OFFICIAL INFORMATION
OF THE CZECH NATIONAL BANK

of 18 September 2009

on authorisation to perform the activities of an investment firm

I. Applicability and purpose

1. This official information relates to authorisation to perform the activities of an investment firm pursuant to Act No. 256/2004 Coll., on Capital Market Undertakings, as amended (hereinafter only the "Act").

2. Through this official information the Czech National Bank provides information about its approach to the evaluation of applications for authorisation to perform the activities of an investment firm, clarifies and elaborates some aspects of the rights and obligations stipulated by the Act and its regulations for application, specifies information essential so that an applicant can properly submit its application, in particular to ensure the greatest possible guarantee of legal certainty for applicants. The information of the Czech National Bank on authorisation to perform the activities of an investment firm is contained in Annex No. 1 of this official information.

II. Cancellation provisions

The methodology of the Czech National Bank/Czech Securities Commission "Povolení k činnosti obchodníka s cennými papíry (LOCP)" (Authorisation to perform the activities of an investment firm) of 21 December 2005 and the "Metodika k investičním službám (MIS)" (Investment Services Methodology) of 21 December 2005 are cancelled.

Vice-Governor

Ing. Miroslav Singer, Ph.D. duly signed

Annexes:
Information on authorisation to perform the activities of an investment firm (Annex No. 1)
Graphical representation of types of investment firms (Annex No. 2)

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Annex No. 1

Information on authorisation to perform the activities of an investment firm

I. The intention to operate as an investment firm

1. Before submitting an application for authorisation to perform the activities of an investment firm, the applicant should in particular clarify its business plan, as this is of key importance especially for the stipulation of the subject of business (in particular defining the range of investment services provided in relation to specific types of investment instruments). The requirement for the minimum amount of initial capital, the obligation to comply with capital adequacy rules and at the same time to ensure the corresponding material, personnel and organisational prerequisites all stem from the range of permitted investment services.
2. The business activity of an investment firm[1] is regulated by the Act, which stipulates the conditions for the provision of investment services. The details relating to the rights and obligations of an investment firm stipulated by the Act are further regulated through statutory instruments in the following areas
   - authorisation - Decree No. 233/2009 Coll., on Applications, Approval of Persons and the Manner of Proving Professional Qualifications, Trustworthiness and Experience of Persons, and on the Minimum Amount of Funds to be Provided by a Foreign Bank to its Branch (hereinafter only "Decree No. 233/2009 Coll.")
   - the rules for prudent provision of investment services and the rules for conduct towards clients during the provision of investment services – Decree No. 237/2008 Coll., on the Details of Certain Rules in the Provision of Investment Services (hereinafter only "Decree No. 237/2008 Coll.")
   - capital adequacy – Decree No. 123/2007 Coll., Stipulating the Prudential Rules for Banks, Credit Unions and Investment Firms (hereinafter only "Decree No. 123/2007 Coll.")
   - requirements for the expertise of persons - Decree No. 143/2009 Coll., on the Expertise of Persons through which an Investment Firm performs its Activities (hereinafter only "Decree No. 143/2009 Coll.")

II. Procedural questions

II.1. Authorisation to perform the activities of an investment firm

1. Participants in the proceedings

The applicant for authorisation to perform the activities of an investment firm (hereinafter only the "applicant for authorisation") and the sole participant in the proceedings is the joint-stock company or limited liability company with registered office as well as its real place of business in the territory of the Czech Republic, for which the activity of an investment firm is to be authorised and which cannot be identified as the entity submitting the application (this may be an entity acting in the name of the applicant, agent, etc.). An applicant for authorisation may be an already-established joint-stock company or limited liability company before its entry into the Commercial Register (i.e. before its incorporation). The details of

[1] Article 5 and subsequent and Article 21 and subsequent of the Act

acting on behalf of a company before its incorporation are regulated by Article 64 of the Commercial Code.

2. Application, deadlines and procedure adopted in administrative proceedings

Pursuant to Decree No. 233/2009 Coll., an application for authorisation to perform the activities of an investment firm (hereinafter only the "application") is submitted on a prescribed form, to which compulsory annexes are to be added. Annex No. 2 of the Decree contains a specimen of the application form and it is published on the website of the Czech National Bank in PDF and DOC formats.

An application can be submitted in the Czech or Slovak languages[2]. Documents prepared in a foreign language shall be submitted to the Czech National Bank in their original wording and, if the Czech National Bank, pursuant to Article 196 (4) of the Act, has not announced on its official notice board[3] or has not notified[4] otherwise in the case in question, it shall be necessary to submit officially certified translations together with the documents. If an application is not complete (it does not contain the prescribed requisites or annexes pursuant to the Decree), the Czech National Bank shall call the applicant to remove the deficiencies within a specified deadline for supplementation and shall suspend commenced administrative proceedings for a reasonable period of time. If the deficiencies are not removed within the stipulated deadline the Czech National Bank shall terminate the administrative proceedings.

Within the framework of the administrative proceedings, personal/oral proceedings are possible, at which authorised employees of the Czech National Bank shall elaborate for the applicant the requirements for the supplementation of the application given in the call for rectification. Any potential uncertainties regarding the application form or the individual annexes can be consulted with the appropriate employees of the Czech National Bank before the submission of the application itself.

The Czech National Bank shall decide on the granting of authorisation to perform the activities of an investment firm within a deadline of 6 months from the date on which an application is delivered to it. This deadline was stipulated in the Act in accordance with a requirement in Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (MiFID).

The proceedings relating to an application for a change in the scope of authorisation to perform the activities of an investment firm shall be subject, to a reasonable extent, to the legislation for granting authorisation to perform the activities of an investment firm. In such cases, if the applicant fulfils the requirements stipulated by the Act, the Czech National Bank by decision shall cancel the existing authorisation and issue a new authorisation within the required scope[5].

