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**Rule of intervention of the Deposit and Financial Instrument Protection Fund
(coordinated version dated 21 September 2009)**

Preliminary remark: compared to the previous coordinated version dated 14 April 2009, a few amendments have been brought to the provisions of the Rule of intervention which deal with the coverage of short-term notes, bonds and other bank debt securities. On the one hand, the determining of these assets has been further defined by including the concept of dematerialization. On the other hand, the limitation according to which the deposit protection only applied to the assets held with the issuing credit institution has been deleted.

Chapter 1: Institution of a protection scheme for deposits and financial instruments

1. The Deposit and Financial Instrument Protection Fund, hereinafter called "the Fund", is a public entity created by the Law of 17 December 1998 which organizes - in accordance with Articles 110 *et seq.* of the Law of 22 March 1993 relating to the status and supervision of credit institutions and Articles 112 *et seq.* of the Law of 6 April 1995 relating to the status and the supervision of investment enterprises - the protection of cash deposits or financial instruments held by clients of credit institutions, stock exchange companies and other investment companies.

This protection scheme came into effect on the 15th February 1999 by virtue of a protocol with the representatives of the concerned financial companies.

This scheme succeeds the deposit protection scheme introduced on 4 January 1995 by the Rediscount and Guarantee Institute (Institut de Réescompte et de Garantie, IRG) and the investment protection scheme operated by the Stock Exchange Companies' Compensation Fund (Caisse d'intervention des sociétés de bourse, CIF).

2. This regulation defines the conditions and modalities of a compensation provided by the Protection fund.

The following categories of financial companies are concerned by this regulation:

- 1° credit institutions
- 2° stock exchange companies
- 3° portfolio management and investment advice companies
- 4° UCI management companies having the authorization to carry out the activity of individual portfolio management.

For the implementation of this regulation, the notion "investment companies" covers categories 2° to 4° while "other investment companies" covers categories 3° and 4°.

Chapter 2: Credit institutions, stock exchange companies and other investment companies governed by Belgian law

Section 1: Financing

3. Credit institutions and stock exchange companies governed by Belgian law shall deposit with the Fund a compensation reserve whose regular resources shall be derived from ordinary annual contributions paid by the said institutions and companies, calculated partly on the basis of their turnover excluding the interest margin and partly on the basis of their obligations to depositors and investors.

4. The Fund's Management Committee may call for additional contributions of up to twice the ordinary annual contributions per year, when the Fund's available resources are insufficient for financing compensation.

5. The available resources of the previous funds for protecting deposits with credit institutions and a contribution of € 12.394.676,24 (Bef five hundred million) from the previous investor protection scheme shall be incorporated in the intervention reserve.

6. The other investment companies shall reimburse the Fund, by annual payments, for any compensation payments made by the Fund as a result of the insolvency or threat of insolvency of such type of investment company.

Section 2: Obligation of the Deposit and Financial Instrument Protection Fund

7. In the event of insolvency of a credit institution, stock exchange company or other investment company that has signed the aforementioned protocol, *the Fund assumes the following obligations:*

a) *with regard to the protection of deposits*, to reimburse deposits and similar bank debt securities owed by the insolvent credit institution, and likewise deposits owed by the insolvent stock exchange company or other investment company, within the limits, subject to the conditions and in the manner hereinafter stated;

b) *with regard to the protection of financial instruments*, to compensate holders of financial instruments owed by the insolvent credit institution, stock exchange company or other investment company, within the limits, subject to the conditions and in the manner hereinafter stated.

8. There is insolvency within the meaning of paragraph 7 when a credit institution, stock exchange company or other investment company has been declared bankrupt, or has applied to the Court or is subject to an application against it for an arrangement with its creditors, or when, even though there is no judicial declaration of bankruptcy or summons for an arrangement, the Banking, Finance and Insurance Commission (CBFA) has notified the Fund that it has noted that the said institution's or company's financial situation has obliged it to refuse to reimburse, deliver or return an asset that has become due and will not enable it to reimburse, deliver or return such assets in the foreseeable future.

