LICENSING THE ACTIVITY OF INVESTMENTS FIRMS AND THE OPERATION OF MTF AND OTF

The procedure aimed at the licensing of the activity of investment firms falls within the competence of the Magyar Nemzeti Bank (**MNB**). The contact point on behalf of the MNB is the **Money and Capital Markets Licensing Department** (address: H- 1013 Budapest, Krisztina krt. 39; telephone number: + 36 1 489 9731; email: ptef@mnb.hu).

The regulatory environment applicable to investment firms has considerably changed after that Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (**MiFID II**) has entered into force on 3 January 2018. In accordance with this, the requirements to be proved during the licensing procedure have also become broader, which have been stipulated in Act CXXXVIII of 2007 on Investment Firms and Commodity Dealers, and on the Regulations Governing their Activities (**Investment Firms Act**) and in the directly applicable EU legal acts – not requiring transposition by the Member States – detailed later.

Pursuant to Act CCXXII of 2015 on the General Rules for Trust Services and Electronic Transactions (**E-administration Act**) and Article 58 of Act XXXXIX of 2013 on the Magyar Nemzeti Bank (**MNB Act**), from 1 January 2018, in the matters belonging to its tasks and competence – and particularly in its licensing, registration and notification procedures – the MNB, as an organisation offering electronic administration, must provide the opportunity for electronic administration, while the enterprises acting as clients, and their legal representative, are obliged to use electronic administration.

According to Section 9 (5) of the E-administration Act, if a law prescribes electronic communication or the method of electronic communication in respect of making a declaration, the declaration not complying with such requirement – with the exception of the cases stipulated in the Act and included in paragraph (4) – shall be void. According to section 9 of the E-administration Act and to the justification added to it, the application submitted on paper – despite the related requirement – shall not be suitable for launching the procedure. Accordingly, in this case the procedure will not commence, since the **declaration submitted in breach of the obligation of electronic communication shall be void**.

In accordance with the foregoing, in the activity licensing procedure of investment firms, step zero shall be the registration for the ERA system (Electronic System for Receiving Authenticated Data), through which the activity licence application and the annexes thereto may be submitted on the relevant electronic form. The MNB communicates with the applicant also through the ERA system, and thus the orders and decisions passed during the procedure are also delivered through that.

The MNB's website contains notices related to electronic administration at:
https://www.mnb.hu/letoltes/tajekoztatas-az-e-ugyintezesrol-az-mnb-elotti-engedelyezesi-eljarasokban-1.pdf

I. GENERAL RULES

Pursuant to Section 7 (1) of the Investment Firms Act, investment services activity may be pursued – unless provided otherwise by the law – by investment firms and credit institutions. As it follows from Section 3 (2) of the Investment Firms Act, credit institutions performing investment services or rendering supplementary services shall be governed by the provisions applicable to investment firms. Similarly, the investment fund managers falling within Act XVI of 2014 on Collective Investment Trusts and Their Managers, and on the Amendment of Financial Regulations are entitled to render investment and supplementary services within a limited scope in accordance with the provisions of Section 3 (3) of the Investment Firms Act.

It should be noted that – in the absence of any express provision to this effect in the Investment Firms Act – the foundation of an investment firm is not subject to a foundation licence; accordingly, the procedure related to the foundation of the company may be conducted at the Court of Registration also before the issuance of the activity licence, with the proviso that the company may commence its activity subject to an official licence only after the issuance of the activity licence.

Based on Article 7 (4) and (5) of MiFID II, Commission Delegated Regulation 2017/1943/EU of 14 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory

technical standards on information and requirements for the authorisation of investment firms (**Licensing RTS**) and Commission Implementing Regulation 2017/1945/EU of 19 June 2017 laying down implementing technical standards with regard to notifications by and to applicant and authorised investment firms according to Directive 2014/65/EU of the European Parliament and of the Council (**Licensing ITS**) have been framed. The two regulations are closely related to each other, since 'Standard form of application for licensing as investment firm', forming Annex I to the Licensing ITS must be filled in with the information specified in the Licensing RTS, and the declaration and documents specified in the latter must be attached to the standard form.

Pursuant to Article 2 of the Licensing ITS an applicant seeking authorisation as an investment firm in accordance with Title II of MiFID II shall submit to the competent authority its application by filling in the template set out in Annex I, and shall notify the competent authority of the information on all members of its management body (Board of Directors, Supervisory Board) by filling in the template set out in Annex II. The electronic form entitled 'Application for the licensing of the activity of an investment firm and for the amendment of its scope of activity' was altered to contain Annexes I and II of the Licensing ITS.

Pursuant to Article 3 of the Licensing ITS, within 10 working days from the receipt of the application, the MNB shall send an acknowledgement of receipt to the applicant, including the contact details of the designated contact point as referred to in Article 1. This acknowledgement of receipt shall stipulate the name, telephone number and e-mail contact of the administrator in charge of the matter.

Pursuant to Article 7 (3) of MiFID II, the applicant shall be informed, within six months of the submission of a complete application, whether or not the licence has been granted, and pursuant to Article 4 of the Licensing ITS where additional information is required to proceed with the assessment of the application, the competent authority shall send a request to the applicant indicating the information to be provided. The MNB shall send a call for supplementation within 45 days from the receipt of the application, in view of Article 49 (3) of the MNB Act. Pursuant to Article 49 (3) and (4) of the MNB Act, the administration deadline is three months from the receipt of the complete application, i.e. shorter than the deadline set forth in Article 7 of MiFID II.

Pursuant to Section 4 (1) a) of MNB Decree 14/2015. (V. 13.) of the Governor of the Magyar Nemzeti Bank on the administrative service fees of the Magyar Nemzeti Bank applied in certain licensing and registration procedures in the context of the supervision of the financial intermediary system and with respect to trustee enterprises, the conduct of the authorisation procedure is subject to the payment of an administrative service fee of HUF 1,100,000.

For further information about the administrative service fee see:
https://www.mnb.hu/letoltes/tajekoztatas-az-e-ugyintezesrol-az-mnb-elotti-engedelyezesi-eljarasokban-1.pdf

The applicant shall make a declaration on the relevant electronic form, based on Article 59 (2) of the MNB Act, to the effect that it has disclosed to the MNB all important facts, data and information required for the issuance of the licence.

II. ACTIVITIES THAT MAY BE PURSUED BY INVESTMENT FIRMS

Section 5 (1) of the Investment Firms Act contains the investment services activity that may be pursued as part of the regular economic activity in respect of the financial instruments listed in Section 6. These include:
a) accepting and forwarding client orders,
b) execution of orders to the benefit of the client,
c) proprietary trading
d) portfolio management,
e) investment advisory services,
f) placement of financial instruments, including a commitment for the purchase of assets (securities or other financial instruments) (subscription guarantee),
g) placement of financial instruments without any commitment for the purchase of assets (financial instruments), and
h) operation of multilateral trading facilities,
i) operation of organised trading facilities.

Section 5 (2) of the Investment Firms Act specifies the following supplementary services:

a) safe custody and keeping a register of financial instruments, and keeping the related client account,
b) safe custody services and keeping the related securities accounts; in the case of printed securities keeping a register of those and keeping the client account, with the exception of maintaining securities accounts at the top tier level (central maintenance service) under Point 2 of Section A of the Annex to Regulation 909/2014/EU,
c) granting of investment loans,
d) advisory services related to capital structure, business strategies and related issues as well as consultancy and services related to mergers and acquisitions,
e) currency and foreign exchange trading related to the investment services activity,
f) investment analysis and financial analysis,
g) services related to subscription guarantee,
h) investment services or supplementary services related to instruments underlying the derivative transactions specified in Section 6 e)-g), j) and k).

