



STATUTORY INSTRUMENTS.

**S.I. No. 375 of 2017**



EUROPEAN UNION (MARKETS IN FINANCIAL INSTRUMENTS)  
REGULATIONS 2017

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REGULATIONS 2017

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EUROPEAN UNION (MARKETS IN FINANCIAL INSTRUMENTS)  
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I, PASCHAL DONOHOE, Minister for Finance, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No.27 of 1972), and for the purpose of giving effect to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 and Commission Delegated Directive (EU) 2017/593 of 7 April 2016 and giving full effect to Regulation (EU) No 600/2014 of the European Parliament and the Council of 15 May 2014, hereby make the following regulations:

## PART 1

## PRELIMINARY

*Citation and commencement*

1. (1) These Regulations may be cited as the European Union (Markets in Financial Instruments) Regulations 2017.

(2) These Regulations shall come into operation on 3 January 2018.

*General purpose of Regulations and application of certain provisions*

2. (1) These Regulations provide for the following:

- (a) authorisation and operating conditions for investment firms,
- (b) provision of investment services or activities by third-country firms through the establishment of a branch,
- (c) authorisation and operation of regulated markets,
- (d) authorisation and operation of data reporting services providers, and
- (e) supervision, cooperation and enforcement by competent authorities.

(2) The following provisions apply to credit institutions authorised in accordance with Directive 2013/36/EU that provide one or more investment services or perform investment activities (or both):

- (a) Regulations 4(2), 9(8) and (9), 17(3) and (4) and 23 to 27,
- (b) Chapters 1 to 3 of Part 4 (other than Regulation 37(2) to (4)),
- (c) Part 5 (other than Regulations 42(3) to (5), (7) and (8), 43(4) to (6) and (13), 44(7)(a) and 45(2) to (4)), and

*Notice of the making of this Statutory Instrument was published in "Iris Oifigiúil" of 18th August, 2017.*

(d) Regulations 91, 92(1) to (4), 119, 126 to 129, 133, 138 and 139.

(3) The following provisions apply to investment firms and credit institutions authorised under Directive 2013/36/EU that sell or advise clients in relation to structured deposits:

(a) Regulations 9(8) and (9), 17(3) and (4) and 23(1)(a) to (e) and (2) to (4);

(b) Regulations 30 to 34, 36, 37 (other than paragraph (3) of it) and 38, and

(c) Regulations 91, 92(1) to (4), 119, 126 to 129, 133, 138 and 139.

(4) Regulation 24 shall also apply to members of, or participants in, regulated markets and MTFs who are not required to be authorised under this Regulation pursuant to Regulation 4(1)(a), (d), (k) or (p).

(5) Regulations 81 and 82 shall also apply to persons exempt under Regulation 4(1).

(6) All multilateral systems in financial instruments shall operate either in accordance with the provisions of Parts 2 to 6 concerning MTFs or OTFs or the provisions of Part 7 concerning regulated markets.

#### *Interpretation*

3. (1) In these Regulations—

“Act of 1942” means the Central Bank Act 1942 (No.22 of 1942);

“agricultural commodity derivatives” means derivative contracts relating to products listed in Article 1 of, and Annex I, Parts I to XX and XXIV/1, to, Regulation (EU) No 1308/2013 of the European Parliament and of the Council;

“algorithmic trading” means trading in financial instruments where a computer algorithm automatically determines individual parameters of orders such as whether to initiate the order, the timing, price or quantity of the order or how to manage the order after its submission, with limited or no human intervention, and does not include any system that is only used for the purpose of routing orders to one or more trading venues or for the processing of orders involving no determination of any trading parameters or for the confirmation of orders or the post-trade processing of executed transactions;

“ancillary services” means any of the services listed in Part 2 of Schedule 1;

“approved publication arrangement” or “APA” means a person authorised under these Regulations to provide the service of publishing trade reports on behalf of investment firms pursuant to Articles 20 and 21 of Regulation (EU) No 600/2014;

“approved reporting mechanism” or “ARM” means a person authorised under these Regulations to provide the service of reporting details of transactions to competent authorities or to ESMA on behalf of investment firms;

