

The Investment Guarantee Fund as a legal person established by Act No. 566/2001 Coll. on securities and on investment services and on amendments and supplements to certain laws (Securities Act) as amended publishes the following terms and conditions in accordance with Section 90(3) of the cited act and after prior approval from the Financial Market Authority No. GRUFT-001/2003/GFI as amended, the issuance of which was approved beforehand by the Decision No. OPK-1441-1/2009 and Decision No. ODT- 6705/2011 of Národná banka Slovenska ("the National Bank of Slovakia", "NBS").

## **General Terms and Conditions of Payment of Compensation for Unavailable Client Assets**

### **Article I Introductory Provision**

These General Terms and Conditions of Payment of Compensation for Unavailable Client Assets regulate the details on procedures for exercising the right to compensation and on how to provide evidence of the right to compensation for unavailable client assets received by a securities dealer or brokerage house, a foreign securities dealer or brokerage house under Section 83(2) of Act No. 566/2001 Coll. on securities and investment services and on amendments and supplements to certain laws as amended ("Securities Act") and a management company and a foreign management company if their obligation to participate in client protection arises from a separate law<sup>1</sup> ("person participating in client protection") for the provision of an investment service.

### **Article II Scope of Client Asset Protection**

1. Pursuant to the Securities Act, the protection of client assets applies to the following:

- a) cash and financial instruments of natural persons, along with natural persons who are entrepreneurs, and legal persons stipulated by the Securities Act<sup>2</sup>; the cash

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<sup>1</sup> Section 11 and 75 of Act No. 594/2003 Coll. on collective investment and on amendments and supplements to certain laws as amended.

<sup>2</sup> Foundations, non-investment funds, non-profit organisations providing services of general interest, civic associations, associations of owners of residential and non-residential premises and legal persons to

and financial instruments are entrusted to a person participating in client protection regarding the provision of investment services or ancillary services under Section 6(2)(a); this includes cash and financial instruments obtained for these values;

- b) jointly-held client assets kept for more clients if the assets meet the conditions under Section 81(2)(a) of the Securities Act while for every jointly-held client asset each of the clients has an equal share unless reliable documents are presented to prove other shares of individual clients; and
- c) assets in notarial custody deposited with a person participating in client protection under Section 81(2)(b) of the Securities Act if the eligible recipient of cash or financial instruments is or shall be the person whose client assets are protected pursuant to the Securities Act and if before the day on which client assets become unavailable, the notary administering the assets in notarial custody serves a written notice containing information on eligible beneficiaries at least to the extent specified in Section 81(5)(a) of the Securities Act on the relevant person participating in client protection.

2. The protection does not apply to the following:

- a) client assets which, according to records from the person participating in client protection made before the date on which the client assets of the person participating in client protection become unavailable under Section 82(1) of the Securities Act, are not kept for the client with at least the following information: first name and surname, birth registration number or date of birth and permanent residence for a natural person; name, identification number, if assigned, and registered office for a legal person; first name and surname and permanent residence address of the person or persons who constitute the statutory body or are members of the statutory body of the legal person;
- b) jointly-held client assets which fail to meet the conditions laid down in paragraph 1(b) of this article;
- c) notarial custody which fails to meet the conditions laid down in paragraph 1(c) of this article;
- d) assets of persons specified in Section 81(1)(c)(1) to (6) of the Securities Act<sup>3</sup>; and
- e) client's cash received by a brokerage house which is a bank or a branch of a foreign bank and kept on accounts under the protection of a separate law<sup>4</sup>.

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whom the exception pursuant to Section 81(1)(c) of the Securities Act does not apply.

<sup>3</sup> The protection does not apply to assets of banks, insurance companies, supplementary pension insurance companies, management companies, securities dealers or brokerage houses, the central depository, stock exchanges, post offices, legal persons operating lotteries or similar games and legal persons that are required to have their financial statements audited pursuant to the Accounting Act, etc.

<sup>4</sup> Act of the National Council of the Slovak Republic No. 118/1996 Coll. on deposit protection as amended.