It should be noted that – pursuant to the provisions of Section 8 (4) of the Investment Firms Act – no licence for the rendering of supplementary services – unless the applicant is a central securities depository as specified in Act CXX of 2001 on Capital Markets (**Capital Markets Act**) – may be obtained independently, without the licence for the pursuance of investment services activity.

The range of financial instruments is included in Section 6 of the Investment Firms Act:
Financial instrument
a) transferable securities,
b) money market instruments,
c) securities issued by collective investment trusts,
d) options, futures, swaps, OTC forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, emission trading or other derivatives instruments, financial indices or financial measures which may be settled by physical delivery or in cash,
e) commodity options, futures, swaps, OTC forwards and any other derivative contracts to be settled in cash or may be settled in cash at the choice of one of the parties to the transaction other than by reason of default or other termination event,
f) commodity options, OTC forward agreements, swaps, and any other derivative contract that can be physically settled provided that they are traded on a regulated market, in multilateral trading facility, or an organised trading facility, except for wholesale energy products traded in organised trading facilities that must be physically settled in accordance with Article 5 of Commission Delegated Regulation 2017/565/EU (must be physically delivered);
g) commodity options, futures and OTC forwards, swaps and any other derivative contracts not otherwise mentioned in subsection f), which have the characteristics of other derivative financial instruments and that can be physically settled and not being for commercial purposes in accordance with Commission Delegated Regulation 2017/565/EU;
h) derivative instrument for the transfer of credit risk,
i) financial contracts for differences,
j) options, futures, swaps, OTC forward rate agreements and any other derivative contracts relating to climate and weather variables, freight rates or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the choice of either of the parties to the transaction other than by reason of default or other termination event;
k) any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in subsections a)-j), which have the characteristics of other derivative financial instruments, having regard to whether they are traded on a regulated market or in a multilateral trading facility, furthermore, the derivative contracts referred to in Article 8 of Commission Delegated Regulation 2017/565/EU;
l) greenhouse gas emission and other rights of emission of air polluting substances consisting of any units recognised as complying with the requirements of Act CCXVII of 2012 on the Participation in the scheme for greenhouse gas emission allowance trading within the Community and in the implementation of the Effort Sharing Decision.

Pursuant to Section 8 (5), in addition to the pursuance of investment services activity and rendering supplementary services, investment firms may only pursue the following activities:
a) the services listed in Section 9 (1), i.e. the activities that may be pursued by commodity exchange providers,
b) keeping the share register,
c) nominee activity,

d) mediation of payment services as defined in Section 3 (1)i) of Act CCXXXVII of 2013 on Credit Institutions and Financial Enterprises (**Credit Institutions Act**),
e) insurance mediation as specified in the Insurance Act, as an agent
f) securities lending,
g) sales of data and information related to financial instruments,
h) group financing activity as specified in Section 6 (1) of the Credit Institutions Act.

The aforementioned homogeneity requirements shall not apply to
a) electricity suppliers defined in Section 46 (1) of Act LXXXVI of 2007 on Electricity performing investment service activities or rendering supplementary services defined in Section 5 solely with respect to the financial instruments stipulated in Section 6 e)-g) and j) and k);
b) natural gas suppliers defined in Section 28 (1) of Act XL of 2008 on Natural Gas Supply performing investment service activities or rendering supplementary service defined in Section 5 solely with respect to the financial instruments stipulated in Section 6 e)-g) and j) and k);
c) an investment firm participating in trading in emission allowances defined in Section 1 (1)a) of Act CCXVII of 2012 on Participating in the Scheme for Greenhouse Gas Emission Allowance Trading Within the Community and in the Implementation of the Decision on Effort Sharing and in emission allowances consisting of units recognised for the airline industry, which performs investment service activities or provides supplementary services defined in Section 5 solely with respect to the financial instruments specified in Section 6 l) or to the related financial derivatives specified in Section 6.

It should be noted that legal provision above – related to the homogeneity of profile – does not apply to credit institutions and market operators operating multilateral trading facilities and organised trading facilities.

III. GENERAL ORGANISATIONAL AND START-UP CAPITAL REQUIREMENT

Pursuant to Section 16 (1) of the Investment Firms Act, investment firms may operate as a joint stock company or a branch office. Pursuant to Section 16 (2) of the Investment Firms Act the investment firms operating in the form of an enterprise shall be governed by the provisions related to legal entities of Act V of 2013 on Civil Code , while the branch office of foreign enterprises shall be governed by the provisions of Act CXXXIII of 1997 on the Hungarian branch offices and representative offices of enterprises registered abroad with the derogations specified in this Act.

Pursuant to Section 13 (1) of the Investment Firms Act, an investment firm – with the exception specified in paragraphs (2)-(3) – shall have a start-up capital of not less than seven hundred and thirty thousand euro for the commencement of its activity. Pursuant to Section 13 (2) of the Investment Firms Act, when an investment firm is not authorised to carry out the investment service activities specified in Section 5 (1)c) and f), but is licensed to perform any (one or several) of the investment service activities specified in Section 5 (1)a), b) and d), and
a) the investment firm is allowed to manage the clients' financial instruments and funds, it shall have a start-up capital not less than one hundred and twenty-five thousand euro,
b) the investment firm is not allowed to manage the clients' financial instruments and funds, it shall have a start-up capital not less than fifty thousand euro.

Pursuant to Section 4 (2)32 of the Investment Firms Act, the start-up capital is the sum of the subscribed capital at the time of the foundation, the capital reserve and the retained earnings.

While according to Section 13 (3) of the Investment Firms Act, if the investment firm obtains licence to pursue any of the investment services activities specified in Section 5 (1)a) or e) and it is not entitled to render the supplementary services specified in Section 5 (2)a) and b) and to manage the clients' financial instruments and funds, its start-up capital shall not be less than fifty thousand euro or it shall hold a professional liability insurance, covering the EEA states, with a value of minimum one million euro per claim event and one million, five hundred thousand euro in total per year.

The requirements related to the subscribed capital of the investment firm are included in Section 15 of the Investment Firms Act. The subscribed capital of the investment firm may only be provided in cash. It shall be equivalent to a cash contribution, if the subscribed capital is raised to the expense of the investment firm's capital resources exceeding its subscribed capital, or the amount of the subscribed capital is determined during an amalgamation, merger or fusion.

Section 15 (3) of the Investment Firms Act prescribes that the subscribed capital of the investment firm may only be paid up in a credit institution that does not participate in the foundation, in which the founder has no shareholding and which has no ownership interest in the founder. In the case of investment firms operating in the form of a branch office and commodity exchange providers subscribed capital shall mean the endowment capital. It should be noted that in the case of the credit institution branch office within the meaning of the Credit Institutions Act the endowment capital requirement must be applied.

According to Section 15 (6), if the amount of the start-up capital or liability insurance set forth in Section 13 is denominated in euro, it shall be converted into forint at the official exchange rate published by the MNB for the respective day.

Naturally, the credit institutions that also pursue investment services activity shall be governed, in respect of the organisational rules and subscribed capital, by the special rules stipulated in the Credit Institutions Act (Section 3 (2) of the Investment Firms Act). The organisation and subscribed capital of investment fund managers shall also be governed by the special rules stipulated in the Collective Investment Trusts Act (Section 3 (3) of the Investment Firms Act).