“authorised officer” means an authorised officer appointed under Regulation 94;

“Bank” means the Central Bank of Ireland;

“branch” means a place of business other than the head office which is a part of an investment firm, which has no legal personality and which provides investment services or performs investment activities (or does both) and which may also perform ancillary services for which the investment firm has been authorised and, for the purposes of this definition, all the places of business set up in the same Member State by an investment firm with headquarters in another Member State shall be regarded as a single branch;

“C6 energy derivative contracts” means options, futures, swaps, and any other derivative contracts mentioned in paragraph 6 of Part 3 of Schedule 1 relating to coal or oil that are traded on an OTF and must be physically settled;

“CCP” means a CCP as defined in Article 2(1) of Regulation (EU) No 648/2012;

“central securities depositories” or “CSD” means a central securities depository as defined Article 2(1) of Regulation (EU) No 909/2014;

“certificates” means certificates as defined in Article 2(1)(27) of Regulation (EU) No 600/2014;

“client” means any natural or legal person to whom an investment firm provides investment or ancillary services, or both;

“close links” means a situation in which two or more natural or legal persons are linked by—

- (a) participation in the form of ownership, direct or by way of control, of 20 % or more of the voting rights or capital of an undertaking,
- (b) control, namely the relationship between a parent undertaking and a subsidiary, in all the cases referred to in Article 22(1) and (2) of Directive 2013/34/EU, or a similar relationship between any natural or legal person and an undertaking, any subsidiary undertaking of a subsidiary undertaking also being considered to be a subsidiary of the parent undertaking which is at the head of those undertakings, or
- (c) a permanent link of both or all of them to the same person by a control relationship;

“commodity derivatives” means commodity derivatives as defined in Article 2(1)(30) of Regulation (EU) No 600/2014;

“competent authority” means the Bank or, in the case of another Member State, the authority designated by that State in accordance with Article 67 of the Directive;

“consolidated tape provider” or “CTP” means a person authorised under these Regulations to provide the service of collecting trade reports for financial instruments listed in Articles 6, 7, 10, 12 and 13, 20 and 21 of Regulation (EU) No 600/2014 from regulated markets, MTFs, OTFs and APAs and consolidating them into a continuous electronic live data stream providing price and volume data per financial instrument;

“contravention” includes, in relation to any provision, a failure to comply with that provision;

“Court” means the High Court;

“credit institution” means a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013;

“cross-selling practice” means the offering of an investment service together with another service or product as part of a package or as a condition for the same agreement or package;

“data reporting services provider” means an APA, a CTP or an ARM;

“dealing on own account” means trading against proprietary capital resulting in the conclusion of transactions in one or more financial instruments;

“depository receipts” means those securities which are negotiable on the capital market and which represent ownership of the securities of a non-domiciled issuer while being able to be admitted to trading on a regulated market and traded independently of the securities of the non-domiciled issuer;

“derivatives” means derivatives as defined in Article 2(1)(29) of Regulation (EU) No 600/2014;

“direct electronic access” means an arrangement where a member or participant or client of a trading venue permits a person to use its trading code so the person can electronically transmit orders relating to a financial instrument directly to the trading venue and includes arrangements which involve the use by a person of the infrastructure of the member or participant or client, or any connecting system provided by the member or participant or client, to transmit the orders (direct market access) and arrangements where such an infrastructure is not used by a person (sponsored access);

“Directive” means Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU;

“durable medium” means any instrument which—

- (a) enables a client to store information addressed personally to that client in a way accessible for future reference and for a period of time adequate for the purposes of the information, and
- (b) allows the unchanged reproduction of the information stored;

“enactment” includes an instrument made under an enactment;

“exchange-traded fund” means a fund of which at least one unit or share class is traded throughout the day on at least one trading venue and with at least one market maker which takes action to ensure that the price of its units or shares on the trading venue does not vary significantly from its net asset value and, where applicable, from its indicative net asset value;

“execution of orders on behalf of clients” means acting to conclude agreements to buy or sell one or more financial instruments on behalf of clients and includes the conclusion of agreements to sell financial instruments issued by an investment firm or a credit institution at the moment of their issuance;

