

## **AUTHORISATION AND NOTIFICATION OF THE SENIOR EXECUTIVES OF INVESTMENT FIRMS (COMMODITY DEALERS) AND NOTIFICATION OF OTHER PERSONS**

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 XXXIX of 2013 on the Magyar Nemzeti Bank, 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**.

Electronic communication is realised through the “ERA” system (Electronic System for Receiving Authenticated Data). The application for the authorisation and the annexes thereto may be submitted through this system. 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. PERSONS NAMED BY THE INVESTMENT FIRMS ACT**

At investment firms, the persons specifically named by the Investment Firms Act includes the senior executive (point 71 of Section 4 (2) of the Investment Firms Act, the management body members (point 99 of Section 4 (2) of the Investment Firms Act, the person managing the investment firm operating as joint stock company (Section 22 (1) of the Investment Firms Act), the chief executive officer overseeing the investment services activity (Section 22 (3) of the Investment Firms Act), the internal auditor of the commodity dealer (Section 19 (3) of the Investment Firms Act), the compliance manager (Section 21 (1) of the Investment Firms Act), the person appointed to safeguard clients’ financial instruments and funds (Section 21 (2) of the Investment Firms Act) and the auditor (Section 97 of the Investment Firms Act).

Credit institutions rendering investment services must have a person controlling the investment services activity. (Section 22 (4) of the Investment Firms Act).

### **II. DEFINITIONS**

#### **Senior Executives:**

- a) the executive officer – including also the managing director specified in the Act –, the members of the Board of Directors and the members of the Supervisory Board,
- b) the person appointed by the foreign enterprise to manage the branch office and the immediate deputy of him or her, and
- c) any other person defined as such by the instrument of incorporation or any internal regulations applicable to the operation (point 71 of Section 4 (2) of the Investment Firms Act)

**Managing director:** the chief executive employed by the investment firm, appointed to manage the investment firm and any additional person involved in the management of the investment firm defined as such by the instrument of incorporation of the investment firm or any internal regulations applicable to the operation. (point 69a of Section 4 (2) of the Investment Firms Act)

**Management body with governance powers:** the management body stipulated in the Memorandum of Association or statutes, authorised to make decisions (point 97 of Section 4 (2) of the Investment Firms Act)

**Management body with supervisory powers:** the management body stipulated in the Memorandum of Association or statutes, which supervises the decision-making of the management body with governance powers (point 98 of Section 4 (2) of the Investment Firms Act)

**Management Body:** the Board of Directors and Supervisory Board of the investment firm, and their chairs and members, including also the senior executives of investment firms operating as branch offices (point 99 of Section 4 (2) of the Investment Firms Act)

**Good business reputation:** existence of the conditions confirming the suitability of the investment firm's senior executives or members with qualifying holding for the management or ownership of the investment firm. (point 33a of Section 4 (2) of the Investment Firms Act)

**Section 26/A (1) prescribes that if the balance sheet total of the investment firm for the previous year exceeds two hundred billion forints, the following offices may be held simultaneously at the investment firm:**

a) one managing director position and two non-managing positions in a management body, or

b) four non-managing director positions in management bodies.

(2) For the purposes of paragraph (1) the following positions shall qualify as a managing position

a) managing director position or non-managing director position within the same group,

b) managing director position, filled

ba) at members of the institutional protection scheme

bb) at an enterprise in which the investment firm specified in paragraph (1) has qualifying holding.

(3) The restriction specified paragraph (1) shall not extend to managing director positions in an organisation that pursues no business activity.

(4) The Supervisory Authority may authorise for the member of management body and for the managing director of the investment firm specified in paragraph (1) to hold one more non-managing office, over the limitation.

Pursuant to Section 24 (1) of the Investment Services Act, for the purposes of Section 22 (1), (1a) and (4) and Section 23 of the Investment Firms Act **the following may be taken into consideration as professional practice.**

Section 24 (1) For the purposes of Section 22 (1), (1a) and (4) and Section 23 of the Investment Firms Act employment in the fields of investment and finances:

a) at investment firms,

b) at financial institutions,

c) at stock exchanges and commodity exchanges,

d) at investment fund managers,

e) at venture fund managers,

f) at the MNB,

g) at the Government Debt Management Agency and State Treasury,

h) at public administration bodies,

i) at commodity dealers,

j) at central securities depositories,

k) at central counterparties,

l) at insurance companies or pension funds

as an officer, public official, government official, state official or employee, may be taken into consideration as professional practice.