IV. INFORMATION TO BE PROVIDED BASED ON THE LICENSING RTS AND THE RELATED REQUIREMENTS UNDER THE INVESTMENT FIRMS ACT

The following information shall be provided on a mandatory basis in the electronic form prepared on the basis of Annexes I and II to the Licensing ITS or at least a reference should be made in the form to the annex to the application that contains the relevant information. The annexes to be submitted during the licensing procedure are listed in Section 28 of the Investment Firms Act, and thus – in addition to the information prescribed by the Licensing RTS – those documents must be also submitted as part of the procedure. The Licensing RTS and Section 28 of the Investment Firms Act differ from each other in several instances, but they also contain identical rules. Accordingly, the licensing guide has been formulated in such a way that the *information to be provided, expected by the Licensing RTS* (hereinafter printed in *italics*) has been linked to the annexes stipulated in Section 28 of the Investment Firms Act (or Section 37 of the Investment Firms Act in respect of the acquisition of qualifying holding).

Article 1 – General information

An applicant seeking authorisation as an investment firm in accordance to Title II of Directive 2014/65/EU shall submit to the competent authority an application that includes the following general information:

a) *its name (including its legal name and any other trading name to be used); legal structure (including information on whether it will be a legal person or, where allowed by national legislation, a natural person), address of the head office and, for existing companies, registered office; contact details; its national identification number, where available; as well as:*
i. for domestic branches: information on where the branches will operate;
ii. for domestic tied agents: details on its intention to use tied agents;

In connection with this point, pursuant to Section 28 (1)a) of the Investment Firms Act, the investment firm shall make a declaration that it will be controlled from the head office to be established in the territory of Hungary. The declaration shall be submitted on the electronic form.

If the applicant wishes to have a domestic branch, pursuant to Section 28 (1)f) of the Investment Firms Act, the description of the material and technical conditions of the business site (in the terminology of the Licensing RTS: domestic branch office), where it wishes to pursue its activity.

b) *the list of investment services and activities, supplementary services and financial instruments to be provided, and whether clients' financial instruments and funds will be held (even on a temporary basis);*

According to Section 5 (1) and (2) of the Investment Firms Act, it is necessary to stipulate the aforementioned investment and supplementary services, and the financial instruments – listed in Section 6 of the Investment Firms Act – in respect of which the applicant wishes to render these services must be also specified. The requirement,

specified in Section 28 (1)d) of the Investment Firms Act, according to which the applicant must describe the activity it wishes to pursue, must be fulfilled also in this point.

Pursuant to Section 28 (1)o) of the Investment Firms Act, the general terms and conditions and business regulations, developed in connection with the pursued activity, must be attached.

If the applicant applies for the licensing of activities involving *the safe custody of financial instruments* and the keeping of the related client account specified in Section 5 (2)a) of the Investment Firms Act and *the custody management* and the keeping of the related securities account, in the case of printed securities the registration thereof and keeping the client account, specified in Section 5(2)b) of the Investment Firms Act, *with the exception of maintaining securities accounts at the top tier level (central maintenance service) under Point 2 of Section A of the Annex to Regulation 909/2014/EU,* the following regulations shall be attached.

- the regulation, under Section 142/A (5) of the Capital Markets Act, stipulating the data security requirements related to the management of user IDs and passwords and the delivery of those to the account holder (according to Section 142/A (5) of the Capital Markets Act, the regulation shall be submitted to the MNB for approval by not less than 60 days prior to the amendment's planned entry into force. The MNB approves the regulation if it contains appropriate procedural and technical measures to prevent unauthorised persons from accessing the user IDs and the passwords. The mandatory content elements of the regulation are specified in MNB Decree 36/2015 (IX. 24.),
- the safe deposit, custody management and depository regulations specified in Section 28 (2) of the Investment Firms Act,
- the regulation specified in Section 5 of Government Decree 284/2001 (XII.26.) on the Method and security rules of producing and forwarding dematerialised securities, and the rules of opening and keeping securities accounts, central securities account and customer account.

If the applicant wishes to render the supplementary services of granting investment loans under Section 5 (2)c) of the Investment Firms Act, the confirmation on the accession to the Central Credit Information System (CCIS), as specified in Section 28 (3) of the Investment Firms Ac shall be attached to the application.

c) *copies of corporate documents and evidence of registration with the national register of companies, where applicable.*

Based on this section the register of shareholders, specified in Section 28 (1) of the Investment Firms Act, must be attached to the application. Pursuant to Section 28 (1a) of the Investment Firms Act, the instrument of incorporation specified in point a), and the amendment thereof shall be obtained by the MNB.

Article 2 – Information related to the capital

An applicant seeking authorisation as an investment firm in accordance to Title II of Directive 2014/65/EU shall provide to the competent authority information and, where available, evidence on the sources of capital available to it. The information shall include:

a) *details on the use of private financial resources including the origin and availability of those funds;*

In connection with this point, pursuant to Section 28 (1)c) of the Investment Firms Act, it must be proved that the amount necessary for the payment of the start-up capital comes from the legal income of the person participating in the foundation or the liability insurance policy should be attached, if the conditions stipulated in Section 13 (3) of the Investment Firms Act exist. In respect of the start-up capital it is necessary to examine the legal origin, also in respect of the person who have no qualifying holding in the applicant.

b) *details on access to capital sources and financial markets including details of financial instruments issued or to be issued;*

For the purposes of point b), information on types of capital raised shall refer, where relevant, to the types of capital specified under Regulation (EU) No 575/2013, specifically whether the capital comprises Common Equity Tier 1 items, Additional Tier 1 items or Tier 2 items.

For the purposes of this subsection it is sufficient to classify the applicant's capital in accordance the Regulation 575/2013/EU (**CRR**) and provide the relevant information; no separate licensing procedure, under CRR, shall be carried out.

c) *any relevant agreements and contracts regarding the capital raised;*

d) *information on the use or expected use of borrowed funds including the name of relevant lenders and details of the facilities granted or expected to be granted, including maturities, terms, pledges and guarantees, along with information on the origin of the borrowed funds (or funds expected to be borrowed) where the lender is not a supervised financial institution;*

In connection with this point, pursuant to Section 28 (1)c) of the Investment Firms Act, it must be proved that the amount necessary for the payment of the start-up capital comes from the legal income of the person participating in the foundation.

e) *details on the means of transferring financial resources to the firm including the network used to transfer such fund.*

Pursuant to Section 28 (1)c) of the Investment Firms Act, the applicant shall attach the confirmation that the start-up capital has been paid up in the prescribed amount.