“FATF” means the Financial Action Task Force on Money Laundering and Countering the Financing of Terrorism;

“financial instrument” means any of the instruments specified in Part 3 of Schedule 1;

“group” means a group as defined in Article 2(11) of Directive 2013/34/EU;

“high-frequency algorithmic trading technique” means an algorithmic trading technique characterised by—

- (a) infrastructure intended to minimise network and other types of latencies, including at least one of the following facilities for algorithmic order entry: co-location, proximity hosting or high-speed direct electronic access,
- (b) system-determination of order initiation, generation, routing or execution without human intervention for individual trades or orders, and
- (c) high message intraday rates which constitute orders, quotes or cancellations;

“home Member State” means:

- (a) in the case of an investment firm:
  - (i) if the investment firm is a natural person, the Member State in which its head office is situated;
  - (ii) if the investment firm is a legal person, the Member State in which its registered office is situated;



- (iii) if the investment firm has, under its national law, no registered office, the Member State in which its head office is situated;
- (b) in the case of a regulated market, the Member State in which the regulated market is registered or, if under the law of that Member State it has no registered office, the Member State in which the head office of the regulated market is situated;
- (c) in the case of an APA, a CTP or an ARM:
  - (i) if the APA, CTP or ARM is a natural person, the Member State in which its head office is situated;
  - (ii) if the APA, CTP or ARM is a legal person, the Member State in which its registered office is situated;
  - (iii) if the APA, CTP or ARM has, under its national law, no registered office, the Member State in which its head office is situated;

“host Member State” means the Member State, other than the home Member State, in which an investment firm has a branch or provides investment services or performs activities (or does both), or the Member State in which a regulated market provides appropriate arrangements so as to facilitate access to trading on its system by remote members or participants established in that same Member State;

“investment advice” means the provision of personal recommendations to a client, either upon its request or at the initiative of the investment firm, in respect of one or more transactions relating to financial instruments;

“investment firm” means any person whose regular occupation or business is the provision of one or more investment services to third parties or the performance of one or more investment activities on a professional basis or both but does not include a natural person unless—

- (a) his or her legal status ensures a level of protection for third parties’ interests equivalent to that afforded by legal persons,
- (b) he or she is subject to equivalent prudential supervision appropriate to his or her legal status, and
- (c) if paragraph (2) is applicable, he or she ensures that the conditions set out in that paragraph are fulfilled;

“investment services and activities” means any of the services and activities listed in Part 1 of Schedule 1 relating to any of the instruments listed in Part 3 of that Schedule;

“limit order” means an order to buy or sell a financial instrument at its specified price limit or better and for a specified size;

“liquid market” means a market for a financial instrument or a class of financial instruments, where there are ready and willing buyers and sellers on a continuous basis, assessed in accordance with the following criteria, taking into consideration the specific market structures of the particular financial instrument or of the particular class of financial instruments, namely:

- (a) the average frequency and size of transactions over a range of market conditions, having regard to the nature and life cycle of products within the class of financial instrument;
- (b) the number and type of market participants, including the ratio of market participants to traded instruments in a particular product;
- (c) the average size of spreads, where available;

“management body” means the body or bodies of an investment firm, market operator or data reporting services provider, which are appointed in accordance with the law of the State or the law of another Member State, which are empowered to set the entity’s strategy, objectives and overall direction, and which oversee and monitor management decision-making and includes persons who effectively direct the business of the entity;

“market maker” means a person who holds himself or herself out on the financial markets on a continuous basis as being willing to deal on own account by buying and selling financial instruments against that person’s proprietary capital at prices defined by that person;

“market operator” means one or more persons who manage or operate (or both manage and operate) the business of a regulated market and may be the regulated market itself;

“matched principal trading” means a transaction where the facilitator interposes itself between the buyer and the seller to the transaction in such a way that it is never exposed to market risk throughout the execution of the transaction, with both sides executed simultaneously, and where the transaction is concluded at a price where the facilitator makes no profit or loss, other than a previously disclosed commission, fee or charge for the transaction;

“Member State” means Member State of the European Union and, where relevant, includes a contracting party to the Agreement on the European Economic Area signed at Oporto on 2 May 1992 (as adjusted by the Protocol signed at Brussels on 17 March 1993), as amended;