(1a) In addition to the provisions of paragraph (1), for the purposes of Section 22 (1) employment in the fields of investment and finances:

- a) at a company engaged in greenhouse gas and other air polluting emission trading, in the case of investment firms rendering investment services only in respect of financial instruments specified in point l) of Section 6 and the related derivative financial instruments, specified in Section 6,
- b) at an electricity or natural gas supplier, in the case of investment firms rendering investment services only in respect of the financial instruments specified in points e)-g), j) and k) of Section 6 related to electricity and natural gas as an officer or employee, may be taken into consideration as professional practice.

Professional experience gained abroad may be recognised if the specialised professional practice was gained at an institution equivalent to the organisations specified in paragraphs (1) and (1a) or at an international financial institution.

#### IV. PERSONNEL CONDITIONS

##### IV.1. General conditions of the authorisation of senior executives

Sections 22 (1a)-(4) of the Investment Firms Act provide as follows:

At investment firms only those persons may be elected or appointed as **senior executive**, who

- a) – considering the provision of paragraph (6) – proves by an extract from the judicial record that he has clean record in respect of the criminal offences specified in paragraph (5);
- b) holds a higher education degree;
- c) has professional practice of at least three years in the respective field and management practice of at least three years in finance or economics;
- d)
- e) confirms his or her good business reputation.

Section 24/F of the Investments Firms Act prescribes that the member of the management body with supervisory powers, i.e. **the members of the Supervisory Board**, – with the exception of the staff representatives – **may not be in employment relationship with the investment firm**, which must be confirmed by them by making a personal declaration.

**Among the senior executives of investment firms operating as branch offices** – not including the branch office of investment firms with registered office in another EEA state – there must be at least one resident, Hungarian citizen who has permanent residence in Hungary for at least one year.

For the management of its operation and activity, the investment firm shall appoint a **chief executive** from among the senior executives.

##### Submission of the application for authorisation; authorisation as precondition of the appointment

According to Section 22/A (1) of the Investment Firms Act, those persons may be appointed as senior executives of the investment firm, who has been notified to the Supervisory Authority – to obtain the preliminary authorisation – prior to the planned date of their election or appointment, and the Supervisory Authority granted the authorisation.

Please note that the MNB's authorisation must be also asked for in advance upon re-election or reappointment. If the document proving the higher education degree, professional practice of at least three years in the respective field and management practice of at least three years in finance or economics have already been submitted before, it is not necessary to re-submit the documents confirming the fulfilment of these conditions.

##### Withdrawal or suspension of the authorisation

The **senior executive and the investment firm are obliged to notify the Supervisory Authority without delay**, if after providing the authorisation **any disqualifying reason arises in respect of the senior executive**. **The Supervisory Authority may withdraw or suspend** the authorisation granted for the election or appointment of the senior executive, if the condition underlying the authorisation ceases or a disqualifying reason arises after granting the authorisation. (Section 22 (2) of the Investment Firms Act).

## Validity of the authorisation

If the senior executive is not appointed or elected **within three months from obtaining the authorisation**, the senior executive may be appointed or elected only after a repeated authorisation procedure. The repeated authorisation procedure shall be governed by the rules specified in paragraph (1).

If the senior executive is elected or appointed, pursuant to Section 123 (1) d) of the Investment Firms Act, the investment firm is obliged to report to the MNB the change in the personnel within five days after the appointment or election of the senior executive or the termination of the mandate. If **any change occurs in the membership of the management body, the form included in Annex III to 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, **must be attached**. The electronically authenticated form must be submitted as an annex to the electronic form entitled "Other applications and notifications".

### IV.2. Conditions applicable to certain persons subject to notification

Credit institutions pursuing investment services activity **shall appoint such person for the management of the investment services activity** who has professional practice of at least three years in the respective field, and confirms by an extract from the judicial record that he has clean record in respect of the criminal offences specified in Section 22(5) of the Investment Services Act.

Pursuant to Section 23 of the Investment Firms Act **commodity dealers shall appoint such person for the management of the business line** who has professional practice of at least two years in the respective field, and confirms by an extract from the judicial record that he has clean record in respect of the criminal offences specified in Section 22 (5) of the Investment Services Act.

The detailed conditions applicable to certain categories of persons subject to authorisation or notification, and the annexes to be attached to the application are summarised in detail in the next section.

## V. DOCUMENTS TO BE SUBMITTED ON A MANDATORY BASIS TO PROVE COMPLIANCE WITH CERTAIN PERSONNEL CONDITIONS

### V. 1. PERSONS SUBJECT TO AUTHORISATION

The **appointment or election of the senior executive of investment firms** – pursuant to Section 22/A (1) of the Investment Firms Act – **is subject to the MNB's prior authorisation**.