### **Article III Compensation for Unavailable Client Assets**

1. If the National Bank declares the person participating in client protection unable to meet liabilities to clients in accordance with Section 86(3) of the Securities Act or if the person's use of client assets has been suspended by virtue of the bankruptcy court decision issued in bankruptcy proceedings pursuant to a separate law<sup>5</sup>, provided that this decision became enforceable prior to the declaration of enforceability under Section 86(3) of the Securities Act, while the legal person is not able to return the received securities and other financial instruments without detriment to claims of other clients, the client assets become unavailable pursuant to the Securities Act.
2. Within the scope and under the terms of the Securities Act, the client has the right to compensation from the Investment Guarantee Fund ('Guarantee Fund') for unavailable client assets protected pursuant to the Securities Act. Instead of a client, another eligible person is entitled to compensation only if stipulated in the Securities Act. Securities and other financial instruments received by the person participating in client protection which can be returned by this person to the client without detriment to the claims of other clients are not regarded as unavailable client assets.
3. The compensation is provided exclusively in euros in the amount of unavailable client assets, but overall, the compensation up to EUR 50,000 belongs to one client or another eligible person pursuant to the Securities Act. The calculated compensation amount is rounded up to whole euro cents.
4. In order to determine the compensation amount for guaranteed client assets, we calculate the unavailable client assets of the same client held by one person participating in client protection, including client's shares of jointly-held client assets, which are protected by the Securities Act, as of the date on which the client assets became unavailable under Section 82(1) of the Securities Act.
5. For the purpose of determining the compensation amount, interest and other asset benefits associated with unavailable client assets are calculated as of the date on which the client assets became unavailable under Section 82(1) of the Securities Act and added to the unavailable client assets.
6. For the purpose of calculating the compensation, the amount of unavailable client assets determined under paragraph 4 and 5 of this article is reduced by all statute-barred financial instruments<sup>6</sup>, deposits<sup>7</sup> and liabilities of the client to the person

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<sup>5</sup> Act No. 7/2005 Coll. on bankruptcy and restructuring and on amendments and supplements to certain laws as amended.

<sup>6</sup> For example, Section 23 of Act No. 530/1990 Coll. on bonds as amended.

<sup>7</sup> Section 5(a) of Act No. 483/2001 Coll. on banks and on amendments and supplements to certain

participating in client protection as of the date on which the client assets became unavailable pursuant to Section 82(1) of the Securities Act.

7. The value of client assets is established using determinative values which, as of the date on which client assets became unavailable pursuant to Section 82(1) of the Securities Act, are applicable under contract with the person participating in client protection or under separate legal regulations<sup>8</sup> pertaining to valuation of assets. The valuation of securities admitted to trading on the stock exchange market for quoted securities<sup>9</sup> is based on the latest price quotations for these securities published by the stock exchange on the date the client assets became unavailable under Section 82(1).

8. Unless a different value of client assets or liabilities of the client to the person participating in client protection is credibly demonstrated, the value of client assets, or rather the liability recorded in the books of the person participating in client protection is decisive, except where a separate law provides otherwise<sup>10</sup>.

9. A client is entitled to compensation pursuant to this article even if the client's financial instrument is not payable by the end of the period set for the payment of compensation, which is determined under Section 88(1) and (2) of the Securities Act. This does not apply to a ban on using or paying the financial instrument pursuant to separate legislation<sup>11</sup>. After the ban is lifted, compensation can be provided depending on the nature of the matter to the client or a different person who acquired the right to the financial instrument of the client or its part by virtue of the decision of a competent authority.

10. No compensation is given to the following clients:

- a) clients who by their criminal activities for which they were lawfully convicted by the court in criminal proceedings partly or fully caused the inability of the person participating in client protection to meet the liabilities to clients;
- b) clients who acquired cash and financial instruments in connection with legalisation of proceeds from crime for which they were lawfully convicted in criminal proceedings; and
- c) clients who have a special relationship with the person participating in client protection

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laws as amended, Section 397 of Act No. 513/1991 Coll. of the Commercial Code as amended.

<sup>8</sup> For example, Act No. 431/2002 Coll. on accounting as amended, Notification of the NBS No. 248/2009 of the issuance of Measure No. 3/2009 on the valuation method for assets in a mutual fund.

<sup>9</sup> Section 22 and 22a of Act No. 429/2002 Coll. on the stock exchange as amended.