Section 3: Definition of assets eligible for compensation

Sub-section 1: Assets held with a credit institution

9. Assets held with a credit institution shall be eligible for reimbursement *under the deposit protection scheme*, within the limits, subject to the conditions and in the manner stated in paragraphs 14 to 52, if they result:

a) from deposits of funds denominated in euro or in national monetary units of a Member State of the European Economic Area; the balance of electronic units on prepaid cards issued by a credit institution shall be treated as a deposit of funds;

b) from deposits of funds denominated in national monetary units of another State, provided that the funds are deposits pending use for the purchase of financial instruments or pending reimbursement; when the deposits are not paid into a cash account exclusively assigned for the operation of a securities account, proof of their purpose shall be provided by the production of purchase orders, which must be realistic in the light of market conditions, or of notes of sale relating to financial instruments, going back at least twelve months before the occurrence of the insolvency referred to in paragraph 8;

c) from short-term notes, bonds or other bank debt securities in euro or national monetary units of a Member State of the European Economic Area issued by the defaulting credit institution and fulfilling the conditions laid down in paragraph 23.

10. Financial instruments within the meaning of Article 1 of the Law of 6 April 1995 shall be eligible for compensation *under the financial instrument protection scheme*, within the limits, subject to the conditions and in the manner stated in paragraphs 14 to 52, when they are held on behalf of third parties by a credit institution and the said credit institution is unable to deliver or return them. This provision shall also apply to short-term notes, bonds and other bank debt securities held on behalf of third parties with a credit institution other than the issuer thereof when the said credit institution is unable to deliver or return them.

Sub-section 2: Assets held with a stock exchange company

11. Assets held with a stock exchange company and resulting from deposits of funds pending use for the purchase of financial instruments or pending return shall be eligible for reimbursement *under the deposit protection scheme*, within the limits, subject to the conditions and in the manner stated in paragraphs 14 to 52.

12. Financial instruments within the meaning of Article 1 of the Law of 6 April 1995 shall be eligible for compensation *under the financial instrument protection scheme*, within the limits, subject to the conditions and in the manner stated in paragraphs 14 to 52, when they are held on behalf of third parties by a stock exchange company and the said stock exchange company is unable to deliver or return them.

Sub-section 3: Assets held with other investment company

13. Assets of the type referred to in paragraphs 11 and 12 entrusted to an asset management company or financial instrument placing firm in genuine ignorance of the law prohibiting such companies from receiving, holding or keeping funds deposited by or financial instruments belonging to clients shall be eligible for reimbursement or compensation, respectively, *under the deposit protection scheme* or the *financial instrument protection scheme*, as the case may be, within the limits, subject to the conditions and in the manner stated in paragraphs 14 to 52.

Section 4: Amount of compensations

14. Pursuant to the Royal Decree of 14 November 2008, the protection guaranteeing every depositor reimbursement of the eligible assets under the deposit protection scheme was increased from twenty thousand to a maximum of one hundred thousand euro.
The Deposit and Financial Instrument Protection Fund shall cover the first fifty thousand euro tranche of this amount, and any excess shall be covered by the Special Deposit and Life Insurance Protection Fund established by the said decree.

15. The Fund shall compensate holders of eligible assets *under the financial instrument protection scheme* up to a maximum of twenty thousand euro per person entitled.

16. Compensations shall be paid in euro.

17. Eligible assets resulting from obligations of branches of a credit institution, stock exchange company or other investment company governed by Belgian law established in another Member State of the European Economic Area shall be repaid or compensated, as the case may be, on the same footing as those resulting from obligations of their Belgian offices and agencies.

18. Assets held with branches of a credit institution, stock exchange company or other investment company governed by Belgian law established in a State which is not a member of the European Economic Area shall not be covered, unless it is decided otherwise in individual cases by the Fund's Management Board by a majority of at least three-quarters of the members present.

19. For cases of insolvency occurring up to 31 December 1999, compensation mentioned in paragraph 14 and 15 amounted to a maximum of 15.000 euro.

For compensations paid out *under the deposit protection scheme* or the *financial instrument protection scheme* for assets held with the branches referred to in paragraphs 17 and 18, the compensation amount could be limited, if necessary, to the amount of the cover provided by the protection scheme in the State in which the branch is established for corresponding assets held with credit institutions or similar investment enterprises.