The applicant shall declare on the electronic form that it has disclosed to the MNB all important facts, data and information required for the issuance of the authorisation. (Article 59 (2) of the MNB Act)

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 **Authorisation RTS**) has been framed. Article 4 of the Authorisation RTS prescribes additional information with regard to the senior executives to be authorised over those specified in the Investment Firms Act. **The senior executive candidates shall provide this information essentially in the good business reputation questionnaire, and the applicant investment firms shall make a declaration on sub-point x) of point a) of Article 4 of the Authorisation RTS (result of the assessment).**

Pursuant to Section 22 (6) of the Investment Firms Act, the person in respect of whom the Act prescribes the absence of prior criminal record, must have a clean record in respect of the criminal offences specified in paragraph (5), which fact shall be proved – in the case of Hungarian citizens – by the extract from the judicial records obtained by the Supervisory Authority or provided by the client. However, in view of the fact that the directly applicable RTS does not limit the criminal offences, and the MNB is entitled to apply for data only in respect of the criminal offences stipulated

in Section 22 (5) of the Investment Firms Act, the applicant must attach his or her certificate of clean record with enhanced content, covering all criminal offences.

#### **V.1.1 Managing director**

- application (in the prescribed electronic form),
- confirmation of higher education degree
- curriculum vitae within the meaning **sub-point iii) of point a) of Article 4 of the RTS**, where the candidate's professional practice of at least three years in the respective field and management practice of at least three years in finance or economics shall be confirmed,
- confirmation of the employment relationship with the investment firm,
- to confirm the absence of criminal record in respect of the criminal offences specified in the Investment Firms Act and to prove good business reputation, a certificate of clean record with enhanced content – i.e. which in addition to confirming the absence of criminal record also stipulates that the candidate is not banned from exercising civil rights and not disqualified from occupation – not older than 90 days,
- to prove good business reputation, in addition to the certificate of clean record with enhanced content, the questionnaire, published on the MNB's website, completed by the candidate,
- the candidate's declaration on the minimum time that will be devoted to the performance of his functions within the firm (sub-point xi) of point a) of Article 4 of the RTS – the time spent on fulfilling the undertaken position must be specifically indicated, in view of the positions filled at other institutions or organisations in employment or other legal relationship aimed the performance of work),
- declaration of the applicant investment firm with regard to sub-point x) of point a) of Article 4 of the Authorisation RTS (result of the assessment).

#### **V.1.2. Member of the Board of Directors**

- application (in the prescribed electronic form),
- confirmation of higher education degree
- curriculum vitae within the meaning **sub-point iii) of point a) of Article 4 of the RTS**, where the candidate's professional practice of at least three years in the respective field and management practice of at least three years in finance or economics shall be confirmed,
- to confirm the absence of criminal record in respect of the criminal offences specified in the Investment Firms Act and to prove good business reputation, a certificate of clean record with enhanced content – i.e. which in addition to confirming the absence of criminal record also stipulates that the candidate is not banned from exercising civil rights and not disqualified from occupation – not older than 90 days,
- to prove good business reputation, in addition to the certificate of clean record with enhanced content, the questionnaire, published on the MNB's website, completed by the candidate,
- the candidate's declaration on the minimum time that will be devoted to the performance of his functions within the firm (sub-point xi) of point a) of Article 4 of the RTS – the time spent on fulfilling the undertaken position must be specifically indicated, in view of the positions filled at other institutions or organisations in employment or other legal relationship aimed the performance of work),
- declaration of the applicant investment firm with regard to sub-point x) of point a) of Article 4 of the Authorisation RTS (result of the assessment).

#### **V.1.3. Member of the Supervisory Board**

- application (in the prescribed electronic form),
- confirmation of higher education degree
- curriculum vitae within the meaning **sub-point iii) of point a) of Article 4 of the RTS**, where the candidate's professional practice of at least three years in the respective field and management practice of at least three years in finance or economics shall be confirmed,
- declaration under Section 24/F of the Investment Firms Act (negative clearance on employment relationship),
- to confirm the absence of criminal record in respect of the criminal offences specified in the Investment Firms Act and to prove good business reputation, a certificate of clean record with enhanced content – i.e. which in addition to confirming the absence of criminal record also stipulates that the candidate is not banned from exercising civil rights and not disqualified from occupation – not older than 90 days,

- to prove good business reputation, in addition to the certificate of clean record with enhanced content, the questionnaire, published on the MNB's website, completed by the candidate,
- the candidate's declaration on the minimum time that will be devoted to the performance of his functions within the firm (sub-point xi) of point a) of Article 4 of the RTS – the time spent on fulfilling the undertaken position must be specifically indicated, in view of the positions filled at other institutions or organisations in employment or other legal relationship aimed the performance of work),
- declaration of the applicant investment firm with regard to sub-point x) of point a) of Article 4 of the Authorisation RTS (result of the assessment).