The Czech National Bank is obligated, when evaluating an application for a change to authorisation to perform the activities of an investment firm, to evaluate all the legal prerequisites in the same way as when granting a completely new authorisation. In administrative proceedings relating to an expansion of authorisation, however, the applicant shall only demonstrate the new facts and documents that shall be affected by the change in the scope of activities or that are relevant for the purposes of the evaluation of the application. Therefore, in the case of unchanged facts and internal regulations, the applicant may refer to

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2 Article 16 of the Code of Administrative Procedure

3 http://www.cnb.cz/cs/dulezite/uredni_deska/

4 Here it would be suitable, before submitting the application, to contact the Czech National Bank (Licencing Division) and verify the possibility of submitting documents in a foreign language.

5 See the provisions of Article 144 (2) of the Act

documents that were submitted to the Czech National Bank within the past three years. If the applicant does not provide materials for evaluating whether or not it meets the conditions for the granting or change of authorisation to perform the activities of an investment firm, the Czech National Bank is under no obligation to investigate whether the conditions have been met itself.

3. Administrative fee

The submission of an application for the granting of authorisation to perform the activities of an investment firm is subject to an administrative fee of CZK 50 000[6], while the submission of an application for a change to authorisation to perform the activities of an investment firm is subject to an administrative fee of CZK 10 000[7].

The identification details for the account of the Czech National Bank for the payment of this administrative fee are: 86 – 69193891/0710. As the variable symbol the applicant shall give its business ID No. (IČ), if this has been allocated, otherwise it must contact the Czech National Bank, which shall allocate it with the appropriate number (as the variable symbol).

In the event the administrative fee is not paid at the same time as the application is submitted (it is recommended that the document demonstrating payment is attached to the application), the Czech National Bank shall call the applicant to pay the administrative fee within a stipulated deadline. If the administrative fee is not paid by the expiration of this stipulated deadline, the Czech National Bank shall terminate the administrative proceedings.

II.2. Registration of other business activities

An application for the registration of other business activities can be submitted together with an application for authorisation to perform the activities of an investment firm or separately. An application for the registration of other business activities is submitted on the form whose specimen is given in Annex No. 12 of Decree No. 233/2009 Coll. and also published on the website of the Czech National Bank. Annexes should be attached to the application form pursuant to the Decree. The submission of an application for the registration of other business activities is not subject to any administrative fee.

If the legally stipulated conditions for registration are met (i.e. the performance of the other business activities will not prevent the proper provision of investment services or effective supervision of the investment firm and the application for registration fulfils the conditions stipulated in the provisions of Article 7 (2) of the Act), the Czech National Bank shall register the other business activity of the applicant without undue delay and will send the applicant registration certification.

The difference between registration and authorisation for the activities of an investment firm issued in administrative proceedings is that registration only certifies compliance with legally stipulated conditions[8]. In the case of a decision on the registration of other business activities of an investment firm given in Article 8a (1)) to (3) of the Act applying to activities directly

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[6] Item 66 d) of the List of Administrative Fees, an annex to Act No. 634/2004 Coll. on Administrative Fees, as amended.

[7] Item 66 e) of the List of Administrative Fees, an annex to Act No. 634/2004 Coll. on Administrative Fees, as amended.

[8] Registration does not take place in administrative proceedings according to part two of the of the Code of Administrative Procedure, but is rather a procedure according to part four of the of the Code of Administrative Procedure (Articles 154 to 158 of the Code of Administrative Procedure), and specifically a different act pursuant to the provisions of Article 158 of the Code of Administrative Procedure.

connected with the administration of its own assets the Czech National Bank shall refuse registration unless there are reasons for special consideration[9].

If the applicant does not demonstrate compliance with the legally stipulated conditions, the Czech National Bank shall commence administrative proceedings with the applicant and shall decide to refuse the application for registration if the applicant does not comply with the given conditions even in these proceedings.

III. Investment services and other business activity

III.1. Investment services and investment activity

The term "investment services" is regulated by the provisions of Article 4 of the Act. As an investment service the Act also considers an investment activity, i.e. an activity that need not necessarily be performed as a service for a third party. From the perspective of compliance with the rules of conduct towards clients, the absence of the conceptual attribute of service for a "third party" or "client", i.e. the performance of an investment activity, is given by the fact that the investment firm cannot comply with the given rules, as here there is no "client" to whom the service would be provided.

Pursuant to the Act, investment services are further split into main (Article 4 (2) of the Act) and ancillary (Article 4 (3) of the Act). An activity that formally fulfils the attributes of any of the main or ancillary investment services, is an investment service only if it is performed as a business activity. An activity performed as a business activity is considered to be a systematic activity performed independently by any entity in its own name and at its own risk for the purpose of making profit.[10]

The Act does not consider as an investment service any activity given in Article 4 (2) and (3) of the Act, but only such activity that is performed in relation to an investment instrument in the sense of Article 3 of the Act. There are, however, several exceptions from this general rule of the connection of the activity to a specific investment instrument. These are investment services of performing exchange operations connected to the provision of investment services (Article 4 (3) e) of the Act), an advice to undertakings on capital structure, industrial strategy and the related questions and the provision of advice and services related to the transformation of undertakings or the purchase of undertakings (Article 4 (3) c) of the Act)

The exclusive authorisation of investment firms to the provision of main investment services and ancillary investment services pursuant to Article 4 (3) a) of the Act is broken by exceptions on the basis of Article 4a and 4b of the Act.

A: Main investment services

1. Reception and transmission of orders in relation to investment instruments

(Article 4 (2) a) of the Act)

This investment service characterises the firm as a broker that either enables or facilitates for investors in particular the acquisition and disposal of investment instruments. The term "order" is understood to mean in particular an order to purchase or sell investment instruments. Such an investment service is also the brokering of the

[9] Article 6a (6) of the Act

[10] Compare with Article 2 (1) of Act No. 513/1991 Coll., the Commercial Code, as amended.

conclusion of a master agreement that stipulates the form of future orders relating to investment instruments.