Article 3 – Information on shareholders

An applicant seeking authorisation as an investment firm in accordance to Title II of Directive 2014/65/EU shall provide to the competent authority the following information on its shareholders:

a) *the list of persons with a direct or indirect qualifying holding in the investment firm, and the amount of these holdings and, for indirect holdings, the name of the person through which the stake is held and the name of the final holder;*

b) *for persons with a qualifying holding (direct or indirect) in the investment firm the documentation required from proposed acquirers for the acquisition and increases in qualifying holdings in investment firms in accordance with Articles 3, 4 and 5 of Commission Delegated Regulation 2017/1946 of 11 July 2017 supplementing Directives 2004/39/EC and 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for an exhaustive list of information to be included by proposed acquirers in the notification of a proposed acquisition of a qualifying holding in an investment firm;*

The procedure conducted for the acquisition of qualifying holding is described in a separate licensing guide; the information related to Articles 3, 4 and 5 of the aforementioned Commission Regulation is included in that.

c) *for corporate shareholders that are members of a group, an organisational chart of the group indicating the main activities of each firm within the group, identification of any regulated entities within the group and the names of the relevant supervisory authorities as well as the relationship between the financial entities of the group and other non-financial group entities;*

d) *For the purposes of point b), where the holder of a qualifying holding is not a natural person, the documentation shall also relate to all members of the management body and the general manager, or any other person performing equivalent duties.*

Pursuant to Article 9 of the Licensing RTS: *"The competent authority shall verify that the request of an applicant for authorisation as an investment firm, in accordance to Title II of Directive 2014/65/EU, offers sufficient guarantees for a sound and prudent management of the entity by assessing the suitability of proposed shareholders and members with qualifying holdings, having regard to the likely influence on the investment firm of each proposed shareholder or member with qualifying holdings, against all of the following criteria:*
a) the reputation and experience of any person who will direct the business of the investment firm;
b) the reputation of the proposed shareholders and members with qualifying holdings;

c) the financial soundness of the proposed shareholders and members with qualifying holding, in particular in relation to the type of business pursued and envisaged in the investment firm;
d) whether the investment firm will be able to comply and continue to comply with the prudential requirements set out in Article 15 of Directive 2014/65/EU and, where applicable, Directives 2002/87/EC (6) and 2013/36/EU (7) of the European Parliament and of the Council and in particular, whether the group of which it will become a part has a structure that makes it possible to exercise effective supervision, effectively exchange information among the competent authorities and determine the allocation of responsibilities among the competent authorities;
e) whether there are reasonable grounds to suspect that, in connection with the authorisation of the investment firm, money laundering or terrorist financing within the meaning of Article 1 of Directive 2005/60/EC of the European Parliament and of the Council is being or has been committed or attempted, or that the authorisation of the investment firm could increase the risk thereof.

Please note that as part of the activity licensing procedure, in respect of the persons with qualifying holding the other requirements set forth in Section 37 of the Investment Firms Act, and in the case of persons having (direct or indirect) controlling interest the other requirements stipulated in Commission Delegated Regulation (EU) 2017/1946 of 11 July 2017 supplementing Directives 2004/39/EC and 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for an exhaustive list of information to be included by proposed acquirers in the notification of a proposed acquisition of a qualifying holding in an investment firm (Articles 7-12) must be proved with the proviso that it is not necessary to submit repeatedly the information that already had to be provided in connection with other articles. A separate licensing guide is prepared in relation to the authorisation of the acquisition of qualifying holding.

Article 4 – Information on the management body and persons who direct the business

An applicant seeking authorisation as an investment firm in accordance to Title II of Directive 2014/65/EU shall provide to the competent authority the following information:

***a)** in respect of members of the management body and persons effectively directing the business and their related powers and any proxies:*

Pursuant to Section 4 (2) of the Investment Firms Act, the management bodies shall include the investment firm's Board of Directors and Supervisory Board. The information related to the members of the management body shall be submitted on the standard form specified in Annex II to the Licensing ITS, which is included in the aforementioned electronic form. In addition to the members of the management body, information on the managing directors specified in Section 4 (2)69a of the Investment Firms Act (pursuant to Section 22 (1) of the Investment Firms Act at least two) shall be provided also in this point.

Pursuant to Section 28 (1)n) of the Investment Firms Act, the applicant shall attach the copy of the instruments proving the fulfilment of the personnel conditions specified in this Act and in separate laws.

i. personal details comprising the person's name, date and place of birth, personal national identification number, where available, address and contact details;
ii. the position for which the person is/will be appointed;
iii. a curriculum vitae stating relevant education and professional training, professional experience, including the names of all organisations for which the person has worked and nature and duration of the functions performed, in particular for any activities within the scope of the position sought; for positions held in the previous 10 years, when describing those activities, details shall be included on all delegated powers and internal decision-making powers held and the areas of operations under control;
iv. documentation relating to person's reputation and experience, in particular a list of reference persons including contact information, letters of recommendation;

Pursuant to Section 22 (1a)b), c) and e) of the Investment Firms Act, any person may be elected or appointed as senior executive at an investment firm if he or she
b) holds a higher education degree;
c) has at least three years of professional experience in the relevant field, and at least three years of management experience in the fields of finance or economics (eligible professional experience is specified in Section 24 of the

Investment Firms Act, while for the positions acceptable as management experience see the guide on the MNB's website),
e) confirms his or her good business reputation.

As part of the aforementioned subsections the documents proving the candidates' higher education degree, their curriculum vitae and the good business reputation questionnaire, filled in by the candidates, shall be attached to the application.

v. criminal records and information on criminal investigations and proceedings relevant civil and administrative cases, and disciplinary actions opened against them (including disqualification as a company director, bankruptcy, insolvency and similar procedures), notably through an official certificate (if and so far as it is available from the relevant Member State or third country), or through another equivalent document; for ongoing investigations, the information may be provided through a declaration of honour;

Pursuant to Section 22 (1a)a) of the Investment Firms Act those persons may be elected or appointed as s senior executive at the investment firms who prove their clean record – considering the provisions of paragraph (6) – in respect of the criminal offences stipulated in Section 22 (5) of the Investment Firms Act. As part of proving the good business reputation of the candidates (Section 22 (1a)e) of the Investment Firms Act) a certificate of clean record with enhanced content, i.e. also covering the effect of being from the exercise of civil rights or occupation, must be attached. Pursuant to paragraph (6), the clean record shall be proved by the extract from the judicial record obtained by the MNB or provided by the candidate. In view of Section 22 (6) of the Investment Firms Act, the MNB is entitled to ask for data from the competent authority only in respect of the clean record, and thus it is advisable that the certificate of clean record with enhanced content is attached to the application by the applicant.

In respect of civil, administrative and disciplinary matters, and pending investigations the candidate shall make a declaration on the good business reputation questionnaire.

vi. information on refusal of registration, authorisation, membership or licence to carry out a trade, business or profession; or the withdrawal, revocation or termination of such a registration, authorisation, membership or licence; or expulsion by a regulatory or government body or by a professional body or association;

The candidate shall provide the information stipulated in this point on the good business reputation questionnaire.

vii. information on dismissal from employment or a position of trust, fiduciary relationship, or similar situation;

The candidate shall provide the information stipulated in this point on the good business reputation questionnaire.

viii. information on whether an assessment of reputation and experience as an acquirer or as a person who directs the business has already been conducted (including the date of the assessment, the identity of that authority and evidence of the outcome of this assessment);

The candidate shall provide the information stipulated in this point on the good business reputation questionnaire.

ix. description of any financial and non-financial interests or relationships of the person and his/her close relatives to members of the management body and key function holders in the same institution, the parent institution and subsidiaries and shareholders;

The candidate shall provide the information stipulated in this point on the good business reputation questionnaire.

x. details of the result of any assessment of the suitability of the members of the management body, performed by the applicant itself;
xi. information on the minimum time that will be devoted to the performance of the person's functions within the firm (annual and monthly indications);
For the purposes of point (ix) of point (a), financial interests include interests such as credit operations, guarantees and pledge, whereas non-financial interests may include interests such as family or close relationships.
xii. information on human and financial resources devoted to the induction and training of the members (annual indications);

xiii. the list of executive and non-executive directorships currently held by the person.

b) *The staff of the internal management and control bodies.*

The persons to be indicated under point b) include the applicant's head of internal audit, risk management, compliance and complaint management function, and – if the applicant has any atypical internal bodies – the persons participating in those. The tasks and competence of such bodies shall be stipulated in detail in the organisational and operational regulations.