#### **V.1.4. At least one senior executive of non-resident (third country) investment firm operating as branch office**

In the case of at least one senior executive of non-resident (third country) investment firms operating as branch office – except for the branch office of investment enterprises with registered office in another EEA state – the notarised copies of the personal documents to confirm Hungarian citizenship, resident status and permanent residence in Hungary existing for at least one year should be submitted. (Section 22 (2) of the Investment Firms Act).

#### **V.1.5. Declaration to be submitted on a mandatory basis by investment firm with balance sheet total over two hundred billion forints.**

Due to the prohibition of parallel employment specified in Section 26/A (1) of the Investment Firms Act in respect of senior executives affected by the change in personnel – upon the fulfilment of the conditions stipulated there – the relevant declaration shall be also submitted. The submission of this declaration is mandatory upon any change in the senior executives filling management body positions listed in Section V. Credit institutions are exceptions to this, since pursuant to Section 3 (2) of the Investment Firms Act, in their case the prohibition of parallel employment shall not apply.

### **V.2. PERSONS SUBJECT TO NOTIFICATION**

#### **V.2.1. Manager of investment services activities in credit institutions (Section 22 (4) of the Investment Firms Act)**

- application (in the prescribed electronic form),
- confirmation of professional practice of at least three years in the respective field,
- extract from the judicial records confirming the absence of criminal record in respect of the criminal offences stipulated by the Investment Firms Act.

#### **V.2.2. Manager of the commodity exchange business (Section 23 of the Investment Firms Act)**

- application (in the prescribed electronic form),
- confirmation of professional practice of at least two years in the respective field,
- extract from the judicial records confirming the absence of criminal record in respect of the criminal offences stipulated by the Investment Firms Act,
- negative clearance with regard to conflict of interests specified in Section 25 of the Investment Firms Act, also covering close relatives.

In the case of the members of the Board of Directors and Supervisory Board of commodity dealers operating as joint stock company, the conditions specified in Sections V.1.2 and V.1.3 shall be also satisfied.

#### **V.2.4. Internal auditor of commodity exchange dealers**

Pursuant to Section 19 (3) of the Investment Services Act, the commodity dealer shall appoint an internal audit manager to manage the internal audit department (internal auditor) **and notify the Supervisory Authority accordingly 30 days prior to the proposed start of the mandate.**

Pursuant to Section 19 (4) of the Investment Services Act, the internal auditor shall send his report to the commodity dealer's Supervisory Board and Board of Directors, and ensure the availability of his report to the Supervisory Authority, as necessary.

The employer's rights over the internal auditor are exercised directly by the managing director.

According to Section 19 (5) of the Investment Firms Act: At commodity exchange dealers only such persons may be engaged as internal auditor, who

- a) hold a higher education degree or chartered accountant qualification and have professional practice of at least three years, and
- b) have clean record in respect of the criminal offences specified in Section 22 (5), and prove this fact by a certificate of clean record issued by Criminal Records Office or equivalent instrument under their personal jurisdiction.

#### **V.2.6. Auditor**

The contract concluded with the auditor and a declaration to the effect that the auditor engaged by the applicant satisfies the provisions of Section 97 (1) of the Investment Services Act shall be submitted.

Pursuant to Section 97 (1) of the Investment Services Act, investment firms shall appoint an auditor or audit firm holding a valid auditor's licence, who or which complies with the provisions of the Civil Code pertaining to auditors and holds a certificate for the audit of investment firms.

The mandate of the natural person auditor of an investment firm may not last longer than 5 years and a new agency contract may be concluded with the same auditor after the third year following the expiry of the mandate. The chamber member auditor performing audit on behalf of the audit firm may act as an auditor at the same investment firm for 5 years at the most. Within 2 financial years after the expiry of the mandate he shall not act as an auditor at the same investment firm.

In addition to the foregoing, applicants shall also take into consideration the following notice published on the MNB's website: "Information on questions most frequently arising in certain licensing and registration procedures affecting the practice of the MNB".

Last amendment: November 2019