<sup>10</sup> Section 781(2) of Act No. 40/1964 Coll. of the Civil Code as amended.

<sup>11</sup> For example, Section 76(1)(e), Section 175e(1) and (2), Section 305(b) of Act No. 99/1963 Coll. of the Code of Civil Procedure as amended.

pursuant to Section 87(8) of the Securities Act<sup>12</sup>.

11. Compensation is not provided for client's loss resulting from the change in market value of cash and financial instruments.

#### **Article IV Payment of Compensation**

1. Within five working days of the date on which the client assets become unavailable, the Guarantee Fund sets the start date, duration, place and procedure of the compensation payment in a notification delivered to the person participating in client protection. This information is published by the person participating in client protection in the print media with nationwide circulation and on its publicly accessible premises within one working day of its delivery at the latest. The notification of the Guarantee Fund may specify the conditions under which the compensation will be paid by bank transfer.
2. The payment of compensation must be completed not later than within three months of the date on which client assets became unavailable under Section 82(1) of the Securities Act. In exceptional and justified cases, this period may be extended by three months at most with prior approval from the NBS. However, the compensation payment must be completed not later than within one year of the date on which the client assets became unavailable.
3. The Guarantee Fund pays the compensation for unavailable client assets exclusively through a mandated bank.
4. If client's assets are held by a person participating in client protection and their aggregate amount exceeds the compensation amount under Section 87(2) of the Securities Act, the compensation is provided for financial instruments gradually in the same chronological order as they were entrusted to the person participating in client protection and up to the amount laid down in Section 87(2) of the Securities Act unless the Guarantee Fund and the client agree otherwise.
5. The compensation for client assets consisting of cash and financial instruments in foreign currency is calculated according to the reference exchange rate fixed and declared by the European Central Bank or the NBS on the date on which the cash or financial instruments became unavailable under Section 82(1) of the Securities Act.
6. If a client or another eligible person were unable to exercise their right to

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<sup>12</sup> For example, the members of the brokerage house's statutory body, the brokerage house's executives, members of the brokerage house's supervisory board, legal persons and natural persons exercising control over the brokerage house and auditors.

compensation within the time limit prescribed by the Securities Act for substantiated compelling health reasons or other important reasons, the Guarantee Fund may provide compensation even after the deadline expires, but not later than within one year of the client assets becoming unavailable under Section 82(1) of the Securities Act.

7. The Guarantee Fund will suspend compensation payments to clients against whom criminal proceedings have been instituted in connection with their activity which may be linked to the inability of a person participating in client protection to meet the liabilities to the clients of that person.
8. The compensation for unavailable client assets must not be provided and paid if the person or the representative of the person who exercises the right to compensation for unavailable client assets has not met all the requirements and conditions which are necessary for assessing and documenting the eligibility to exercise the right to compensation and obtain compensation for unavailable client assets.
9. On the date the compensation for unavailable client assets is paid the client's claim on the person participating in client protection lapses to the extent of compensation paid.
10. The compensation from the Guarantee Fund is provided without prejudice to right of the client or another person eligible to claim from the person participating in client protection and holding assets that have become unavailable, the payment of that part of client assets for which the Guarantee Fund has not provided any compensation.

**Article V**  
**Providing Evidence of Right to Compensation**

1. The client exercising the right to compensation shall prove, depending on the type of client assets, his or her right to payment of compensation for the client assets concerned. This right is demonstrated in particular by the following:
  - a) a document establishing the claim to cash or a financial instrument, which is, for example, the original or a certified copy of the contract with the person participating in client protection, a document confirming the receipt of cash or financial instruments and issued by the person participating in client protection, client account statement on the state of cash or financial instruments, which is issued by the person participating in client protection; or
  - b) by the decision of the appropriate authority.
2. The natural person exercising the right to compensation establishes his or her identity by the following:
  - a) a valid identity card; or a valid passport, diplomatic passport, service passport and, if it is a foreigner, foreigner's permit to reside in the Slovak Republic.
3. The legal person exercising the right to compensation proves its identity by the following:
  - a) a statement from official records or official register, where it is entered, while this statement must not be older than one month prior to the exercise of the compensation claim;
  - b) if from the document under a) it is not evident who is authorised to act on behalf of the legal person, a document or a certified copy thereof is presented, which shows who is authorised to act on behalf of the legal person, the statutory body.
4. If a representative acts on behalf of the client, the representative shall present the document or a certified copy thereof, which grants him or her the authorisation for representation. If it is a representative of a legal person, this document must contain an attested signature of the statutory body of that legal person. The representative shall prove his or her identity with documents referred to in paragraph 2 of this article.
5. If an agent acts on behalf of a natural person, representative or legal person, the agent shall also present the written power of attorney with an attested signature by the principal to prove the agent's identity in addition to documents listed in paragraph 2 to 4.