“Minister” means Minister for Finance;

“money-market instruments” means those classes of instruments which are normally dealt in on the money market, such as treasury bills, certificates of deposit and commercial papers and excluding instruments of payment;

“multilateral system” means any system or facility in which multiple third-party buying and selling trading interests in financial instruments are able to interact in the system;

“multilateral trading facility” or “MTF” means a multilateral system, operated by an investment firm or a market operator, which brings together multiple third-party buying and selling interests in financial instruments — in the system and in accordance with non-discretionary rules — in a way that results in a contract in accordance with Parts 2 to 6;

“non-regulated financial service provider” means a person who is not a regulated financial service provider (within the meaning of the Act of 1942) but who otherwise is a person subject to requirements imposed by these Regulations or Regulation (EU) No 600/2014;

“organised trading facility” or “OTF” means a multilateral system which is not a regulated market or an MTF and in which multiple third-party buying and selling interests in bonds, structured finance products, emission allowances or derivatives are able to interact in the system in a way that results in a contract in accordance with Parts 2 to 6;

“parent undertaking” means a parent undertaking within the meaning of Article 2(9) and 22 of Directive 2013/34/EU of the European Parliament and of the Council;

“portfolio management” means managing portfolios in accordance with mandates given by clients on a discretionary client-by-client basis where such portfolios include one or more financial instruments;

“professional client” means a client meeting the criteria specified in Schedule 2;

“qualifying holding” means, in relation to an investment firm or a market operator, a direct or indirect holding in an investment firm or market operator which represents 10 % or more of the capital or of the voting rights, as set out in Articles 9 and 10 of Directive 2004/109/EC of the European Parliament and of the Council, taking into account the conditions regarding aggregation thereof specified in Article 12(4) and (5) of that Directive, or which makes it possible to exercise a significant influence over the management of the investment firm or market operator in which that holding subsists;

“qualifying money market fund” means a collective investment undertaking authorised under Directive 2009/65/EC, or which is subject to supervision and, if applicable, authorised by an authority under the national law of the authorising Member State, and which satisfies all of the following conditions:

- (a) its primary investment objective must be to maintain the net asset value of the undertaking either constant at par (net of earnings), or at the value of the investors’ initial capital plus earnings;
- (b) it must, with a view to achieving that primary investment objective, invest exclusively in high quality money market instruments with a

maturity or residual maturity of no more than 397 days, or regular yield adjustments consistent with such a maturity, and with a weighted average maturity of 60 days (and it may also achieve that objective by investing on an ancillary basis in deposits with credit institutions);

(c) it must provide liquidity through same day or next day settlement,

and, for the purposes of paragraph (b) of this definition—

(i) a money market instrument shall be considered to be of high quality if the management or investment company performs its own documented assessment of the credit quality of money market instruments that allows it to consider a money market instrument as high quality, and

(ii) where one or more credit rating agencies registered and supervised by ESMA have provided a rating of the instrument, the management or investment company's internal assessment should have regard to, *inter alia*, those credit ratings;

“regulated market” means a multilateral system operated or managed (or both managed and operated) by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments — in the system and in accordance with its non-discretionary rules — in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules or systems (or both), and which is authorised and functions regularly and in accordance with Part 7;

“retail client” means a client who is not a professional client;

“securities financing transaction” means transactions as defined in Article 3 point (11) of Regulation (EU) 2015/2365 of the European Parliament and of the Council on transparency of securities financing transactions and of reuse;

“senior management” means natural persons who exercise executive functions within an investment firm, a market operator or a data reporting services provider and who are responsible, and accountable to the management body, for the day-to-day management of the entity, including for the implementation of the policies concerning the distribution of services and products to clients by the firm and its personnel;

“small and medium-sized enterprise” means a company that had an average market capitalisation of less than €200, 000 000 on the basis of end-year quotes for the previous 3 calendar years;

“SME growth market” means an MTF that is registered as an SME growth market in accordance with Regulation 41;

“sovereign debt” means a debt instrument issued by a sovereign issuer;

“sovereign issuer” means any of the following that issues debt instruments:

- (a) the Union;
- (b) a Member State, including a government department, an agency, or a special purpose vehicle of the Member State;
- (c) in the case of a federal Member State, a member of the federation;
- (d) a special purpose vehicle for several Member States;
- (e) an international financial institution established by two or more Member States which has the purpose of mobilising funding and providing financial assistance to the benefit of its members that are experiencing or threatened by severe financing problems;
- (f) the European Investment Bank;

“structured deposit” means a deposit as defined in point (3) of Article 2(1) of Directive 2014/49/EU of the European Parliament and of the Council, which is fully repayable at maturity on terms under which interest or a premium will be paid or is at risk, according to a formula involving factors such as:

- (a) an index or combination of indices, excluding variable rate deposits whose return is directly linked to an interest rate index such as Euribor or Libor,
- (b) a financial instrument or combination of financial instruments,
- (c) a commodity or combination of commodities or other physical or non-physical non-fungible assets, or
- (d) a foreign exchange rate or combination of foreign exchange rates;

“structured finance products” means structured finance products as defined in Article 2(1)(28) of Regulation (EU) No 600/2014;

“subsidiary” means a subsidiary undertaking within the meaning of Articles 2(10) and 22 of Directive 2013/34/EU, including any subsidiary of a subsidiary undertaking of an ultimate parent undertaking;

“systematic internaliser” means an investment firm which, on an organised, frequent systematic and substantial basis, deals on own account when executing client orders outside a regulated market, an MTF or an OTF without operating a multilateral system and paragraphs (3) and (4) supplement this definition;

“trading venue” means a regulated market, an MTF or an OTF;

“third country” means a country that is not in the European Economic Area;

“third-country firm” means a firm that would be a credit institution providing investment services or performing investment activities or an investment firm if its head office or registered office were located within the European Economic Area;

“tied agent” means a natural or legal person who, under the full and unconditional responsibility of only one investment firm on whose behalf it acts, promotes investment or ancillary services (or both) to clients or prospective clients, receives and transmits instructions or orders from the client in respect of investment services or financial instruments, places financial instruments or provides advice to clients or prospective clients in respect of those financial instruments or services;

“transferable securities” means those classes of securities which are negotiable on the capital market, with the exception of instruments of payment, such as:

- (a) shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depositary receipts in respect of shares,
- (b) bonds or other forms of securitised debt, including depositary receipts in respect of such securities, or
- (c) any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures;

“UCITS management company” means a management company as defined in point (b) of Article 2(1) of Directive 2009/65/EC of the European Parliament and of the Council;

“wholesale energy product” means a wholesale energy product as defined in point (4) of Article 2 of Regulation (EU) No 1227/2011.

(2) For the purposes of the definition of “investment firm” in paragraph (1), where a natural person provides services involving the holding of third parties’ funds or transferable securities, the natural person may be considered as an investment firm for the purposes of these Regulations and of Regulation (EU) No 600/2014 only if, without prejudice to the other requirements imposed by these Regulations, by Regulation (EU) No 600/2014 and by Directive 2013/36/EU, he or she ensures that the following conditions are fulfilled:

- (a) the ownership rights of third parties in instruments and funds must be safeguarded, especially in the event of the insolvency of the investment firm or of its proprietors, seizure, set-off or any other action by creditors of the firm or of its proprietors;
- (b) the investment firm must be subject to rules designed to monitor the firm’s solvency and that of its proprietors;
- (c) the investment firm's annual accounts must be audited by one or more persons empowered, under the law of the State or another Member State, to audit accounts;

(d) where the investment firm has only one proprietor, he or she must make provision for the protection of investors in the event of the investment firm's cessation of business following his or her death incapacity or any other such event.

(3) Without prejudice to paragraph (4), for the purposes of the definition of “systematic internaliser” in paragraph (1)—

(a) the frequent and systematic basis (referred to in that definition) shall be measured by the number of OTC trades in the financial instrument carried out by the investment firm on own account when executing client orders, and

(b) the substantial basis (referred to in that definition) shall be measured either by the size of the OTC trading carried out by the investment firm in relation to the total trading of the investment firm in a specific financial instrument or by the size of the OTC trading carried out by the investment firm in relation to the total trading in the Union in a specific financial instrument.