Article 5 – Financial information

An applicant seeking authorisation as an investment firm in accordance to Title II of Directive 2014/65/EU shall provide to the competent authority the following information on its financial situation:

a) *forecast information at an individual and, where applicable, at consolidated group and sub-consolidated levels, including:*
i. forecast accounting plans for the first three business years including:
- forecast balance sheets,
- forecast profit and loss accounts or income statements;
ii. planning assumptions for the above forecasts as well as explanations of the figures, including expected number and type of customers, expected volume of transactions/orders, expected assets under management;
iii. where applicable, forecast calculations of the firm's capital requirements and liquidity requirements under Regulation (EU) No 575/2013 of the European Parliament and of the Council (5) and forecast solvency ratio for the first year;

Pursuant to Section 28 (1)k) of the Investment Firms Act, the business plan must be attached to the application. The business plan shall cover the information included in Article 5 a) and Article 6 a) of the Licensing RTS.

b) *for companies that are already active, statutory financial statements, at an individual and, where applicable, at consolidated group and sub-consolidated levels for the last three financial periods, approved, where the financial statements are audited, by the external auditor, including:*
i. balance sheet;
ii profit and loss accounts or income statements;
iii. the annual reports and financial annexes and any other documents registered with the relevant registry or authority in the particular territory relevant to the company financial statements and, where applicable, a report by the company's auditor of the last three years or since the beginning of the activity;

c) *an analysis of the scope of consolidated supervision under Regulation (EU) No 575/2013, including details on which group entities will be included in the scope of consolidated supervision requirements post-authorisation and at which level within the group these requirements will apply on a full or sub-consolidated basis.*

Article 6 – Information on the organisation of the firm

An applicant seeking authorisation as an investment firm in accordance to Title II of Directive2014/65/EU shall provide to the competent authority the following information on its organisation:

Pursuant to Section 28 (1)m) of the Investment Firms Act, the instruments proving the fulfilment of the organisational conditions stipulated in this Act shall be attached to the application. The organisational requirements of investment firms are essentially determined by Chapter II of Commission Delegated Regulation 2017/565/EU of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (**Regulation**) and Chapter V of the Investment Firms Act. Compliance with the organisational requirements should be essentially stipulated in the organisational and operational regulations, specified in Section 28 (1)d) of the Investment Firms Act, also containing the applicant's decision-making and governance regime.

a) *a programme of initial operations for the following three years, including information on planned regulated and unregulated activities detailed information on the geographical distribution and activities to be carried out by the investment firm. Relevant information in the programme of operations shall include:*
i. the domicile of prospective customers and targeted investors;
ii. the marketing and promotional activity and arrangements, including languages of the offering and promotional documents; identification of the Member States where advertisements are most visible and frequent; type of promotional documents (in order to assess where effective marketing will be mostly developed);
iii. the identity of direct marketers, financial investment advisers and distributors, geographical localisation of their activity;

Pursuant to Section 28 (1)k) of the Investment Firms Act, the business plan must be attached to the application. The business plan shall cover the information included in Article 5 a) and Article 6 a) of the Licensing RTS.

b) *details of the firm's auditors, when available at time of application for authorisation;*

The applicant is expected to have an auditor with investment firm qualification (Section 97 (1) of the Investment Firms Act).

c) *the organisational structure and internal control systems of the company, comprising:*
i. the personal details of the heads of internal functions (management and supervisory), including a detailed curriculum vitae, stating relevant education and professional training, professional experience;

The detailed curriculum vitae of the heads of the applicant's internal audit, risk management and compliance functions must be attached to the application, which contains the aforementioned information.

ii. the description of the resources (in particular human and technical) allocated to the various planned activities;
iii. in relation to holding client financial instruments and funds, information, specifying any client asset safeguarding arrangements (in particular, where financial instruments and funds are held in a custodian, the name of the custodian, and related contracts);

Concerning this subsection, the custody management and data security regulation, already mentioned in Article 1 b) of the Licensing RTS, must be attached.

iv. an explanation of how the firm will satisfy its prudential and conduct requirements.

d) *information on the status of the application undertaken by the investment firm to become a member of the investor compensation scheme of the Home Member State or evidence of membership to the investor compensation scheme, where available;*

Pursuant to Section 28 (1)w) of the Investment Firms Act, the confirmation of the Investment Protection Fund to the effect that the application for accession to the Fund has been submitted and the accession fee has been paid must be attached to the application, if it applies for a licence for the pursuance of insured activity and the law prescribes accession to the Fund.

e) *a list of the outsourced functions, services or activities (or those intended to be outsourced) and a list of the contracts concluded or foreseen with external providers and resources (in particular, human and technical, and the internal control system) allocated to the control of the outsourced functions, services or activities;*

With regard to the requirements applicable to outsourcing, provisions are included in Article 30-32 of the Regulation and Sections 79-81 of the Investment Firms Act. Compliance with the statutory requirements related to outsourcing must be proved in the licensing procedure.

f) *measures to identify and to prevent or manage conflicts of interest that arise in the course of providing investment and ancillary services and a description of product governance arrangements;*

Pursuant to Section 28 (1) o) of the Investment Firms Act, the draft conflict of interest policy must be attached to the application. Articles 33-34 of the Regulation contain rules related to the conflict of interest policy; however, it should

be noted that in respect of the individual activities to be pursued, the Regulation may prescribe additional requirements, e.g. in respect of the investment services involving the placement of financial instruments (Articles 38-43 of the Regulation).

In addition, the regulation related to personal transactions (Article 28-29 of the Regulation) and remuneration policy (Article 27 of the Regulations) must be submitted within the conflict of interest requirements (or presented as part of the conflict of interest policy).

g) *a description of systems for monitoring the activities of the firm, including back–up systems, where available, and systems and risk controls where the firm wishes to engage in algorithmic trading and/or provide direct electronic access;*

Pursuant to Section 28 (1)l) of the Investment Firms Act, the detailed description of the fulfilment of the material and technical conditions stipulated in this Act shall be attached to the application.

Section 12 (1)-(2) and (4)-(10) of the Investment Firms Act prescribes stricter conditions, compared to the previous regulations, in respect of the investment firms' IT system. Section 12 is supplemented with paragraphs (12)-(14), which prescribe – among other things – that the adequacy of the IT system must confirmed by a certification organisation.

Section 12 (6) of the Investment Firms Act defines the minimum conditions that must be ensured, without exception, in proportion to the security risk.

Pursuant to Section 12 (7) of the Investment Firms Act) the investment firm and commodity exchange provider shall implement the protective measures, justified on the basis of the security risk analysis, for the performance of its activity and for the up-to-date and secure keeping of its registers, fulfil the additional requirements specified in paragraph (7) and ensure the permanent availability of the documents stipulated in paragraph (9).

Pursuant to Section 12 (12) of the Investment Firms Act investment firms and commodity exchange providers may only pursue their activity with the use of an IT system, which ensures the integrity of system components, prevents unauthorised access and undetected modification. The IT system must also comply with the general information security and system integrity requirements. To this end, investment firms and commodity exchange providers shall implement administrative, physical and logical measures to satisfy compliance with the overall information security integrity requirements.

In order to realise this requirement, Section 13 of the Investment Firms Act prescribes that compliance with the requirements set out in Section 12 (12) must be confirmed by an external expert (certification organisation) by a certificate related to the IT system.

The fulfilment of the requirements applicable to the IT system may only be proved by a certificate issued by a certification organisation accredited for the certification of IT security software products and systems based on an acknowledged domestic or international security methodology.