The provisions of Article 4 (4) of the Act stipulate that the brokering of transactions with investment instruments, meaning a typical activity directed towards finding a counterparty for a client, is also a main investment service of reception and transmission of orders in relation to investment instruments. Such a service is also the brokering of the purchase of unit funds certificates (or similar securities) issued by a standard fund (or a similar open-type collective investment fund) to clients[11].

2. The execution of orders on behalf of clients

(Article 4 (2) b) of the Act)

An investment firm, when providing this investment service, acts as the representative of the client (which can also be another investment firm) and the content of its activity is composed of the performance of an order for a transaction with an investment instrument. Usually the content of such an investment service is one of the following cases:

- finding a suitable counterparty and ensuring the "pairing" of the order from the client with the order from the counterparty,
- transmission of an order to purchase (an order) newly issued securities to the issuer or the issue manager,
- transmission of an order to an (automated) trading system of the organiser of a regulated market or other market platforms, where the "pairing" is performed anonymously.

The performance of a public auction of securities pursuant to Article 33 of the Act is also considered as the provision of an investment service.

3. Dealing with investment instruments on own account

(Article 4 (2) c) of the Act)

An investment firm that, within the framework of the administration of its own assets, trades on its own account and this activity has the characteristics of a business activity, is providing the main investment service of dealing with investment instruments on its own account. Entities without authorisation to perform the activities of an investment firm can deal with investment instruments on their own account and also as a business activity, if one of the conditions pursuant to the provisions of Article 4b of the Act will be fulfilled. This investment service also includes a certain client element, meaning that an investment firm's transaction on its own account will have its own counterparty. A typical characteristic of the service of dealing with investment instruments on own account is, however, the absence of the element of "an investment firm acting in the name of a client".

The following activities are typical for the provision of this investment service:

- purchase and sale depending on the expected market development (so-called "time arbitrage")

[11] In accordance with the reply of the European Commission in the material "Your questions on the MiFID", in its wording as of 31. 10. 2008, question 92.

- purchase and sale depending on differences in prices on different markets (so-called "spatial arbitrage")
- market making – the creation of liquidity of a specific title on the basis of a contract with an issuer or market organiser, potentially the creation of liquidity of specific products not tradable on a regulated market
- the conclusion of a transaction with a client on the basis of a request[12] from a client that the investment firm informs him of the price for which it is willing to sell or purchase a specific investment instrument (i.e. also in cases when the investment firm in question does not perform market maker activities)
- the conclusion of transactions with OTC derivatives
- an activity composed of the broker in the position of commission agent selling a security from its "inventory" to a client who is in the position of principal and who gave an order for the purchase of such a security or, on the contrary, purchasing the investment instrument from that client (the commission contract must expressly permit such an approach)
- systematic internalisation[13]
- regular, unsolicited offers to buy or sell investment instruments to the public (e.g. through posted flyers, by telephone, by email).

The situation will be the provision of the service of trading on own account also in cases when the broker procures financial means for clients from third parties through so-called repo transactions, if it acts in regard to the counterparty to the transaction or the market as the entity responsible for the proper settlement of liabilities from the transaction. In such a case the contract will be concluded between the creditor and the broker on the one side and between the broker and the debtor on the other side.

4. Managing the assets of a client, if they include an investment instrument, on the basis of free discretion within the framework of a contractual arrangement

(Article 4 (2) d) of the Act)

The basic element of this service (so-called portfolio management) is the decision-making activity of an investment firm regarding the specific parameters of individual transactions on the basis of its own discretion, restricted by the investment strategy arranged within the framework of the management contract, and the subsequent implementation of such a decision. If an investment firm acts on the basis of a specific order or specific orders of a client, or its agent, then this will not be the performance of this service.

This investment service is provided to individual clients whose individual assets are managed by the investment firm, unlike the management of assets brought together in collective investment funds[14].

An investment firm need not, during the provision of this investment service, necessarily accept financial means and investment instruments of a client, i.e. need not maintain client accounts. These means may be stored e.g. with a custodian, which

[12] "Request for quote" – compare with point 7 of the response of the European Commission in the annex to document CESR/07-320 "Best Execution under MiFID: Questions & Answers, May 2007"

[13] Article 17a to 17d of the Act in connection with Article 21 of Commission Regulation (EC) No. 1287/2006

[14] Compare to Act No. 189/2004 Coll., on Collective Investment, as amended

ensures for investment firms during the provision of this investment service only the settlement of orders that the investment firm created and performed at its own discretion during the management of the client's assets.

5. Investment advice in relation to investment instruments

(Article 4 (2) e) of the Act)

Investment advice is defined as the provision of personal (individually intended) advice to a client, aimed directly or indirectly towards the purchase, sale, underwriting, placing, holding or other disposal of a specific investment instrument or towards the exercise of the right to such disposal, irrespective of whether this is upon the instigation of the client or the provider. As individually intended advice is typically considered advice that is presented to a client as appropriate, i.e. taking into account his individual needs, his knowledge, experience, financial background and investment goals (Article 15h of the Act).

The provision of investment recommendations and analyses of investment opportunities is not considered as investment advice.

6. The operation of a multilateral trading facility

(Article 4 (2) f) of the Act)

The so-called multilateral trading facility[15] was introduced on the basis of the requirements of the MiFID as a market on which more moderate requirements are legally imposed compared to a regulated market. This is an alternative trading system in relation to the existing regulated (stock) markets.

7. The underwriting or placing of investment instruments on a firm commitment basis

(Article 4 (2) g) of the Act)

The provision of this investment service is composed of activities through which an investment firm fulfils its obligation towards the issuer of an investment instrument, namely that it will ensure the underwriting and placing of investment instruments. The investment firm has the obligation to underwrite, on its own account, the issue of investment instruments for which it does not find a buyer (underwriter).

An entity that promises to an issuer that it will underwrite the investment instruments it issued without the subject of the obligation being the performance of activities directed towards the further distribution of such offered securities (i.e. their public or non-public offering) is not a provider of the investment service of subscribing or placing investment instruments, but rather an investor.