(4) The definition of “systematic internaliser” in paragraph (1) shall apply only where the pre-set limits for a frequent and systematic basis and for a substantial basis are both crossed or where an investment firm chooses to opt-in under the systematic internaliser regime.

(5) A reference in these Regulations to an investment firm is, unless the context otherwise requires, a reference to an authorised investment firm.

(6) A reference in these Regulations to a company incorporated under the Companies Act 2014 (No.38 of 2014) includes a reference to an existing company within the meaning of that Act.

(7) For the avoidance of doubt, “devise or otherwise create”, where used in these Regulations in relation to a financial instrument, is equivalent to the expression “manufacture” used in the Directive and includes the creation, development, issuance or design of a financial instrument.

(8) A word or expression that is used in these Regulations and is also used in the Directive, the Commission Delegated Directive (EU) 2017/593 of 7 April 2016 or Regulation (EU) No 600/2014 shall have the meaning in these Regulations that it has in the Directive, that Delegated Directive or that Regulation, as the case may be.

(9) References in Schedules 3, 4 and 5 to investment firms and financial instruments include references to credit institutions and structured deposits in relation to all the requirements referred to in Regulation 2(2) and (3).



*Exemptions*

4. (1) These Regulations do not apply to any of the following:
- (a) insurance undertakings or undertakings carrying out the reinsurance and retrocession activities referred to in Directive 2009/138/EC when carrying out the activities referred to in that Directive and the exemption conferred by this subparagraph is not dependent on the insurance undertaking or other foregoing undertaking meeting the conditions specified in subparagraph (c);
  - (b) persons which provide investment services exclusively for their—
    - (i) parent undertakings,
    - (ii) subsidiaries, or
    - (iii) other subsidiaries of their parent undertakings;
  - (c) persons dealing on their own account in financial instruments other than commodity derivatives or emission allowances or derivatives thereof and not providing any other investment services or performing any other investment activities in financial instruments other than commodity derivatives or emission allowances or derivatives thereof, unless the persons—
    - (i) are market makers,
    - (ii) are members of or participants in a regulated market or an MTF or have direct electronic access to a trading venue,
    - (iii) apply a high-frequency algorithmic trading technique, or
    - (iv) deal on own account when executing client orders,but clause (ii) does not apply to non-financial entities who execute transactions on a trading venue which are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of those non-financial entities or their groups;
  - (d) operators with compliance obligations under Directive 2003/87/EC who, when dealing in emission allowances, do not execute client orders and who do not provide investment services or perform any investment activities other than dealing on own account, provided that those persons do not apply a high-frequency algorithmic trading technique;
  - (e) persons who provide investment services consisting exclusively in the administration of employee-participation schemes;
  - (f) persons who provide investment services which only involve both administration of employee-participation schemes and the provision



of investment services exclusively for their parent undertakings, for their subsidiaries or for other subsidiaries of their parent undertakings;

- (g) the members of the European System of Central Banks, the National Treasury Management Agency and other public bodies charged with or intervening in the management of the public debt in the Union and international financial institutions established by two or more Member States which have the purpose of mobilizing funding and providing financial assistance to the benefit of their members that are experiencing or threatened by severe financing problems;
- (h) any of the following who acts on behalf of the National Treasury Management Agency:
  - (i) An Post, including any postmaster acting on its behalf, or any agent appointed by the NTMA to administer and distribute State Savings, and this clause shall be construed as operating also to exempt from these Regulations such an agent with respect to any services provided by the agent that are incidental to, or consequential on, the administration and distribution of State Savings;
  - (ii) the Prize Bond Company Ltd. or any successor to the Prize Bond Company Ltd., as operator of the Prize Bond scheme;
- (i) any Fund investment vehicle (within the meaning given by section 37 of the National Treasury Management Agency (Amendment) Act 2014);
- (j) the National Pensions Reserve Fund Commission;
- (k) persons—
  - (i) dealing on own account, including market makers, in commodity derivatives or emission allowances or derivatives thereof, excluding persons who deal on own account when executing client orders, or
  - (ii) providing investment services (other than dealing on own account) in commodity derivatives or emission allowances or derivatives thereof to the customers or suppliers of their main business,

where-

- (I) for each of those cases individually and on an aggregate basis this is an ancillary activity to their main business, when considered on a group basis, and that main business is not the provision of investment services within the meaning of these Regulations or banking activities under Directive