In the case of IT systems that keep records of more than one thousand permanent clients only the certification organisation specified in the separate law may issue the certificate; however, **it is not necessary to attach the certificate during the licensing procedure, it is sufficient to submit it subsequently**.

When the applicant wishes to apply an algorithmic trading system (Section 4 (2)1) of the Investment Firms Act) or wishes to provide direct electronic access (Section 4 (2)38a) of the Investment Firms Act), it shall prove that it complies with the provisions of Chapter VI/A of the Investment Firms Act and of Commission Delegated Regulation 2017/589/EU of 19 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the organisational requirements of investment firms engaged in algorithmic trading.

h) *information on the compliance, internal control, and, risk management systems (a monitoring system, internal audits and the advice and assistance functions).*

Pursuant to Section 28 (1) j) of the Investment Firms Act, the draft regulation related to its control regime must be attached to the application. Also based on Section 28 (1)r) and s) of the Investment Firms Act, the draft of the regulation related to the monitoring, measurement, control and management of risks, and to the keeping of the trading book shall be attached to the application. Please note that detailed rules applicable to the compliance, risk management, internal audit and complaint management function are included in Articles 22-24 and 26 of the Regulation.

i. details on the systems for assessing and managing the risks of money laundering and terrorist financing;

Pursuant to Section 28 (1)o) of the Investment Firms Act, the policies and procedures related to the prevention and combating of money laundering and terrorist financing, and to the implementation of the financial and asset restricting measures ordered by the European Union and the UN's Security Council shall be attached to the application.

j) *business continuity plans, including systems and human resources (key personnel);*

k) *record management, record-keeping and record retention policies;*

Pursuant to Section 28 (1)i) of the Investment Firms Act, the draft regulation related to the business hours shall be attached to the application. The detailed rules related to the registration systems are included in Articles 72-76 of the Regulation and Sections 55 of the Investment Firms Act.

l) *a description of the firm's manual of procedures.*

Article 7 – General requirements related to the central place of business, branch office and tied agents

(1) The information to be provided to the competent authority of the home Member State, as set out in Articles 1 and 6, shall refer to both the head office of the firm and its branches and tied agents.
(2) The information to be provided to the competent authority of the home Member State, as set out in Articles 2 to 5, shall refer to the head office of the firm.

V. ADDITIONAL DOCUMENTATION TO BE SUBMITTED BASED ON SECTIONS 28 AND 37 OF THE INVESTMENT FIRMS ACT

This section lists only those documents the submission of which is prescribed by the Investment Firms Act as a condition of the licensing procedure, but the Licensing RTS does not prescribe it specifically, and thus they are not included in Section IV hereof.

Pursuant to Section 28 (1) of the Investment Firms Act, the applicant shall attach to its investment services activity licence application
g) the name, registered office and scope of activity of the company in which the applicant has any shareholding, indicating the rate of the shareholding,
h) the description of its accounting policies and accounting regime,
o) ... the draft cash and valuables management regulation and its execution policy,
p) unless the procedure is aimed at the amendment of the scope of activity, the detailed description of the ownership structure together with the documentary evidence, and – if possible – presentation of the beneficial owners,
q) confirmation issued by the auditor to the effect that the IT system of the investment firm is suitable for satisfying the requirements set forth in Section 18 (2),
t) in the case of investment firms subject to consolidated or supplementary supervision, the presentation of the rules applicable to the transfer of information related to consolidated or supplementary supervision and the declaration of the persons having close links with the investment firm to the effect that they shall transfer all data, facts and information necessary for the consolidated or supplementary supervision,
(u) the declaration of the natural person being in close relationship with the investment firm to the effect that he or she consents to the forwarding of his or her personal data transferred to the investment firm for the purpose of processing such data to carry out the consolidated and supplementary supervision,

v) the identification data of the person or organisation having close links with the parent company of the investment firm subject to consolidated or supplementary supervision,
x) the rules of procedure, approved by the investment firm's Board of Directors, to be applied in situations that severely jeopardise the liquidity and solvency of the investment firm, and – if the investment firm is not covered by the consolidated supervision – its recovery plan specified in Section 102,
y) copy of the declaration on joining the Resolution Fund.

When submitting the application, the owners of the investment firm shall take into consideration the rules set out in the Investment Firms Act with regard to the acquisition of qualifying holding, and particularly the provision of Section 37 (4), according to which: "A qualifying holding may be held in an investment firm by a person,
a) the activity or the influence of whom exerted on the investment firm does not jeopardise independent, reliable and prudent owner's control over the investment firm,
b) the nature of whose business activity and relations or the structure of his direct and indirect ownership share outstanding in other companies do not hinder the supervisory activity,
c) who has good business reputation,
d) who – in the case of natural persons – has clean record in respect of the criminal offences specified in Section 22 (5) and confirms this fact by an extract from the judicial record.
A separate licensing guide is issued in relation to the procedure conducted in respect of the acquisition of qualifying holding.

VI. OTHER SPECIAL RULES

Additional rules are specified in Section 28 (4)-(5) for non-resident applicants. Accordingly, non-resident applicants shall – in the investment activity licence application – indicate also the places, in addition to those included in paragraphs (1)-(3), where they pursue their activity, as well as the decision competence of the senior executives and of the body without the approval of which certain decisions are not valid. In addition, non-resident applicants shall attach to their investment activity licence application the confirmation of the supervisory authority having competence based on their registered office that no disqualifying reason exists in respect of the non-Hungarian citizen senior executive related to the filling this position and performing the related tasks.

If the investment firm uses cloud computing services within the framework of an outsourcing contract already at the start of its operation, its shall take into consideration the provisions of MNB Recommendation 2/2017.

VII. SPECIAL STATUTORY CONDITIONS OF THE LICENSING OF THE MULTILATERAL TRADING FACILITY AND ORGANISED TRADING FACILITY

Pursuant to Section 5 (1)h) and i) of the Investment Firms the operation of a multilateral trading facility or organised trading facility pursued within the framework of regular economic activity in respect of financial instruments qualifies as investment services activity. Pursuant to Section 142 (1) of the Investment Firms Act, multilateral trading facility (**MTF**) and organised trading facility (**OTF**) may be operated by investment firms (which, pursuant to Section 2 (2) and Section 7 (1) of the Investment Firms Act, also include credit institutions) or market operators.

The enterprise applying for a licence for the operation of MTF or OTF shall also take into consideration the provisions of Sections I-VI hereof.

VII.1. REGULATORY ENVIRONMENT, MULTILATERAL SYSTEMS: MTF, OTF, REGULATED MARKET

The licensing and operation of MTF and OTF is regulated by the **Investment Firms Act** based on MiFID II; at the same time a large number and volume of **directly applicable EU laws** are also in force with regard to the activity of these trading venues.

MiFID II, and accordingly the Investment Firms Act as well, introduced the notion – among other things – of trading venue and multilateral trading facility as of 3 January 2018.

trading venue: any regulated market, multilateral trading facility or organised trading facility (Section 4 (2)34a of the Investment Firms Act)

multilateral system: a multilateral facility that brings together multiple third-party buying and selling interests in financial instruments (Section 4 (2)49a of the Investment Firms Act)

The three specified forms of the trading venue are the regulated market, the MTF and the OTF. This licensing guide stipulates only the special licensing criteria for MTF and OTF.