An entity that only provides services connected with the underwriting of an investment instrument, without binding itself to its placing, does not provide the main investment service of subscribing or placing investment instruments, but rather an ancillary investment service pursuant to Article 4 (3) f) of the Act (services connected with the underwriting or placing of investment instruments).

[15] Article 69 and subsequent of the Act

8. The placing of investment instruments without a firm commitment basis

(Article 4 (2) h) of the Act)

This investment service differs from the investment service of underwriting or placing of investment instruments with a firm commitment basis through the fact that here there is no obligation of the investment firm to underwrite, on its own account, part of the issue of the investment instruments for which it does not find a purchaser (underwriter).

In the same way as for the investment service of underwriting or placing investment instruments with a firm commitment basis, this investment service is also provided to the issuer, or the issue manager, but not the investor. One essential attribute of this investment service is payment or another advantage provided to the investment firm by the entity which has an interest in the placing of the investment instrument (the issuer or issue manager). In the event an investor is found, the investment firm will typically provide a main investment service to this client pursuant to Article 4 (2) a) or b) of the Act.

B: Ancillary investment services

1. The safekeeping and administration of investment instruments including related services

(Article 4 (3) a) of the Act)

Within the framework of this investment service the investment firm accepts from the client documentary investment instruments or maintains records relating to the central records of securities, maintains separate records of investment instruments or maintains records connected with the separate records of investment instruments (so-called safekeeping services). The decisive element for stipulating whether the provision of this investment service is involved is the actual acceptance of the documentary securities by the investment firm or the maintenance of the applicable records of the investment instruments, and not the conclusion of a safekeeping contract.

When providing this investment service, within the framework of the administration the investment firm performs legal acts on behalf of the client, through which it exercises the rights connected with the investment instruments that are the property of the client, and also performs acts essential for the retention of such rights, and this all within the scope pursuant to the contract with the client. It must also perform these acts without any specific orders from the client. In the event that the client issues orders, the investment firm must provide notification of any eventual incorrect orders within the framework of the qualified provision of this service. The acts essential for the retention of the rights connected with the managed investment instrument are, in particular, acts connected with the exercise of the right to a dividend, exchange and pre-emptive rights and so on. And unlike in relation to the main investment service of managing the assets of the client, the investment firm, when providing this ancillary investment service, is not under obligation to monitor e.g. the financial health of the issuer of the managed investment instrument.

2. **The granting credit or loan to a client for the purpose of enabling a transaction with an investment instrument in which the granted credit or loan should participate**

   (Article 4 (3) b) of the Act)

   This investment service includes cases when an investment firm grants a client with a credit (financial means) or a loan[16] of investment instruments for the purpose of enabling a transaction with an investment instrument. Compared to the regular provision of a credit or loan, this investment service is restricted only to cases when the investment firm, as the provider of the credit or loan, will participate in the transaction with the investment instrument. This participation will be composed of the provision of other investment services (in particular the main investment service of reception and transmission of orders, the execution of orders on behalf of clients, dealing on its own account or portfolio management).

   As arises from the definition of this ancillary investment service, the investment firm must always act as creditor towards the client. The investment firm is thus not authorised to only mediate the credit or loan within the scope of authorisation for the provision of this ancillary investment service.

   In practice on the Czech capital market it is usual that an investment firm provides for a client part of the financial means for the financing of the purchase of an investment instrument and at the same time acquires the investment instrument in question as security through a repo operation. In such a case there is thus the combination of the provision of this ancillary investment service and the main investment service of dealing on its own account pursuant to the provisions of Article 4 (2) c) of the Act.

3. **An advice to undertakings on capital structure, industrial strategy and related questions, as well as the provision of advice and services relating to the transformation of undertakings or the purchase of undertakings**

   (Article 4 (3) c) of the Act)

   This investment service covers several areas. The first of them is advice activity relating to the capital structure, i.e. the financing of businesses or business projects. It includes questions of acquiring financial means, the structure of sources of financing, the preparation of recommendations or plans for financing. These plans as a rule include the use of investment instruments for the acquisition of financial resources or their use during the management of the finances of the business entity in question. This advice activity is often connected to the provision of the investment service of the underwriting or placing of investment instruments.

   The second area is advice in the area of industrial strategy and related questions. This means comprehensive issues related to logistics, production and quality management, accounting, tax issues, marketing, management and so on.

   The third area is the provision of advice and services relating to the transformation of undertakings or purchase of undertakings. This means the issues of merger, division, asset transfer, takeover offers, sale or lease of a business or its part and so on.

   From the perspective of an investment firm this activity is frequently connected with the provision of other investment services e.g. ensuring the implementation of the

[16] Article 16a of Act No. 591/1992 Coll., on Securities, as amended

compulsory purchase of shares within the framework of takeover bids (the reception and transmission of orders and the execution of orders on behalf of clients).

4. The provision of investment recommendations and analyses of investment opportunities or similar general recommendations relating to transaction in investment instruments

(Article 4 (3) d) of the Act)

The definitions of the terms "investment recommendation" and "analysis of investment opportunities" (investment research) are in many respects similar. Both these terms can overlap, while the analysis of investment opportunities is, as a rule, a special form of investment recommendation. An investment recommendation need not contain an analysis of investment opportunities.

For the purposes of the Act an investment recommendation is understood to be:

- information from an investment firm, bank or other entity whose main business activity is the creation of investment recommendations, or a natural person who works for them on the basis of an employment contract or otherwise, while this information directly or indirectly recommends a specific investment decision relating to an investment instrument or the issuer of an investment instrument,
- information from other entities than the entities given in the previous paragraph, which directly recommends a specific investment decision relating to an investment instrument,

including an opinion regarding the current or future value or price of such investment instruments, if it is intended for the public or its publication can be justifiably assumed (e.g. potential link to information distribution channels). An investment recommendation is not a personal recommendation (individually targeted) because that is considered to be investment advice.

Within the framework of the issue of managing conflicts of interest, the obligation is expressly emphasised for an investment firm to ensure the neutrality and independence of the financial analysts (and other persons who, in connection with the performance of their employment, profession or function, create material content of investment recommendations or analyses of investment opportunities containing investment recommendations) during the provision of this ancillary investment service.