2013/36/EU, or acting as a market-maker in relation to commodity derivatives,

(II) those persons do not apply a high-frequency algorithmic trading technique, and

(III) those persons notify annually the Bank that they make use of this exemption and upon request report to the Bank the basis on which they consider that their activity under clauses (i) and (ii) is ancillary to their main business;

and the exemption conferred by this subparagraph on those persons is not dependent on their meeting the conditions specified in subparagraph (c);

- (l) persons providing investment advice in the course of providing another professional activity not covered by these Regulations if the provision of the advice is not specifically remunerated;
- (m) a personal representative, within the meaning of the Succession Act 1965, in respect of actions as personal representative of a deceased person;
- (n) a trustee, within the meaning of the Trustee Act 1893, in respect of actions as trustee of a trust, unless the principal objective of the trust is to provide investment services to members of the public;
- (o) notwithstanding the obligations imposed on liquidators and receivers under these Regulations, a person appointed as a liquidator or receiver of the property of a company in respect of activities relating to the liquidation or receivership;
- (p) collective investment undertakings and pension funds whether coordinated at Union level or not and the depositories and managers and the exemption conferred by this subparagraph is not dependent on the undertaking, fund, depository or, as the case may be, manager meeting the conditions specified in subparagraph (c);
- (q) a practising member of an approved professional body within the meaning of Part VII of the Investment Intermediaries Act 1995, not being a certified person within the meaning of that Part, who holds at the member's principal place of business, on behalf of clients, share certificates in private companies limited by shares owned by those clients where—
  - (i) the member holds the share certificates only in order to facilitate the orderly management of the accounting records of the private company limited by shares, and
  - (ii) the holding of the share certificates arises from the provision of professional services by the member to the client;

- (r) CSDs that are regulated as such under Union law, to the extent that they are regulated under that Union law;
  - (s) persons who perform investment activities or provide investment services relating to commodity derivatives, except with regard to the operation of a secondary market, including a platform for secondary trading in financial transmission rights, in order to carry out the following activities—
    - (i) transmission system operators as defined in Article 2(4) of Directive 2009/72/EC or Article 2(4) of Directive 2009/73/EC when carrying out their tasks under those Directives, under regulation (EC) No 714/2009, under Regulation (EC) No 715/2009 or under network codes or guidelines adopted pursuant to those Regulations,
    - (ii) acting as service providers on their behalf to carry out their task under those legislative acts or under network codes or guidelines adopted pursuant to those Regulations, or
    - (iii) any operator or administrator of an energy balancing mechanism, pipeline network or system to keep in balance the supplies and uses of energy when carrying out such tasks;
  - (t) branches of third country firms established in the State, save as otherwise provided for in Regulation 48.
- (2) The rights conferred by these Regulations do not extend to the provision of services as counterparty in transactions carried out—
- (a) by public bodies dealing with public debt,
  - (b) by members of the European System of Central Banks,
    - (i) performing their tasks as provided for by the Treaty and the Statute of the European System of Central Banks and of the European Central Bank, or
    - (ii) performing equivalent functions under the law of the State or another Member State.
- (3) These Regulations do not apply to persons whose activities are regulated by the Bank, if the persons—
- (a) are not allowed to hold clients' funds or securities and therefore are not allowed at any time to place themselves in debit with their clients,
  - (b) are not allowed to provide any investment service except as follows:
    - (i) receiving and transmitting orders in transferable securities and units in collective investment undertakings;

(ii) providing investment advice in relation to those securities and units,

and

(c) in the course of providing the services referred to in clause (i) of subparagraph (b) are allowed to transmit orders only to any or all of the following:

(i) investment firms authorised in accordance with the Directive or these Regulations;

(ii) credit institutions authorised in accordance with Directive 2013/36/EU;