Pursuant to Section 3/A (1) of the Investment Firms Act, all *multilateral systems* where financial instrument are traded shall be operated in accordance with
a) the provisions of this Act pertaining to multilateral trading facility or organised trading facility, or
b) the provisions stipulated in Part Nine of the Capital Markets Act
and the **transparency of the *trading venues* under subsections a)** and b) **shall be ensured in line with** Title II of Regulation No 600/2014/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (**MiFIR**).

In addition to MiFIR, the operational obligations of trading venues are regulated by Chapter IV of Commission Delegated Regulation 2017/65/EU (**Regulation 2017/565**) and several directly applicable regulatory technical standards (**RTS**) and implementing technical standards (**ITS**) also specify requirements with regard to the activity of trading venues.

During the licensing procedure special attention should be paid to Commission Implementing Regulation 2016/824/EU of 25 May 2016 laying down implementing technical standards with regard to the content and format of the description of the functioning of multilateral trading facilities and organised trading facilities and the notification to the European Securities and Markets Authority according to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments (**ITS 19**). The information prescribed in ITS 19 shall be provided by the applicant in the manner described therein.

In addition to ITS 19, the following directly applicable regulatory technical standards (RTS) are relevant for the licensing procedures:

- Commission Delegated Regulation 2016/957/EU of 9 March 2016 supplementing Regulation No 596/2014/EU of the European Parliament and of the Council with regard to regulatory technical standards for the appropriate arrangements, systems and procedures as well as notification templates to be used for preventing, detecting and reporting abusive practices or suspicious orders or transactions (**MAR RTS**),
- Commission Delegated Regulation 2017/587/EU of 14 July 2016 supplementing Regulation No 600/2014/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and on transaction execution obligations in respect of certain shares on a trading venue or by a systematic internaliser (**RTS 1**),
- Commission Delegated Regulation 2017/583/EU of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives (**RTS 2**),
- Commission Delegated Regulation 2017/584/EU of 14 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying organisational requirements of trading venues (**RTS 7**),
- Commission Delegated Regulation No 2017/578/EU of 13 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards specifying the requirements on market making agreements and schemes (**RTS 8**),
- Commission Delegated Regulation 2017/566/EU of 18 May 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards for the ratio of unexecuted orders to transactions in order to prevent disorderly trading conditions (**RTS 9**),
- Commission Delegated Regulation 2017/572/EU of 2 June 2016 supplementing Regulation No 600/2014/EU of the European Parliament and of the Council with regard to regulatory technical standards on the specification of the offering of pre-and post-trade data and the level of disaggregation of data (**RTS 14**)

The investment firm operating an MTF or OTF shall comply, at all times, with the provisions prescribed in the Investment Firms Act and in the relevant directly applicable EU legislative acts.

VII.2. INTERPRETATIVE PROVISIONS

multilateral trading facility (MTF): a multilateral system, which brings together multiple third-party buying and selling interests in financial instruments – in accordance with non-discretionary rules – in a way that results in a contract. (Section 4 (2)79 of the Investment Firms Act)

organised trading facility (OTF): a multilateral system, which is not a regulated market or MTF and in which multiple third party buying and selling interests in bonds, structured finance product, emissions allowances or derivatives are able to interact in the system in a way which results in a contract. (Section 4 (2)61b. of the Investment Firms)

regulated market: the stock exchange and any other market of a Member State of the European Union that satisfies the following criteria:
a) a multilateral system operated and/or managed by a market operator,
b) which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments in the system, in accordance with its non-discretionary rules, in a way that results in a contract,
c) holds the licence of the competent supervisory authority of the Member State of its registered office,
d) operates in regular periods at specific times,
e) is included in the list of regulated markets available on the official website of the European Commission (Section 5 (1)114 of Act CXX of 2001 on Capital Markets)
SME growth market: a multilateral trading facility that is registered as an SME growth market in accordance with Section 154/A (Section 4 (2)34d of the Investment Firms Act)

market operator: a person who manages and/or operates the business of a regulated market and that is the regulated market itself (Section 4(2)52a of the Investment Firms Act)

algorithmic trading: trading in financial instruments where a computer algorithm automatically determines individual parameters of orders such as – in particular – whether to initiate the order, the timing, price or quantity of the order or how to manage the order after its submission, with limited or no human intervention - in accordance with Article 18 of Commission Delegated Regulation 2017/565/EU -, and does not include any system that is only used for:
a) the purpose of routing orders to one or more trading venues,
b) the processing of orders involving no determination of any trading parameters,
c) the confirmation of orders, or
d) the post-trade processing of executed transactions (Section 4 (2)1 of the Investment Firms Act)

direct electronic access: an arrangement where a member or participant or client of a trading venue permits a person to use its trading code so the person can electronically transmit orders relating to a financial instrument directly to the trading venue and includes arrangements which involve the use by a person of the infrastructure of the member or participant or client, or any connecting system provided by the member or participant or client, to transmit the orders (direct market access) and arrangements where such an infrastructure is not used by a person (sponsored access), having regard to Article 20 of Commission Delegated Regulation 2017/565/EU (Section 4 (2)38a of the Investment Firms Act)

VII.3. SPECIFIC LICENSING CRITERIA FOR THE OPERATION OF MTF AND OTF

Section 146 (1) of the Investment Firms Act – The provisions laid down in Sections 27-31 shall apply mutatis mutandis to the licensing of the operation of an MTF or OTF.
(2) An MTF or OTF shall have at least three effectively active members, participants or users, each having the opportunity to interact with all the others in respect of market making.

Section 148 of the Investment Firms Act – The Supervisory Authority shall issue the licence to perform the activity specified in Section 5(1)h) and i) to the applicant who complies with the provisions of this Act.

Section 149 (1) of the Investment Firms Act – The Supervisory Authority shall reject the application for the licence to perform the activity specified in Section 5 (1)h) and i) in the cases stipulated in Section 30.
(2) The Supervisory Authority shall withdraw the licence to perform the activity specified in Section 5 (1)h) and i) in the cases stipulated in Section 31 (1).

VII.3.1. Annexes to the application

Section 147 of the Investment Firms Act – In addition to those mentioned in Section 28, the applicant shall attach to its application for the licence to perform the activity specified in Section 5 (1)h) and i)
a) the draft regulations specified in Section 50 (1)[1],
b) the conditions that must be fulfilled to be able to trade in the respective financial instrument in the MTF or OTF,
c) description of the range of publicly available information related to the MTF or OTF and to the trading in these trading venues, as well as the method of disclosure,
d) procedure of verifying the conditions applicable to the members and participants in the MTF or OTF,
e) the procedure aimed at the prevention and detection of insider trading and market manipulation,
f) presentation of the procedure that facilitates the identification and management of the potentially harmful consequences – affecting the operation of the MTF or OTF, or the members, participants and users – which may arise as a result of the conflicts of interests between the MTF and OTF, the owners of those, the investment firm or market operator operating the MTF or OTF and the efficient and profitable operation of the MTF or OTF,
g) presentation of the procedure that ensures compliance with the requirements set forth in Section 316/A of the Capital Markets Act related to the resilience of the system, the suspension mechanism and electronic trading,
h) presentation of the procedure that ensures compliance with the requirements set forth in Section 316/B of the Capital Markets Act related to tick sizes,
i) the name of the Chief Operating Officer,
j) indication and detailed description of the – available or to be procured – tangible assets and technical tools necessary for the trading,
k) the certificates that guarantee the security and reliability of the system, business continuity as well as the confidential and comprehensive processing of the data,
l) the business continuity plan prepared for the event of the failure or breakdown of the MTF or OTF, or the emergence of circumstances jeopardising the functioning of the trading system,
m) the liability insurance policy stipulated in Section 144 (3),
n) the draft template of the contract to be concluded between the investment firm or the market operator and the member or participant of the MTF or OTF,
o) the procedure related to the content of the information to be provided to the member or participant of the MTF or OTF and the manner of forwarding the information, and
p) presentation of the solutions guaranteeing the security of the equipment used for the forwarding of information and preventing damage and unauthorised access to the data, and the resources and backup systems necessary for this, if the MTF or OTF reports transactions to the Supervisory Authority on behalf of the MTF or OTF.