Such an investment service is not the publication of the company, logo or scope of the services provided.

5. The performance of foreign exchange operations connected to the provision of investment services

(Article 4 (3) e) of the Act)

This is a transaction on a foreign exchange market connected with the provision of investment services. The concrete content of such a service is the performance of conversion (exchange) of currencies, the purchase of foreign currencies and the transfer of financial means abroad.

This ancillary investment service must always be connected with the provision of one of the main investment services. A broker providing this investment service must at the same time be authorised to provide main investment services (for example

reception and transmission of orders, execution of orders on behalf of clients or managing the assets of the client).

Typically this will involve a case when a client trading in the USA deposits Czech crowns on the account of an investment firm and the investment firm itself ensures their conversion into dollars.

In the event an investment firm intended to provide cash-free conversion outside the framework of the provision of an investment service, it would first have to acquire a foreign exchange licence pursuant to Article 3b of the Exchange Act and subsequently register this activity as another business activity pursuant to Article 6a of the Act (for more details see II. 2.).

6. Services related to underwriting or placing of investment instruments

(Article 4 (3) f) of the Act)

The content of this ancillary investment service is activities of a supporting nature connected with the underwriting and issue of investment instruments. This means e.g. administrative and legal services connected with the underwriting, marketing activity, contacting of potential parties interested in the underwriting, the preparation or cooperation in the preparation of the issue prospectus, communication with the regulated market on which the issue is to be placed, with the central depository (in the case of book-entered securities), with the printers of the documentary securities and so on.

7. A service similar to an investment service related to asset values to which the value of an investment instrument given in Article 3 (1) g) to k) of the Act and which is connected with the provision of investment services relates

(Article 4 (3) g) of the Act)

The Act stipulates three conditions that stipulate the framework of this ancillary investment service:

- the service is connected with the provision of investment services,
- the subject may only be an asset value that is an underlying asset of one of the derivatives given in the provisions of Article 3 (1) g) to k),
- the provided service must be similar to an investment service.

This is typically a case in which an investment firm performs for a client a transaction with a derivative and the physical settlement, when the underlying asset is e.g. a commodity and at the same time it ensures the actual physical settlement at the derivative maturity date, which it could not do without the corresponding authorisation[17].

[17] Compare justification point 23 of Commission Regulation (EC) No. 1287/2006, where it is stated that in accordance with Section B(7) of Annex I to Directive 2004/39/EC (transposed into Article 4 (3) g) of the Act) investment firms may exercise the freedom to provide ancillary services in a Member State other than their home Member State, by performing investment services and activities and ancillary services of the type included under Section A or B of Annex I of the mentioned Directive (transposed into Article 4 (2) and (3) of the Act), related to the underlying of the derivatives included under Sections C(5), (6), (7) and (10) of the mentioned Annex (transposed into Article 3 (1) g) to k) of the Act), where these are connected to the provision of investment or ancillary services. On this basis, a firm performing investment services or activities, and connected trading in spot contracts, should be capable to take advantage of the freedom to provide ancillary services in respect of that connected trading.

III.2. Other business activity

In addition to the provision of an investment service, an investment firm is also permitted to perform other business activities (Article 6a of the Act) after their registration with the Czech National Bank. The performance of these other activities, however, must not threaten the proper provision of investment services or the effective performance of supervision.

For an investment firm with the highest limits of initial capital pursuant to Article 8a (1)) to (3) of the Act (EUR 730 000, EUR 125 000 and EUR 50 000) such other business activity may only be the performance of an activity on a financial market or an activity directly connected with the management of its own assets (e.g. the lease of its own property, the sale of excess electricity from solar panels on the roof of a building into the electricity grid and so on). A demonstrative listing of the possible activities related to services on a financial market is provided in Article 6a (2) of the Act, while these may specifically be in particular

- an activity related to building savings, mortgages or other loans, ancillary pension insurance or insurance, if this is composed of mediation, or in another intermediary activity or in advice,
- the lease of safety deposit boxes,
- foreign exchange activity and cash-free transactions with a foreign currency,
- educational activity in the area of a financial market.

The subject of the other business activity is not restricted in the case of an investment firm pursuant to Article 8a (4) of the Act.

In addition to registration with the Czech National Bank it is also always necessary to acquire the relevant special business authorisation if this is required for such activity pursuant to other legal regulations. In view of the provisions of Article 6b (1) of the Act, which clearly restricts the subject of business of an investment firm that is not a bank, only to activities that are given in the authorisation to perform the activities of an investment firm or activities registered pursuant to the provisions of Article 6a of the Act, the Czech National Bank is of the opinion that such other business activity cannot be registered without the investment firm already being the holder of the relevant special authorisation. The Czech National Bank bases this approach in particular on the fact that an investment firm that would apply for the registration of another business activity without the relevant special authorisation, would have this other business activity listed in the authorisation, without it being guaranteed that it is in fact authorised for it if, e.g. it did not subsequently obtain the special authorisation.

IV. Types of investment firms

IV.1. According to legal form

In view of the fact that legislation, after the amendment of Act No. 230/2008 Coll. in connection with the transposition of the MiFID, will impact a much wider range of activities and entities (e.g. entities operating formerly on the basis of a foreign exchange licence for cash-free transactions, which included exchange derivatives, entities trading with commodity derivatives) and the specific legal form is not prescribed for investment firms by community law, in addition to the form of a joint-stock company the Act also admits the legal form of a limited-liability company. For an investment firm in the form of a limited-liability company the Act stipulates an obligatory requirement to establish a supervisory board.

IV.2. According to the initial capital limit depending on the investment services, the possibility of holding client assets and the obligation to comply with capital adequacy

In addition to the general requirement imposed by the Commercial Code for a minimum level of equity capital for a joint-stock company and a limited-liability company, an applicant for authorisation must also comply with obligations pursuant to the Act, i.e. the payment of the initial capital including equity capital from means demonstrably coming from legal sources that can be unequivocally identified. For this purpose the applicant must submit to the Czech National Bank the transparent and error-free origin of the initial capital including the equity capital.