20. Notwithstanding paragraph 16, the compensations referred to in paragraphs 17 and 18 shall be paid in the national monetary unit of the country in which the branch is established when that country is a Member State which has not adopted the single currency in accordance with the Treaty establishing the European Community or a State which is not a member of the European Community.

21. The Fund's Management Board may adjust the details specified in paragraphs 9 to 15, 17 to 19 and 22 to 36, taking account particularly of the amount of the available resources of the deposit protection scheme and the financial instrument protection scheme or of the development of European law regarding deposit protection or investor compensation. Any such adjustments shall not affect the compensation procedures already commenced.

Section 5: Calculation of compensations

22. All claims of the same person on the same credit institution, stock exchange company or other investment company or on the same bankrupt's estate which are eligible either for reimbursement *under the deposit protection scheme*, or for compensation under the *financial instrument protection scheme* shall be added together by category after judicial or privately agreed set-off against that holder's debts.

23. Short-term notes, bonds and other bank debt securities referred to in paragraph 9 (c) shall be eligible for reimbursement *under the deposit protection scheme* provided that they are registered, dematerialized or on open deposit. If the registration, the dematerialization or deposit in an account took place less than a month before the insolvency, the said assets shall not be eligible for reimbursement unless the holder can prove that he acted in good faith.

24. When short-term notes, receipts, bonds and other bank debt securities referred to in paragraph 9 (c) or financial instruments are either issued in the name of a person other than the person entitled to them or dematerialized or placed on open deposit in the name of a person other than the person entitled to them, they shall not be eligible for reimbursement *under the deposit protection scheme*, or for compensation under the *financial instrument protection scheme*, as the case may be, unless the holder proves that he acquired the title to them by virtue of a right acquired prior to the date of insolvency.

25. Assets eligible for reimbursement *under the deposit protection scheme* shall be taken into account to the extent of the principal sum or nominal value thereof of income due or accrued and of the value of any ancillary benefits attaching to them on the last day before the date of occurrence of the insolvency.

26. Assets eligible for compensation *under the financial instrument protection scheme* shall be taken into account to the extent of their market value, or, if there is none and they are debt securities, of their reimbursement value plus accrued interest, or, even more subsidiarily, of their estimated realisation value, all such values being calculated on the last day before the date of occurrence of the insolvency. For financial instruments listed on the stock exchange, the market value shall be determined on the basis of the average price on the last quotation day before the date of occurrence of the insolvency.

27. As far as a conversion between monetary units is necessary in accordance with the above-mentioned paragraphs 16 to 20, this conversion shall be done at the average market rate on the last trading day before the date of occurrence of the insolvency.

28. Assets placed in a cash or securities account to which at least two persons have rights as members of an association, group or indivisible unit without legal personality shall, except for the cases specified in paragraph 29, be considered to belong to a single person; nevertheless, if those who can prove themselves to have rights to the said assets are identified or identifiable, the share due to each shall be taken into account; in the absence of proof to the contrary, the shares held by each of the persons entitled shall be presumed to be equal.

29. Assets placed in a cash or securities account in respect of the whole of which at least two persons have rights which can be exercised under the signature of one of the said persons acting in a capacity other than that of agent shall be repaid or compensated according to the shares due to the persons entitled thereto; in the absence of proof to the contrary, the shares held by each of the persons entitled shall be presumed to be equal.

30. Assets recorded on accounts opened in the name of professional investors not belonging to the financial professions and devoted exclusively to the holding and movement of third-party funds shall not be recognised as claims belonging to the said third parties unless the said accounts are sub-headed in the names of the said third parties in the depository institution's accounts or unless their share is established by the account-holder on the basis of communications made at the time of the payments, transfers and withdrawals.

31. Assets held by a person other than those referred to in paragraph 30, acting in his own name but on behalf of a third party, shall be considered to belong to the said third party if the latter was identified or identifiable on the date of occurrence of the insolvency.

32. Assets recorded on accounts sub-headed in the names of individual clients that have been opened by a stock exchange company with a depository institution pursuant to Article 77 (2) (2) of the Law of 6 April 1995 shall be regarded as assets belonging to those clients if the depository institution becomes insolvent.

