



CYPRUS

FINANCIAL SERVICES

FIRMS ASSOCIATION



ASSOCIATED WITH THE CYPRUS CHAMBER OF COMMERCE AND INDUSTRY (CCCI)

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## NEWS BULLETIN

March /2019

### CySEC Directive relating to the Operation of the Investor Compensation Fund

#### New Directive DI87-07

Dear Members, please be informed that CySEC issued a revised Directive regarding the Operation of the Investor Compensation Fund which came into force as of its publication in the Official Gazette of the Republic on March 13<sup>th</sup> 2019. Unfortunately, there is still no full translation of the Directive in English language on CySEC website.

The following is a not exhaustive summary of the significant changes of the new Directive. It is also noted that the present English text is for information purposes only and not legally binding. The legally binding document is the one in Greek language.

#### **Significant changes**

##### **Members of the Fund:**

CIFs; Member state IFs branches of paragraph 5 of the Directive, Third Country IFs branches of paragraph 4 established in the Republic pursuant to Article 78 of the Law; AIF Managers providing the services of paragraph 6 of Section 6, of the AIFM Law and Management Companies providing the services of paragraph 4 of Section 109 of the UCITS Law.

##### **Capital and resources of the Fund:**

Essentially there will be two "types" of ICF, one consisting of the existing individual contributions of each Member which will continue to be maintained in members' accounts and one which will be created from new contributions, as described in Paragraph 8 of the new Directive. The new "type" will treat new contributions as assets of the fund (not belonging to the members).and therefore will not be credited to the members' account, even though they will be paid by members.

The Fund's capital that has accrued before the date the new directive came into force and corresponds to the amount that is credited to the individual account of each Member will still belong to the members. However there are no provisions in the Directive for the return of these amounts to the members. Thus it not clear if a member will ever be eligible to claim the balance of its member's account.

Thus, the Fund's capital shall thus comprise of:

- a) Initial contributions, ordinary annual and extraordinary supplementary contributions
- b) Proceeds of Fund from donations or ex gratia
- c) Proceeds from investments of the Fund's liquid assets
- d) Fees paid by its Members to cover administrative or other costs incurred in the context of the functioning of the Fund
- e) Unclaimed customer funds which a Member of the Fund is holding for at least 6 years and opts to transfer these to the fund. (If a member opts to transfer clients funds to the ICF and the client subsequently claims these, the Member is obliged to pay the clients from its own funds)
- f) The funds transferred to the Fund by virtue of the Commission Directive on the procedure for suspending and withdrawing authorisation and other related issues.

Contributions and fees paid to the Fund pursuant to the new Directive do not constitute an asset of Members of the Fund and therefore no amount may be refunded to Members at any stage, except from the cases of the rejection of the application for authorisation by the CySEC or incorrect calculation of the contribution already paid.



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### Claims by covered clients

In case of activation of the Compensation Fund, the payments will be charged pro rata to the two "types" of Funds, regardless whether the Member have contributions only to one of the "two" Funds, and pro-rata to the members accounts. There is no provision in the Directive to firstly charge the default member's account as was the case with the previous Directive.

### Initial Contributions

Initial contributions are payable on the basis of the investment services for which a potential Member of the Fund has applied for authorization or when an existing current Member has applied for an extension of its authorisation to CySEC (see paragraph 9).

### Ordinary Annual Contributions

Ordinary annual contributions are calculated on the basis of the statement of eligible funds submitted by the member. The amount payable shall be communicated to the Fund Members by the ICF not later than 10 June of each year and it is payable not later than 10 August of each year. A discount of 80% will provided, if the Member pays the amount by 10 July of each year.

The statement of the eligible funds and financial instruments of the previous year must be submitted by the 10th May of the current year and must be accompanied by:

- a. Auditor's report on the correctness of the statement and if applicable
- b. Statement of errors found and communicated to the member
- c. Written confirmation obtained by the auditors from the member that the errors found were corrected

The ordinary annual contribution of each Member of the Fund will amount to 5% of the eligible funds and financial instruments of the Member's covered clients, if the statement of eligible funds and financial instruments is submitted by the 10th May, the auditor's report is unqualified and all errors found were corrected.

The rate of the ordinary annual contribution will increase to 6% if the statement of eligible funds and financial instruments is submitted by the 10th May, the auditor's report is unqualified and not all errors found are corrected

Lastly, the ordinary annual contribution will increase to the higher of €130.000 and 1% of the eligible funds and financial instruments of the Member's covered clients in case the statement of the eligible funds and financial instruments of the previous year is not submitted by the 10th May or the auditor's report is qualified.

### Extraordinary supplementary contribution of Members.

Extraordinary supplementary contributions are payable by members, without limit, upon the decision by CySec.

CySEC requires Members to maintain a minimum liquidity cushion in a separate bank account. The amount to be maintained in a separate bank account is calculated to a percentage of 3% of the eligible funds and financial instruments of the Member for the previous year. According to the Directive, this amount must be deposited the day after the submission of the statement of eligible funds and financial instruments and must be kept until the next submission.

Additionally the Members of the Fund are obliged to submit on a yearly basis a written assurance of their compliance to the above paragraph, signed by all members of the Board of Directors and by the internal auditor or where this apply by the Compliance Officer.



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### Annual administration fee

Fund Members shall pay an annual fee to cover administrative and/or other expenses arising in the context of the Fund's operation by 10 July each year. For the year 2018 the administrative fee must be paid by 8 April.

For those Fund Members which hold eligible funds and financial instruments of clients eligible to submit a claim to the Fund the administration fee has been set up to €700.

For those Fund Members which do not hold eligible funds and financial instruments of clients eligible to submit a claim to the Fund the administration fee has been set up to €100.

### Sanctions

In case of infringement by any person of the provisions of this Directive, CySec shall take measures or impose penalties according to the Law.

Further to the above, penalties will be imposed on Members in case of failure to comply with the provisions of the Directive in connection with the payment of contributions.