Section 147/A of the Investment Firms Act – In addition to those mentioned in Section 147, the investment firm or market operator shall attach to its application for the licence to perform the activity specified in Section 5 (1)h) (i.e. upon operating n MTF) the following documents
a) the method of accounting for and settlement of the executed transactions,
b) the copy of the agreement for the settlement and execution of the transactions executed in the multilateral trading facility.

[1] Section 150 (1) of the Investment Firms Act: Operators of multilateral trading facilities shall draw up regulations laying down the conditions for participating in trading, which shall contain at least:
a) the conditions for access to the trading system on a non-discriminatory basis,
b) the rights and obligations of members authorised to trade in the trading system,
c) the rules of trading and concluding deals, including rules and procedures for the suspension of trading, and
d) the manner of price formation.

VII.3.2. Obligation to provide information (to be fulfilled also within the framework of the activity licensing procedure)

Section 149/A (1) of the Investment Firms Act – Investment firms and market operators operating an MTF or an OTF shall provide the Supervisory Authority with a detailed description of the functioning of the MTF or OTF, including, without prejudice to Sections 154/B and 154/D, any links to or participation by a regulated market, an MTF, an OTF or a systematic internaliser owned by the same investment firm or market operator, and a list of their members, participants and/or users.
(4) The investment firm or market operator operating an MTF or OTF shall inform the Supervisory Authority about any Member State in which the investment firm or market operator operating an MTF or OTF plans to offer services designed to help members, participants or users established or having remote participation in that Member State to access the MTF or the OTF.

VII.3.3. Organisational requirements related to trading venues offering algorithmic trading or direct electronic access

If the MTF or OTF offers algorithmic trading or the members may provide their clients with direct electronic access, the operators of such trading venues shall comply with the provisions of Commission Delegated Regulation **2017/584/EU** of 14 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying organisational requirements of trading venue, and prove their compliance during the licensing procedure. Please note that for the purposes of the Regulation the trading venue shall be deemed to authorise or facilitate algorithmic trading if the submission and matching of orders is supported by electronic means.

VII.3.4. Conditions of registration as an SME growth market

Section 154/A (1) of the Investment Firms Act – The operator of an MTF may submit an application to the Supervisory Authority for registration as an SME growth market.
(2) Based on the application submitted in accordance with paragraph (1) the Supervisory Authority registers the MTF as an SME growth market, if the MTF complies with the requirements set forth in this Chapter and in Articles 77-79 of Commission Delegated Regulation No 2017/565/EU.

VII.3.4.1. Annexes to the application

Section 154/A (3) of the Investment Firms Act – The registration by the Supervisory Authority as an SME growth market shall be conditional upon the MTF's having a regulation, organisational solution and procedures that ensure the fulfilment of the conditions below, and these regulation, organisational solutions and procedures are attached to the application mentioned in paragraph (1):
a) at least 50 percent of the issuers whose financial instruments are admitted to trading on the MTF are SMEs defined in Article 77 of Commission Delegated Regulation 2017/565/EU at the time when the MTF is registered as an SME growth market and in each calendar year thereafter,
b) appropriate criteria have been determined for the initial and ongoing admission to trading of financial instruments of issuers,
c) upon the initial admission to trading of financial instruments sufficient information has been published by the issuers to enable investors to make an informed judgment whether or not to invest in the financial instruments (either an appropriate admission document [information sheet used for registration] or a prospectus defined in the Capital Markets Act, if the requirements related to a public offer being made in conjunction with the initial admission to trading of the financial instrument on the MTF are applicable to them),
d) there is appropriate, continuous and periodic financial reporting in the market by or on behalf of the issuer, e.g. audited annual reports,
e) the market issuers defined in Article 3 (1)21 of Regulation 596/2014/EU, the persons executing management duties, specified in Article 3(1)25 of Regulation 596/2014/EU and the persons closely linked to them, specified in Article 3(1)26 of Regulation 596/2014/EU comply with the provisions of Regulation 596/2014/EU applicable to them,
f) they retain and disclose the regulatory information related to the market issuers,
g) there are efficient systems and control mechanisms in place to prevent and detect market abuses in accordance with Regulation 596/2014/EU.

(4) The conditions set out in paragraph (3) are without prejudice to compliance by the investment firm or market operator operating the MTF with other obligations under this Act relevant to the operation of MTFs.

The SME growth market shall satisfy the aforementioned conditions in addition to the conditions applicable to the MTF; furthermore, it should be noted that – according to the provisions of the law referred to – Articles 77-79 of Regulation 2017/565 shall be also applicable.

VII.3.4.2. Deregistration

Section 154/A(5) of the Investment Firms Act – The Supervisory Authority shall deregister an MTF as an SME growth market if:
a) the investment firm or market operator operating the SME growth market applies for its deregistration;
b) the MTF no longer complies with the requirements set out in paragraph (3).

VIII. AMENDMENT OF THE SCOPE OF ACTIVITY

The form constituting Annex 1 to the Licensing ITS shall be also used for the amendment of the scope of activity, irrespective of whether it is broadened or narrowed.

Upon broadening the investment firm's **scope of activity**, of the documents specified in Section 28 (1) of the Investment Firms Act (referred to above) those shall be attached to the licence application that have not yet been submitted before; and also, of the information prescribed by the Licensing RTS those pieces of information shall be provided that will change due to the broadening of the scope of activity.

The following declarations shall be made also upon the amendment of the scope of activity:

- the applicant has disclosed to the MNB all material facts and data necessary for the issuance of the licence *(declaration to be made in the electronic form)*.

In addition to the foregoing, the following declarations shall be made also upon broadening the scope of activity:

- the company has the personnel, material and technical conditions related to its new activity *(declaration to be made in the electronic form)*,
- the company shall make a declaration on the start date of the new activity *(declaration to be made in the electronic form)*,
- the company shall make a declaration that it is well-prepared for the fulfilment of the statutory reporting requirements related to its new activity *(declaration to be made in the electronic form)*.

Upon **narrowing the scope of activity**, of the information prescribed by the Licensing RTS those pieces of information shall be provided that will change as a result of the narrowing of the scope of activity, and a declaration shall be made on the following:

- the applicant has disclosed to the MNB all material facts and data necessary for the issuance of the licence *(declaration to be made in the electronic form)*.
- pursuant to Section 31(2) of the Investment Firms Act the company has discharged its outstanding, acknowledged obligations towards its clients and the fulfilment of its contracts has been assumed by another investment firm *(declaration to be made in the electronic form)*.

Should, after carefully reading this guide, any further question – related to the respective, individual case, not possible to answer in the form of consultation over the phone or in writing – arise, the MNB provides the applicant with the possibility of personal consultation. For the possibility of personal consultation, contact the secretariat of the Money and Capital Markets Licensing Department (telephone number: +361-489-9731; email: ptef@mnb.hu).

If the questions are solely of IT nature, you may also contact the Information Technology Supervision Department directly for the purpose of personal consultation (telephone number: +361-489-9780; email: iff@mnb.hu).

Last amendment: November 2019