33. Similarly, assets recorded in general client accounts opened by a stock exchange company with an institution acting as depository pursuant to Article 77 (2) (1) of the Law of 6 April 1995 shall be regarded as assets belonging to the clients of that stock exchange company if the depository institution becomes insolvent. Each client's proportionate share of the assets recorded on the general client accounts opened by this stock exchange company with the insolvent depository institution shall be determined proportionately after deduction of the assets due to the stock exchange company and the assets referred to in paragraph 32.

34. Payment of the compensations relating to the assets referred to in paragraphs 32 and 33 shall be subject to signature of an acknowledgment of receipt comprising:

- a) remission of the client's debt in favour of the stock exchange company to the extent of the amount paid by the Fund in respect of the assets referred to in paragraphs 32 and 33;
- b) assignment to the Fund by the stock exchange company of its claims and rights of reclaim, if any, to the extent of the amount paid by the Fund in respect of the assets referred to in paragraphs 32 and 33;

c) an agreement by the client to offset the amount of the compensation paid by the Fund in respect of the assets referred to in paragraphs 32 and 33 against the compensation which he might be entitled to claim *under the deposit guarantee scheme* if the stock exchange company were to become insolvent as a result of the insolvency of the depository institution.

35. If the holder of the assets has debts or obligations in favour of the insolvent credit institution, stock exchange company or other investment company for which no set-off arrangement as referred to in paragraph 22 is possible, the compensation payment shall be made only after deduction of the amount thereof, unless the said debts and obligations are guaranteed by securities considered sufficient by the Fund, other than the assets for which a compensation payment is applied for.

Section 6: Exclusions

36. The following shall not be eligible for reimbursement or compensation by the Fund:

- 1°) assets belonging to enterprises and institutions belonging to the following categories:
 - a) credit institutions and investment enterprises governed by Belgian or foreign law and acting in their own name and for their own account;
 - b) financial institutions governed by Belgian law within the meaning of Article 3 (1) (5) of the Law of 22 March 1993 and similar financial institutions established abroad;
 - c) Belgian enterprises governed by the Law of 9 July 1975 on the supervision of insurance enterprises, Belgian pension or retirement funds and institutions not subject to the said law and foreign insurance, pension or retirement institutions carrying on a similar type of business;
 - d) Belgian and foreign collective investment undertakings;
 - e) companies or enterprises governed by Belgian law or by that of another Member State of the European Economic Area which are of such a size that they are not permitted to draw up an abridged balance sheet in accordance with Article 11 of the fourth Council Directive 78/660/EEC, of 25 July 1978, based on Article 54 (3) (g) of the Treaty and relating to the annual accounts of certain forms of company, as well as companies or enterprises of comparable size governed by the law of a State which is not a member of the European Economic Area;
- 2°) assets belonging to the Belgian States, regions, communities, provinces and municipalities, to similar foreign local authorities, to all Belgian or foreign public-interest bodies subordinate to the said authorities, and to the associations thereof;
- 3°) assets belonging to directors, managers and other persons participating *de facto* or *de jure* in the actual management of the credit institution, stock exchange company or other investment company, assets belonging to partners with personal liability and to persons or companies directly or indirectly holding at least 5% of the share capital of the credit institution, stock exchange company or other investment company, as well as assets belonging to persons responsible for the legal supervision of the accounts or accountancy of the credit institution, stock exchange company or other investment company;
- 4°) assets belonging to other enterprises in the group to which the credit institution, stock exchange company or other investment company belongs; "group" should be taken to mean all enterprises which directly or indirectly control the credit institution, stock exchange company or other investment company, as well as the subsidiaries of those enterprises and of the credit institution, stock exchange company or other investment company;

5°) assets for which the holder has obtained on an individual basis from the credit institution, stock exchange company or other investment company interest rates and financial advantages exceeding those which have been granted by the said institution or company at the same time for assets of the same nature, in the same currency, in the same category, for the same term and for the same amount, and which have played a part in worsening the financial situation of the credit institution, stock exchange company or other investment company;

6°) assets derived from transactions for which there has been a criminal conviction constituting *res judicata* for money laundering as defined in the Law of 11 January 1993 in Belgium or, abroad, as defined in Article 1 of Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering;

7°) obligations arising from the signature of bills of exchange, such as acceptances and promissory notes;

8°) for credit institutions, the assets, particularly subordinated claims, belonging to the categories listed in Article 57 of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions, but irrespective of the restrictive conditions contained in the same provision, and likewise the assets listed in Article 63 of the same Directive.