**Article VI  
Provision of Personal Data**

1. The person and the representative of the person exercising the right to compensation for unavailable client assets shall, in order to demonstrate the fulfilment of requirements and conditions under Article V, provide and allow the Guarantee Fund to obtain the following information by photocopying, scanning or other means of recording:
  - a) personal identification data from an identity document that includes visual likeness, title, first name, surname, maiden name, birth registration number, date of birth, place and district of birth, address of permanent residence, address of temporary residence, record of any restriction of legal capacity, type and number of the identity document, the issuing authority, date of issue and expiry date of the identity document if it is a natural person;
  - b) identifying information to the extent pursuant to Section 81(5)(a) of the second subparagraph of the Securities Act if it is a legal person;
  - c) any contact telephone number, fax number, and electronic mail address, if there are any;
  - d) documents and information on client assets and other claims and liabilities to the person participating in client protection and holding unavailable client assets, documents and information on the representative's power of attorney and on the fulfilment of other requirements and conditions necessary for assessing and documenting the eligibility to exercise the right to compensation and to receive compensation for unavailable client assets.
2. The use of personal data provided to the Guarantee Fund is referred to in Section 89(6) of the Securities Act and provisions of separate regulations<sup>13</sup>.

**Article VII  
Objections and  
Disputes**

1. Every client exercising the right to compensation from the Guarantee Fund can lodge a written objection notifying the Guarantee Fund of the incorrect procedure used for payment of compensation. The submission shall be made in person or by registered

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<sup>13</sup> For example, Act No. 428/2002 Coll. on personal data protection as amended.



post to the registered office of the Guarantee Fund. The submission must contain the name of the person making it, the name of the person participating in client protection at whom it is aimed, true description of facts, the evidence offered that is sought by the writer of the submission and copies of documentary evidence. It must be evident from the submission what the writer of the submission seeks.

2. The Guarantee Fund will decide on the received objections within 30 days and in particularly complex cases normally within 60 days of their receipt by the Guarantee Fund.
3. By virtue of the Guarantee Fund's decision on the objection, the right of the client to claim his or her rights does not expire pursuant to generally binding legislation.
4. The court will rule on disputes relating to compensation for unavailable client assets and the payment thereof.

#### **Article VIII Final Provisions**

1. The provisions of the Securities Act apply to relationships not regulated in these terms and conditions and relationships arising from herein.

RNDr. Miron Zelina, CSc.  
Chair of the Board of the  
Investment Guarantee  
Fund

RNDr. František Szulényi  
Vice-Chair of the Board of the  
Investment Guarantee Fund

The board decision of the Investment Guarantee Fund approving the General Terms and Conditions for the Payment of Compensation for Unavailable Client Assets held by brokerage houses was adopted by the Board of the Investment Guarantee Fund on 13 March 2003. The changes herein as amended and approved by the Board of the Investment Guarantee Fund on 17 December 2008 were approved by the Board of the Investment Guarantee Fund on 29 April 2011.

The decision of the Financial Markets Authority granting prior approval to the Investment Guarantee Fund for the issuance of General Terms and Conditions for the Payment of Compensation for Unavailable Client Assets was issued by the authority on 4 June 2003 under No. GRUFT-001/2003/GFI. The decision was served on the Investment Guarantee Fund on 5 June 2003. The NBS granted the prior approval by virtue of the Decision No. OPK-1441-1/2009 taking effect on 20 February 2009 and by virtue of the Decision No. ODT – 6705/2011 taking effect on 3 June 2011.

