

## **BRIEFING OF INVESTORS CONCERNING THE INVESTOR COMPENSATION FUND OF CYPRIOT INVESTMENT FIRMS (CIF)**

### **• INTRODUCTION**

The Investor Compensation Fund (ICF) for Customers of Cypriot Investment Firms (CIFs) and other Investment Firms (IFs) which are not credit institutions (the "Fund") was established under the Investment Firms (IF) Law of 2002 until 2004 and it constitutes a private law legal entity.

Its administration is exercised by an Administrative Committee of five members, who are designated for a three-year term.

According to the Founding and Operation of the Investor Compensation Fund for Customers of Cypriot Investment Firms CIF Regulations of 2004, under articles 53(3), 55(4), 56(3), 58(2) and 72 of the Law, as published in the Official Gazette of the Republic on May 30<sup>th</sup> 2004, all CIF and Other Investment Firms, excluding the banks, who offer services in the Republic are obligated to become members of CIF. The participation of Investment Firms that are based in a third country and maintain branches in the Republic or provide cross-border investment or ancillary services in it is also mandatory, provided that the clients do not receive coverage equal to that stipulated by the Regulations.

### **• COVERED SERVICES**

The services covered are investment services concerning:

1. Receiving and transmitting on behalf of third parties orders for execution of transactions dealing with one or more financial instruments, executing the abovementioned orders on behalf of a third party,
2. Own account transactions and trading,
3. Management of clients' investment portfolios according to clients' orders, provided that the portfolios include one or more financial instruments,
4. Contracting the issuing or the distribution of one or more of the financial instruments, as well as ancillary services,
5. Safeguarding or managing one or more financial instruments.

### **• COVERED CLIENTS**

Covered clients are the clients of CIF's members who do not belong in one of the following investor categories:

1. Institutional and professional investors as mentioned below:
  - (a) Investment Firms (IFs)
  - (b) Legal entities associated with the Company and, in general, belonging to the same group of companies
  - (c) Banks
  - (d) Cooperative credit institutions
  - (e) Insurance companies

- (f) Collective investment organizations in transferable securities and their management companies
- (g) Social insurance institutions and funds
- (h) Investors characterized by the member as professionals upon their request, under articles 14 and 15 of the Code of Professional Conduct for Ifs.

2. States and supranational organizations.
3. Central, federal, confederate, regional and local administrative authorities.
4. Enterprises associated with the member of the ICF.
5. Managerial and administration staff of the Company.
6. Shareholders of the member of ICF whose participation directly or indirectly in the capital of the member amounts to at least 5% of its share capital, or its partners who are personally liable for the obligations of the member of ICF, as well as persons responsible for the carrying out of the financial audit of the member of the ICF as provided by the Law, such as qualified auditors.
7. Investors having in enterprises connected with the member of ICF and, in general, of the group of companies, to which the member of the ICF belongs, positions or duties corresponding to the ones listed in the previous two paragraphs.
8. Second-degree relatives and spouses of the persons listed in the previous three paragraphs as well as third parties acting for the account of these persons.
9. (a) Investors whose claim results from transactions with persons convicted of a criminal offence pursuant to the Prevention and Suppression of Money Laundering Activities Law.  
  
(b) Investors-Clients of the member of the ICF responsible for causing financial difficulties to the member or have contributed to the worsening of its financial situation or who have profited from these facts.
10. Investors in the form of a company which, due to its size, is not allowed to draw a summary balance sheet in accordance with the Companies Law or a corresponding law of a Member State of the European Union.

In cases 5, 6, 7 and 8 the ICF suspends the payment of compensation informing the interested parties accordingly, until it reaches a final decision as to whether such cases apply. In addition, in case there is a criminal procedure pending against a client-applicant for offences pursuant to the Prevention and Suppression of Money Laundering Activities Law, the ICF will suspend the payment of compensation until the case is completed.

- **OBJECTIVE OF THE ICF**

The objective of the ICF is to safeguard the requirements of the covered clients against its members by paying compensation for demands arising from covered services

provided by its members in the cases that the member is unable to fulfill its obligations to:

- Either to return Client's funds to its covered Clients which are held by the member directly or indirectly in the framework of provision of covered services by the member to said Client, and which the latter requested the member to return, in exercise of their relevant right
- Or to return to the covered Clients financial instruments which belong to them and which the member of the ICF manages or safeguards on their behalf, including cases in which the member is the manager of said financial instruments.