Section 7: Compensation procedure

37. The occurrence of a case of insolvency and the predicted time within which compensation payments will be made shall be published by the Fund in the *Moniteur belge*. The Fund shall publish the same information by the official or usual methods in States where credit institutions, stock exchange companies or other investment company governed by Belgian law whose obligations are covered by the Belgian scheme have branches.

38. Save where a holder of eligible assets has not had sufficient time to present his claim for compensation for legitimate reasons recognised by the Fund, the application for compensation must be submitted to the Fund within a maximum of two months for assets eligible *under the deposit protection scheme*, or five months for assets eligible under the *financial instrument protection scheme*, failing which it shall lapse. The period allowed shall run from the date of publication of a case of insolvency by the Fund as stated in paragraph 37. The Fund may grant an extension to the said periods. It shall publish its decision in the same way as stated in paragraph 37.

39. In the event of insolvency or of a Court order for an arrangement with creditors, the holder must have declared his claim to the bodies concerned and there must not have been any previous distribution of bankrupt dividends or any payment under an arrangement with creditors in respect of the claim.

40. In the case of credit institutions forming a federation within the meaning of Article 61 of the Law of 22 March 1993 or for the obligations of a credit institution in respect of which one or more other credit institutions are jointly and severally liable, the Fund shall be obliged to grant a financial compensation only when asset-holders have unsuccessfully claimed the reimbursement or return thereof or compensation therefor from the central institution of the federation or from the institutions jointly and severally liable with it.

41. The Fund shall make compensation payments within a period of three months from the date of the insolvency for assets eligible *under the deposit protection scheme*, and within a period of three months from the date on which the eligibility and the amount of the claim have been established for assets eligible under the *financial instrument protection scheme*.

42. The periods mentioned in paragraph 41 may be extended by a decision of the CBFA in highly exceptional circumstances, and for compensation payments relating to a specific credit institution, stock

exchange company or other investment company. Up to three extensions may be granted for compensation payments to be made *under the deposit guarantee scheme*; no such extension may exceed three months. A single extension may be granted for compensation payments to be made *under the financial instrument protection scheme*; such an extension may not exceed three months. The Fund shall publish the decision of the CBFA in the manner stated in paragraph 37.

43. The Fund shall not make any compensation payment for eligible assets the holder of which has made false statements for the application of the deposit and financial instrument protection scheme or has committed acts of fraud, particularly in connection with that scheme or with the laws and decrees applicable to credit institutions, stock exchange companies or other investment company, or with the relations between those institutions and companies and their clients.

44. Notwithstanding the time-limits laid down in paragraphs 41 and 42, the Fund may, if the holder fails to supply the information necessary for examination of his application for reimbursement or compensation or if there is any doubt as to the validity of the items produced in support of the said application, suspend the compensation payment until the information requested is supplied or until the items referred to above are proved to be valid. In the event of insolvency or a judicial order for an arrangement with creditors, the Fund may suspend payment of the compensation until the claim can be included in the liabilities specified in the insolvency or arrangement order.

45. The compensation payment cannot be made unless:

- 1) the holder of the eligible assets agrees expressly and simultaneously to subrogate the Fund to his claim and to any repayment rights;
- 2) if the holder receives only partial reimbursement or compensation, he shall agree, by way of derogation from Article 1252 of the Civil Code, to exercise his rights to claim what remains due to him only *pari passu* with the Fund;
- 3) the holder shall sign the declarations relating to the conditions imposed for the making of the compensation payments;
- 4) the holder of the eligible assets shall assign them to the Fund for the purposes of its compensation and any procedures that may follow. The Fund shall manage the assets so assigned in the common interest of the holder and itself. It shall pay the holder any sums it has recovered, after deduction of the amount of the compensation payment made.