Depending on the scope of the investment services provided and the obligation to comply with capital adequacy rules, six types of investment firm are identified pursuant to the initial capital limit, while four of them have an obligation to comply with capital adequacy rules and two do not have this obligation. A graphical representation of the types of investment firms is given in Annex No. 2 of this official information.

A: Investment firms subject to the capital adequacy obligation

1. An investment firm without restriction

EUR 730 000 (Article 8a (1) of the Act, Article 37 of Decree No. 123/2007 Coll.)

The initial capital of an investment firm that is not a bank and does not have the provision of an investment service restricted pursuant to Article 8a (2) to (9) of the Act, must be an amount at least equal to EUR 730 000.

This investment firm must, in addition, pursuant to Article 37 of Decree No. 123/2007 Coll. comply with capital adequacy rules on an individual basis to ensure that it continuously retains capital on an individual basis of an amount at least corresponding to the sum of the capital requirements for the credit, market and operating risks stipulated on an individual basis. In addition, pursuant to the Act, the capital of an investment firm may not fall below the minimum initial capital amount.

2. An investment firm with restricted trading on its own account

EUR 730 000 (Article 8a (1) of the Act, Article 39 of Decree No. 123/2007 Coll.)

The initial capital of an investment firm that is not a bank and does not have the provision of an investment service restricted pursuant to Article 8a (2) to (9) of the Act, must be an amount at least equal to EUR 730 000.

If this investment firm deals on its own account exclusively for the purpose of fulfilling or performing a client order, or in order to become a participant in the settlement system or a member of a recognised stock market[18], if it will only perform client orders there, it has pursuant to Article 39 of Decree No. 123/2007 Coll. an obligation to comply with capital adequacy rules on an individual basis in such a way that it continuously retains capital on an individual basis of an amount of at least the sum of the capital requirements for credit and market risk stipulated on an individual basis and the capital requirement on the basis of overhead costs stipulated on an individual basis. In addition, pursuant to the Act, the capital of an investment firm may not fall below the minimum initial capital amount.

[18] Article 2 (6) d) of Decree No. 123/2007 Coll., stipulating the prudential rules for banks, credit unions and investment firms, as amended by Decree No. 282/2008 Coll.

3. **An investment firm with a restricted scope of investment services**

   EUR 125 000 (Article 8a (2) of the Act, Article 38 of Decree No. 123/2007 Coll.)

   The initial capital of an investment firm that is not a bank and is not authorised to provide the investment services given in Article 4 (2) c) and g) of the Act (dealing with investment instruments on its own account, underwriting and placing of investment instruments with a firm commitment basis) and at the same time is authorised to hold client assets (to accept financial or investment instruments of a client) must be an amount at least equal to EUR 125 000.

   This investment firm must in addition, pursuant to Article 38 of Decree No. 123/2007 Coll., comply with capital adequacy rules on an individual basis in such a way that it continuously retains capital on an individual basis of an amount of at least the higher of the following amounts:

   - the sum of capital requirements for credit and market risk stipulated on an individual basis, or
   - the capital requirement on the basis of overhead costs stipulated on an individual basis.

   In addition, pursuant to the Act, the capital of an investment firm may not fall below the minimum initial capital amount.

4. **An investment firm with a restricted scope of investment services**

   EUR 50 000 (Article 8a (3) of the Act, Article 38 of Decree No. 123/2007 Coll.)

   The initial capital of an investment firm that is not a bank and is not authorised to provide the investment services given in Article 4 (2) c) and g) of the Act (dealing with investment instruments on its own account, underwriting and placing investment instruments with a firm commitment basis) and at the same time is not authorised to hold client assets (to accept financial or investment instruments of a client) must be an amount at least equal to EUR 50 000.

   This investment firm must in addition, pursuant to Article 38 of Decree No. 123/2007 Coll., comply with capital adequacy rules on an individual basis in such a way that it continuously retains capital on an individual basis of an amount at least corresponding to the higher of the following values:

   - the sum of capital requirements for credit and market risk stipulated on an individual basis, or
   - the capital requirement on the basis of overhead costs stipulated on an individual basis.

   In addition, pursuant to the Act, the capital of an investment firm may not fall below the minimum initial capital amount.

B. Investment firms that must have initial capital without the obligation to comply with capital adequacy rules

5. **EUR 50 000 or insurance, potentially a combination** (Article 8a (4) to (6) and (10) of the Act)

   The initial capital of an investment firm that is not a bank and that is authorised to provide only the main investment services given in Article 4 (2) a) and e) of the Act (reception and transmission of orders and investment advice) and at the same time is

not authorised to hold client assets (to accept financial or investment instruments of a client), must be an amount at least equal to EUR 50 000.

The initial capital of such an investment firm may be less than the amount stipulated above if such investment firm is insured against liability for losses caused during the provision of investment services with an insurance settlement limit of EUR 1 million for each insured event and EUR 1.5 million for all insured events on an annual basis, or a combination of these.

6. **EUR 25 000 or insurance, potentially a combination** (Article 8a (7) to (10) of the Act)

   The initial capital of an investment firm that is not a bank and that is authorised to provide only the main investment services given in Article 4 (2) a) and e) of the Act (reception and transmission of orders and investment advice) and at the same time is not authorised to hold client assets (to accept financial or investment instruments of a client), and which is, in accordance with European law, authorised to perform mediation activity in the area of insurance and is also insured against liability for losses caused during the performance of the activities of an insurance broker in accordance with the requirements stipulated by the Act regulating the activities of insurance intermediaries (Act No. 38/2004 Coll., on Insurance Intermediaries and on Independent Loss Adjusters and on amendment to the Trade Licensing Act, as amended), must be an amount at least equal to EUR 25 000.

   The initial capital of such an investment firm may be less than the amount stipulated above if such investment firm is insured against liability for losses caused during the provision of investment services with an insurance settlement limit of EUR 500 000 for each insured event and EUR 750 000 for all insured events on an annual basis, or a combination of these.