The payment of compensation requires a well-founded claim from the clients' part against the member of the ICF which stems from a covered service that the member of the ICF offered to the client in question.

- **REQUIREMENTS FOR INITIATION OF THE COMPENSATION PAYMENT PROCESS**

The compensation payment process from ICF is initiated if, at least, one of the following requirements for compensation is met:

1. The Supervisory Authority has determined by resolution that the member of the ICF is currently unable to meet such of its duties as arise from its Clients' claims in connection with the investment services it has provided, as long as such inability is directly related to its financial circumstances with respect to which no realistic prospect of improvement in the near future seems foreseeable or,
2. A judicial authority has, on reasonable grounds directly related to the financial circumstances of the IF, issued a ruling which has the effect of suspending the investors' ability to lodge claims against it.

The first requirement is deemed fulfilled if:

- The member submits to the ICF or to CySEC a written statement declaring its failure to fulfill its obligations towards its Clients
- The Company files an application for liquidation in accordance with the provisions of the Companies Law
- CySEC has revoked or suspended the member's authorization to provide investment services and ascertains that the member is not expected to be in a position to fulfill its obligations toward its Clients in the near future, for reasons which do not concern a temporary lack of liquidity that can be dealt with immediately.

CySEC makes a decision concerning the fulfillment of the first requirement either ex officio or following a claim made by a covered client of the member of the ICF, the ICF or any other relevant supervisory authority and anyone else who has a legal interest. CySEC may ask the member of the ICF to present its case within a short deadline set by CySEC. The deadline cannot be set for less than three working days from the day of the invitation for presenting the case.

Furthermore, in case of absence of certainty concerning the irreversibility of the ICF's member inability to fulfill its obligations and, especially, when that inability is mostly due to a liquidity problem which can be, reasonably, expected to be addressed, CySEC may postpone for up to three months the ruling for the initiation of the compensation payment process from the ICF.

Members of the ICF have the right to petition CySEC to postpone the deadline explaining the reasons for which the relevant request is made.

In case where ruling is postponed, CySEC may prohibit the member in question from disposing certain assets in order to protect the interests of its clients and its creditors or it may take other appropriate measures towards this end. The above measures can also be enforced at the request of the member of the ICF.

When CySEC is satisfied that the requirements for a ruling for the initiation of the compensation payment process from the ICF are fulfilled, the decision is published in the Official Gazette of the Republic and on CySEC's website.

- **PROCESS FOR INVITATION OF COVERED CLIENTS FOR APPLICATION SUBMISSION**

Upon the issuance of a decision to initiate the compensation payment process by a Court or by CySEC, the ICF publishes, in at least three newspapers of national coverage, an invitation to the covered Clients to make their claims against the member of the ICF regarding the covered services. The invitation outlines the procedure for submission of the relevant compensation applications, including the deadline for submission and the content of such applications. The publication must include, at least, the following:

- (a) the name and the address of the main office building of the member of the ICF against which the compensation process for covered clients through the ICF is initiated
- (b) the manner and the address of submission of the applications
- (c) the address at which the investors can receive information concerning the exact content of the submitted applications by receiving the relevant document prepared by the ICF.

The above publication is listed and maintained in the websites of CySEC, CSE and any involved member for the duration of the period for submitting the applications. This does not mean that if the publication is not listed the procedure will be cancelled. The offender, however, may be charged with an administrative penalty.

Under exceptional circumstances, the ICF may extend the deadline for submitting the applications for compensation for up to three months.

In cases where the covered client, without fault on his part, was either not informed concerning the invitation for submitting the application for compensation or was not in a position to submit the application in a timely manner, the deadline for submitting the application for compensation as far as he is concerned is interrupted. In these cases, in addition to the information constituting the minimum requirements of the applications, the applicant is required to submit a solemn declaration stating the reason for which he was unable to demand the compensation in a timely manner as well as the appropriate supporting documents for confirmation of his allegations.

The following are considered reasons for interruption of the deadline:

- (a) proven absence of the covered client from the country for a time period covering, at least, half the deadline for submitting a timely application
- (b) illness that, as confirmed by a doctor, constitutes a serious obstacle to the submission of the application covering, at least, the deadline for submitting a timely application or
- (c) stay at a correctional facility for a time period covering, at least, half the deadline for submitting a timely application.

