excluded investor in accordance with section 35(8).

"Investment firm" means **–**

(a) an authorised investment business firm or a person (being a person who was an authorised investment business firm) whose authorisation has been revoked,
(b) an authorised investment firm as defined in the European Communities (Markets in Financial Instruments) Regulations 2007,
(c) a person who was formerly an authorised investment firm and whose authorisation has been revoked,
(d) a credit institution licensed in the State or a credit institution whose authorisation by the Bank under Council Directive 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 extends to one or more of the investment services listed in the Annex to the Investment Services Directive or a credit institution whose authorisation by the Bank under Council Directive 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 has been revoked or a credit institution whose authorisation by the Bank under Council Directive 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 no longer extends to one or more of the investment services listed in the Annex to the Investment Services Directive,
(e) an insurance intermediary or a person who was formerly an insurance intermediary, or
(f) a management company authorised under the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2003 (S.I. No. 211 of 2003), as amended, to undertake the services referred to in Regulation 16(3) of those Regulations;

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