V. Prerequisites for authorisation

V.1. Prerequisites for authorisation in general and the application

The prerequisites for authorisation to perform the activities of an investment firm are regulated in Article 6 and subsequent of the Act, while other details are regulated in Decree No. 233/2009 Coll., while the material demands for the rules for prudent provision of an investment service and the rules for conduct towards clients during the provision of investment services for the applicant arise among other things from Decree No. 237/2008 Coll., for the area of capital adequacy from Decree No. 123/2007 Coll. and requirements for the expertise of persons through which an investment firm performs its activities, are stipulated in Decree No. 143/2009 Coll.

The specimen form of the application for authorisation to perform the activities of an investment firm and the contents of its annexes are stipulated in Decree No. 233/2009 Coll.[19] The compulsory content of internal regulations is then stipulated in particular in Decree No. 237/2008 Coll.

V.2. The initial capital[20]

The initial capital is understood to be the sum of:

[19] A specimen form in DOC and PDF formats is published on the website of the Czech National Bank at http://www.cnb.cz/cs/dohled_fin_trh/dohled_kapitalovy_trh/tiskopisy/index.html

[20] Article 2 (1) i) of the Act

- the paid up equity capital,
- the paid up share premium,
- the obligatory reserve funds,
- the other reserve funds created from profit after tax, with the exception of reserve funds created for specific purposes,
- the difference between the undistributed profit of previous periods given in the financial statements verified by an auditor and approved by the general meeting, about whose distribution the general meeting has not decided, and the uncovered losses of previous periods including losses for the previous accounting periods.

V.3. Business plan

The applicant's business plan is the key document of the application, on the basis of which the Czech National Bank will evaluate the adequacy of the created personnel, organisational and material prerequisites specified through the other annexes to the application.

The plan must be based on a thorough analysis of the market and the possibilities of the applicant and must clearly define the basic strategic goals of the applicant with an indication of the method to be used to achieve them.

The business plan should serve as the basic source for the preparation of the application and during the verification of its material completeness. It must reflect the rules for the prudent provision of investment services and be founded upon a thorough evaluation of the risks connected with the intended activity. The estimates of future demand, the client base, the competitive environment and other economic conditions must be based on realistic economic calculations.

The business plan should be stipulated for at least three years in such a way as to provide a detailed explanation of the activities that should contribute to the achievement of the company's strategic goals.

The plan should, in particular, contain as a framework:

- a detailed description of the offered investment services in relation to the specific investment instruments,
- the planned balance sheet and the planned profit and loss statement for the next 3 calendar years, including the assumptions on which the plan has been based and their detailed justification,
- the envisaged scope of provided services with an estimate of the number of clients, the amount of revenues and the amount of managed or entrusted client assets for 3 years from the commencement of the provision of investment services,
- a definition of the circle of clients to whom the individual services will be provided
- a definition of the financial markets (e.g. regulated markets) on which the investment firm will perform the orders of the clients.

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V.4. Draft internal regulations, rules and other documents of the applicant

The draft internal regulations, rules and other documents of the applicant arise from the requirements of the Act and statutory instruments. While the addressee of the obligations stipulated by the Act and the statutory instruments is the investment firm itself, the addressee

of the internal regulations of an investment firm are the sections, employees or other entities that fulfil the individual functions of the investment firm and actually thus ensure the performance of the obligations of the investment firm itself.

The content of an internal regulation should therefore not be only references to provisions of the Act or a statutory instrument, or the word-for-word adoption of these provisions, but rather the concrete procedures of the investment firm during the performance of its activities. For example the draft internal regulation regulating the rules of conduct towards clients cannot merely repeat the provisions of the Act and Decree No. 237/2008 Coll., but must stipulate the internal procedures for conduct towards clients, within the framework of which it will define among other things other responsibilities of sections or employees for their achievement.

The method of regulating the procedures of an investment firm is influenced in particular by the scope of activities of that investment firm and its organisational structure.

The applicant will regulate through internal regulations at least:

- the organisational layout,
- the procedure when accepting, amending and implementing internal regulations,
- the internal control rules,
- the requirements for the knowledge and experience of entities that will ensure the performance of their activities and their demonstration,
- the internal communication system,
- the procedure for the creation, processing and storage of documents and records of the investment firm and the disposal of them,
- measures for the protection of internal information containing rules for the performance of personal transactions,
- rules for the handling of complaints and claims from clients or potential clients who are not professional clients, their documentation and the documentation of the measures adopted,
- rules for the division of performances and obligations from an associated order,
- rules for discovering and managing conflicts of interest
- measures for preventing market manipulation,
- control and security measures for processing and documenting information,
- rules for the control of the activities of investment brokers and contractual representatives that the investment firm uses during the provision of their services,
- the risk management system,
- the procedures during the provision of an investment service and during the performance of other business activities,
- the accounting procedures directed towards the protection of clients' assets,
- the rules for documenting clients' assets,
- the system of internal fundamentals, procedures and control measures for compliance with the obligations stipulated by Act No. 253/2008 Coll., on Selected Measures against Legitimisation of Proceeds of Crime and Financing of Terrorism,

- potentially other regulations depending on the scope of the authorisation that is being applied for (e.g. the procedures when maintaining separate documentation and so on).

V.5. Personnel prerequisites

The investment firm should be staffed at a corresponding level, complexity and scope in relation to the activities it performs. The investment firm is, in accordance with Article 14 and subsequent of the Act, obligated to ensure that these are trustworthy persons with the knowledge and experience essential for the performance of the activities allocated to them[21].

It is necessary to attach to the application a list of the persons who will form the management of the organisational sections or as independent persons provide:

- risk management,
- the performance of the internal audit,
- regular checks of compliance with legal obligations and obligations arising from the internal regulations of the investment firm (compliance activity),
- the provision of the investment service,

with the identification information of these persons and information pursuant to Article 8 (3) c) of Decree No. 233/2009 Coll.