The deadline for the cases mentioned above starts again from the day the reason for the interruption no longer holds. However, a covered client with a valid reason for interrupting a deadline may not submit an application for compensation after the lapse of eight months from the published deadline for submitting compensation applications. Finally, the ICF does not compensate covered clients who submit compensation applications for claims against an IF that was a member of the ICF if a year has passed since the IF has lost its status as a member of ICF.

- **CONTENT OF COMPENSATION APPLICATIONS SUBMITTED TO THE ICF**

The compensation applications of covered clients with which they make their claims against the member of the ICF are submitted to the ICF in writing and must include:

1. The name of the claimant
2. The address, telephone and fax numbers as well as any email address of the claimant
3. The client code that the claimant had for the member of the ICF
4. The particulars of the covered services agreement between the member of the ICF and the claimant
5. The type and amount of the alleged claims of the claimant
6. The exposition of the particulars from which the alleged claims of the claimant and their amount are derived.

The Fund may ask for more information to be included in the compensation application, which it communicates with a publication in at least three newspapers of national coverage as well as in the Official Gazette of the Republic. It also puts a catalogue with

this information at the disposal of investors, at its offices and/or at the offices of the member of the ICF.

- **PROCEDURE RELATING TO THE RECORDING AND EVALUATION OF THE ALLEGED COMPENSATION CLAIMS**

The Fund will designate at least one qualified auditor and at least one lawyer with knowledge on capital market issues who, after having checked initially the following prerequisites, will evaluate the claims submitted to the ICF and recommend to the Administrative Committee their acceptance in total or in part or their rejection:

1. The claimant falls within the category of covered clients
2. The application was timely submitted
3. The claim(s) arise out of transactions involving conviction of the claimant of a criminal offence pursuant to the Prevention and Suppression of Money Laundering Activities Law
4. The conditions of the Law and of the Regulations for the valid submission of compensation applications are fulfilled.

- **ADMINISTRATIVE COMMITTEE DECISIONS CONCERNING THE APPLICATIONS**

The Administrative Committee during the examination of the applications takes into consideration the recommendations of the above persons (qualified auditor and lawyer) and decides on the applications submitted to the ICF determining the amount of the compensations for each covered client-claimant. The Administrative Committee rejects the application in case the claimant does not fulfill the above conditions or, if at the Administrative Committee's discretion, at least one of the following situations applies:

- (a) The claimant used fraudulent means in order to secure the payment of compensation by the ICF, especially if he knowingly submitted false evidence
- (b) The damage suffered by the claimant substantially derives from concurrent negligence or offence on his behalf in relation to the damage he suffered and to its underlying cause
- (c) If the claim stems from transactions of persons convicted for a criminal offence under the Prevention and Suppression of Money Laundering Activities Law
- (d) If the claimant is responsible for causing financial difficulties to the member of the ICF or has contributed to the worsening of its financial situation or has profited from these facts.

The Fund may demand at any time from a covered client to return the compensation paid to him, if it finds out subsequently that there was a reason to reject the client's application.

- **DETERMINING THE AMOUNT OF PAYABLE COMPENSATION**

To ascertain the claims of a claimant against the member of the ICF, as well as any counterclaims of the member of the ICF against the claimant, the books kept and the particulars issued by the member of the ICF as well as the supporting evidence produced by the claimant are taken into consideration. The amount of compensation payable to each covered customer is calculated in accordance with the legal and contractual terms governing the relation of the covered customer with the member of the ICF, subject to the rules of set-off applied for the calculation of the claims between the covered customer and the member of the ICF. The valuation of the financial instruments pertaining to the compensation payable to the covered client is carried out based on their value at the day:

- (a) Of publication of a court ruling which has the effect of suspending the investors' ability to lodge claims against the IF based on reasonable grounds directly related to the financial circumstances of an Investment Firm which has subscribed to the ICF or,
- (b) Of publication of the decision of the Cyprus Securities and Exchange Commission that an Investment Firm which has subscribed to the Fund, is unable to currently meet such of its obligations as arise from its customers' claims in connection with the covered services it has provided, as long as such inability is directly related to its financial circumstances in respect of which no realistic prospect of improvement in the near future seems foreseeable.

The calculation of the payable compensation derives from the sum of total established claims of the covered customer against the member of the ICF, arising from all covered services provided by the member and regardless of the number of accounts of which the customer is a beneficiary, the currency and place of provision of these services.