46. Until a court decision constituting *res judicata* has been made, the Fund shall suspend the reimbursement of or compensation for the eligible assets when the holder or one of the holders thereof or any other person entitled thereto has been convicted of a money-laundering offence, of which the said assets are assumed to be the proceeds, as defined in Article 3 of the Law of 11 January 1993, in Belgium, or, abroad, as defined in Article 1 of Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering.

Section 8:

Articles 47 to 52 were abolished.

Section 9: Compensation in the event of liquidation or financial reorganisation of or resumption of business by a credit institution, stock exchange company, or other investment company

53. Within the limits of the available financial resources of the deposit and financial instrument protection scheme, the Fund may, on certain conditions, take preventive action to assist in the liquidation or financial reorganisation of or resumption of business by a credit institution, stock exchange company or other investment company, if the due fulfilment of their obligations would otherwise be jeopardised.

Chapter 3: Branches of credit institutions or investment enterprises governed by the law of another Member State of the European Economic Area

54. Branches established in Belgium of credit institutions, stock exchange companies or other investment companies governed by the law of another Member State of the European Economic Area shall have the possibility of joining the Belgian deposit and financial instrument protection scheme with the object of complementing, within the limits of the said system, the guarantees provided by the systems to which the said institutions and enterprises belong in their country of origin.

55. The Fund shall take action in cases where the courts of the country of origin of the credit institution or investment enterprise or the competent authority of that State have taken the decisions or noted a situation as described in paragraph 8, or taken equivalent decisions or noted similar situations within the meaning of EC Directive 19/94 as regards eligible assets *under the deposit protection scheme* or of EC Directive 9/97 as regards eligible assets *under the financial instrument protection scheme*.

56. The reimbursement shall relate, for eligible assets *under the deposit protection scheme*, to the difference between the compensation payment under the deposit guarantee scheme of the country of origin and the amount of the compensation payment provided for in paragraph 14. The compensation shall relate, for eligible assets *under the financial instrument protection scheme*, to the difference between the compensation payment under the investor-compensation scheme of the country of origin and the amount of the compensation payment provided for in paragraph 15.

57. In other respects, the terms and conditions of compensation laid down in paragraphs 7, 9 to 13 and 22 to 52 for credit institutions, stock exchange companies or other investment companies governed by Belgian law shall be applicable to the said branches.

Chapter 4: : Branches of credit institutions or investment enterprises governed by the law of a State which is not a member of the European Economic Area

58. The Belgian deposit and financial instrument protection scheme shall cover eligible assets with branches established in Belgium of credit institutions and investment enterprises governed by the law of a State which is not a member of the European Economic Area when the said branches are members of the scheme and the said assets are not guaranteed by a protection scheme in the State of origin.

59. The Fund shall take action in cases where the courts of the country of origin of the credit institution or investment enterprise or the competent authority of that State have taken the decisions or noted a situation as described in paragraph 8, or taken decisions or noted situations of equivalent scope with regard to the availability of deposits or the delivery or return of financial instruments.

60. In other respects, the terms and conditions of reimbursement set out in paragraphs 7, 9 to 13 and 22 to 52 shall be applicable to the said branches.

61. Similarly, the Belgian deposit and financial instrument protection scheme shall cover eligible assets with branches established in Belgium of credit institutions and investment enterprises governed by the law of a State which is not a member of the European Economic Area when the said branches are members of the scheme and when the protection scheme or schemes of the country of origin cover the said assets to a lesser extent than the Belgian scheme.

62. The Fund shall take action in the cases referred to in paragraph 59 for the amounts referred to in paragraph 56.

63. In other respects, the terms and conditions of compensation laid down in paragraphs 7, 9 to 13 and 22 to 52 shall be applicable to the said branches.

Chapter 5: Keeping depositors and investors informed

64. The Fund shall publish the names of the credit institutions, stock exchange companies or other investment companies that are members of the scheme as well as of those that cease to be covered by the Belgian scheme.

65. In the event of the occurrence of a case of insolvency, the Fund shall notify all interested parties of the conditions, criteria and methods of reimbursement and compensation.

66. The Fund shall ensure that any amendments to this undertaking are published in the same way as is specified in paragraph 37.