V.6. Qualifying holding and control of an investment firm

One of the essential prerequisites for granting authorisation to perform the activities of an investment firm is the suitability of the entities with qualifying holdings in the applicant and the entities controlling the applicant for the healthy and prudent management of the investment firm and also such close connections between the applicant and third parties that will not prevent the effective performance of supervision.

The Czech National Bank will base its evaluation of the entities with qualifying holding in the applicant or controlling the applicant within the framework of the application for authorisation to perform the activities of an investment firm on the criteria stipulated by the Act for granting agreement with the acquisition of qualifying holdings or for the control of an investment firm.[22] The Czech National Bank will comply with the application from the perspective of the suitability of these entities if the following conditions are met:

- the entities with qualifying holdings in the applicant or controlling the applicant are trustworthy,
- the persons proposed as managers of the applicant comply without evident doubt with the conditions stipulated in Article 10 (2) of the Act,
- sufficient volume, transparency of origin and objectionableness of the financial means of the entities with qualifying holding in the applicant or entities controlling the applicant, in relation to the performed or planned activity of the investment firm,
- the applicant will be able to comply with the prudency rules on an individual and consolidated basis,
- the structure of the consolidated group into which the applicant is to be included

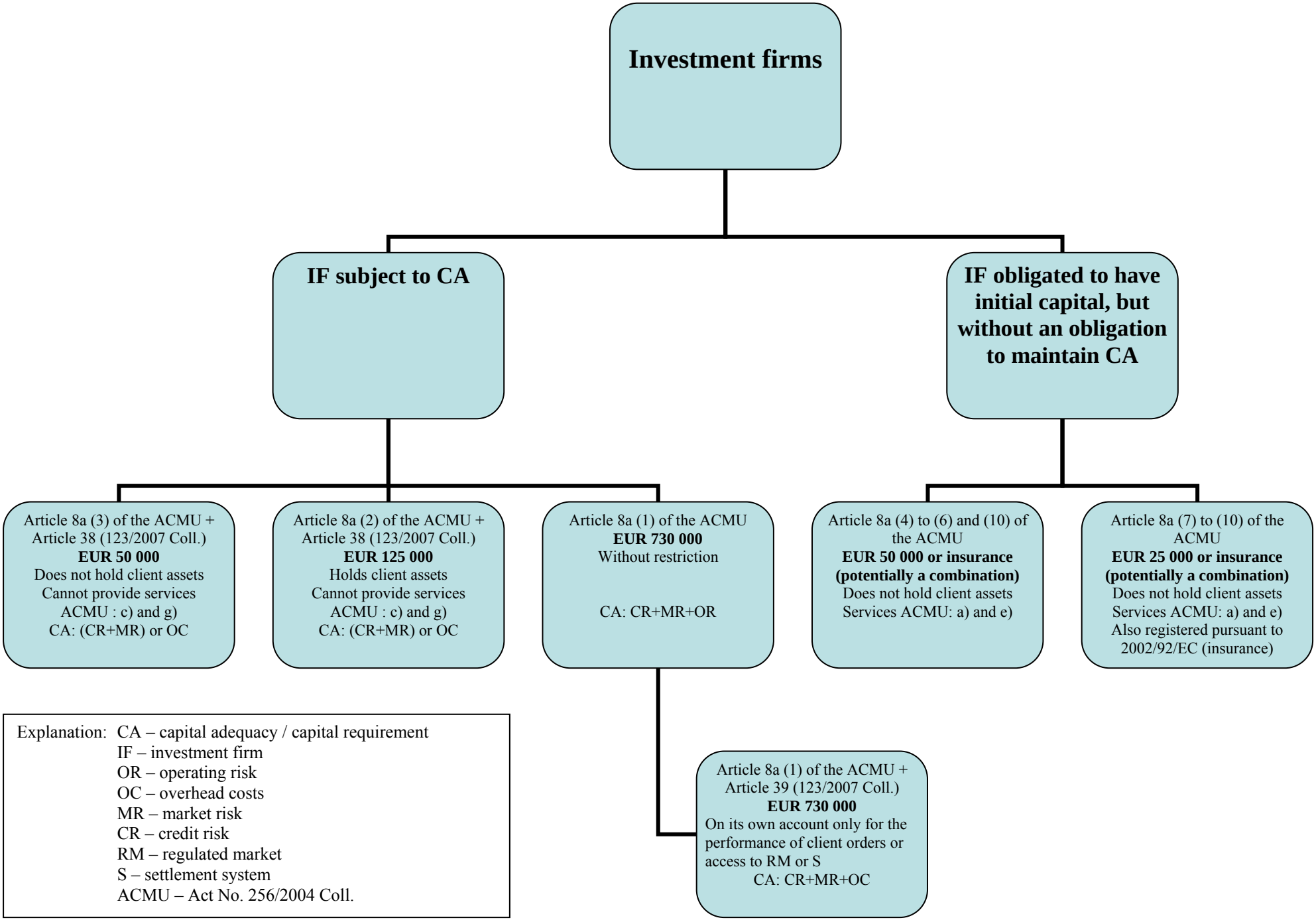
[21] See Decree No. 143/2009 Coll., on the Expertise of Persons through which an Investment Firm performs its Activities.

[22] Article 10d (6) of the Act

1. will not prevent effective supervision over the investment firm,
2. will not prevent the effective exchange of information between the Czech National Bank and the supervisory body of a different European Union Member State that supervises the financial market, or
3. will not impede the performance of the competencies of the individual supervisory bodies over the consolidated group and over the entities included in this consolidated group,

- in connection with the qualifying holdings of entities in the applicant or the control of the applicant there are no justified concerns that this could lead to a breach of the Act regulating measures against the legalisation of proceeds of crime and financing of terrorism.

Annex No. 2



Explanation:
CA – capital adequacy / capital requirement
IF – investment firm
OR – operating risk
OC – overhead costs
MR – market risk
CR – credit risk
RM – regulated market
S – settlement system
ACMU – Act No. 256/2004 Coll.