If the amount of the claim determined, exceeds the amount of Euro 20.000 (€20.000), the claimant receives as compensation only the amount of Euro 20.000 (€20.000). If the member of the ICF provides services to its clients through a branch situated in a third country, the amount of maximum compensation payable to its clients for the branch in question comes up to the lump sum paid by any investor compensation scheme in operation in the third country, without however this amount exceeding the amount of twenty thousand euro €20.000 per client. If in the third country mentioned above, an investor compensation scheme is not in operation, the maximum amount of payable compensation comes up to Euro 3.417 per client.

In cases where the beneficiaries of a joint account of a member of the ICF exceed the covered clients:

1. The total sum paid to all the co beneficiaries of the account amounts to twenty thousand euro (€20.000) or, as in the case mentioned above, €3.417 and

2. The total of the compensation is calculated for all the co beneficiaries of the joint account and then allocated among them in a way that is defined in the agreement between the co beneficiaries and the member of the ICF. In the absence of such an agreement, the compensation is divided equally among the co beneficiaries.

Upon completion of the valuation, the ICF:

(a) Issues minutes listing the clients of the member of the ICF who are entitled to compensation, along with the amount of money each one of them is entitled to receive and communicates it to the Cyprus Securities and Exchange Commission and the member of the ICF within five working days from its issue and

(b) Communicates to each affected client its finding no later than fifteen days from the issue of the minutes of sub-paragraph (a), determining the total compensation amount this client is entitled to receive.

The Cyprus Securities and Exchange Commission, in order to ensure that the provisions of the legislation in force in the Republic are fulfilled during the examination of the applications and the calculation of the amount of the corresponding compensation per covered client, may:

1. Request from the ICF, the member of the ICF and the claimant to produce information and particulars
2. Conduct any investigation required, implementing the relevant provision of the Cyprus Securities and Exchange Commission (Cyprus Securities and Exchange Commission Law) Laws.

In case the claimant, to whom the ICF communicates the total compensation amount to which he is entitled, disagrees with ICF's decision, he has the right, within ten days from the communication of the decision, to appeal to the Cyprus Securities and Exchange Commission, justifying sufficiently his alleged claim.

If the Cyprus Securities and Exchange Commission discovers errors or inaccuracies in ICF's evaluation of the compensation applications and calculation of the compensation corresponding to the claimant while simultaneously taking into consideration any memos submitted to it by the claimants, may demand from ICF rectification of the compensations paid with a ruling communicated to ICF within forty five days from the beneficiaries' appeal to it.

ICF is obliged to pay to each covered customer – claimant the compensation within three months from sending to the Cyprus Securities and Exchange Commission the minutes regarding the compensation beneficiaries which must be communicated within five working days from its publication. The payment of the compensation by ICF is deposited to a bank account of the covered customer-claimant designated by the latter in writing to ICF.



Any compensation paid to a covered client is originally derived from ICF assets and corresponds to individual shares of its members and later to assets of the reserve.

The payment of any compensation from the ICF leads to ipso jure substitution of ICF to the fees of the compensated covered client-claimant in place of the member of ICF for an amount equaling the paid compensation.

Financial Instruments are:

- Transferable securities and units in collective investment undertakings
- Money market instruments
- Futures contracts, including equivalent instruments which provide the option to be settled in cash
- Forward rate agreements (FRAs)
- Swaps dealing in interest rates or currency as well as equity swaps
- Options for buying or selling in the future any financial instrument, including equivalent instruments which provide the option for settlement in cash and, especially, Options concerning currency and interest rates.

Connected Natural Persons:

- Up to second degree blood relatives and the spouse, unless these persons prove that they engage in completely different professional activities and they obtained the shares in question in the course of these activities as mentioned in the Directives of the Supervisory Authority
- Persons, that in the Supervisory Authority's opinion, are in a dependency relationship or have common or significant interests with the aforementioned persons
- Businesses controlled by the natural person or persons connected to it, in which they possess, at minimum, twenty per cent (20%) of the share capital or voting rights.

Connected Legal Persons:

- The connected businesses belonging to the same group, as well as natural persons who control, directly or indirectly, the legal person itself or its parent company by controlling, at least, 20% of the share capital or the voting rights as well as their associates as defined in paragraphs (b) and (c), subparagraph (2), article 17 of the Banking Law of 1997/2000.