(iii) branches of investment firms or of credit institutions authorised in a third country and which are subject to and comply with prudential rules considered by the competent authorities to be at least as stringent as those specified in the Directive, the European Union (Capital Requirements) Regulations 2014 (S.I. No. 158 of 2014) or the European Union (Capital Requirements) (No. 2) Regulations 2014 (S.I. No. 159 of 2014);

(iv) collective investment undertakings authorised under the law of a Member State to market units to the public and to the managers of the undertakings;

(v) investment companies with fixed capital, as defined in Article 17(7) of Directive 2012/30/EU of the European Parliament and of the Council, the securities of which are listed or dealt in on a regulated market in a Member State.

(4) A certified person, within the meaning of Part VII of the Investment Intermediaries Act 1995 is not required to hold an authorisation under these Regulations while—

(a) that person remains a certified person, and

(b) any investment advice and investment services are provided by that person in an incidental manner and within the limits, conditions or constraints of the certificate granted by that person's approved professional body.

(5) In paragraph (4)(b)—

“investment advice” includes investment advice within the meaning of that expression as used in Part VII of the Investment Intermediaries Act 1995 in relation to a certified person;

“investment services” includes investment business services within the meaning of that expression as used in Part VII of the Investment Intermediaries Act 1995 in relation to a certified person.

## PART 2

### AUTHORISATION OF INVESTMENT FIRMS

#### *Requirement for authorisation (and certain provisions concerning MTFs and OTFs)*

5. (1) Subject to the provisions of this Regulation, a person shall not act as an investment firm in the State, claim to be an investment firm in the State or represent that the person is an investment firm in the State, unless the person—

- (a) is an authorised investment firm, or
- (b) is authorised to do so (in accordance with the Directive) by a competent authority in another Member State,

and is acting as authorised.

(2) A person who, immediately before 3 January 2018, is an authorised investment firm under the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No.60 of 2007) is deemed, for the purposes of these Regulations, to be an authorised investment firm.

(3) A market operator of a regulated market may operate an MTF or an OTF in the State, subject to the prior verification by the Bank of the market operator’s compliance with the provisions of Parts 2 and 3 relating to MTFs and OTFs.

(4) For the purposes of paragraph (1), an investment firm shall not be regarded as operating in the State if the firm provides investment services or performs investment activities, with or without any ancillary services, to eligible counterparties or to professional clients within the meaning of Schedule 2 without the establishment of a branch in the State and—

- (a) the firm’s head or registered office is—
  - (i) in a third country, or
  - (ii) in a Member State other than the State and the firm does not provide any investment services in respect of which it is required to be authorised in its home Member State for the purposes of the Directive, or
- (b) the firm is authorised in a Member State other than the State, under the Directive, but provides only investment services of a kind for which authorisation under the Directive is not available during the provision of the investment services.

(5) A third country investment firm providing investment services or performing investment activities in the State shall not be able to do so on the basis of the firm relying on paragraph (4) unless the following conditions are met:

- (a) the firm is subject to authorisation and supervision in the third country where the third-country firm is established and the third-country firm is authorised so that the competent authority of the third country pays due regard to any recommendations of FATF in the context of anti-money laundering and countering the financing of terrorism, and
- (b) co-operation arrangements that include provisions regulating the exchange of information for the purpose of preserving the integrity of the market and protecting investors are in place between the Bank and the competent authorities where the third-country firm is established.

(6) Without prejudice to the rights of third country investment firms to provide investment services or perform investment activities in the State in accordance with the second subparagraph of Article 46(5) of Regulation (EU) No 600/2014, the Bank may issue a direction to a third country investment firm, being a third country investment firm whose registration has been withdrawn by ESMA in accordance with Article 48 of Regulation (EU) No 600/2014, that it shall not provide investment services or perform investment activities in the State irrespective of its compliance with paragraphs (4) and (5).

(7) The Bank, after consultation with the Minister, may make rules requiring persons who provide investment services or perform investment activities on the basis of relying on paragraph (4) to notify the Bank in writing of such particulars as the Bank considers necessary or expedient to enable the Bank to verify that the conditions in paragraphs (4) and (5) are being met.

(8) An investment firm falling within the definition of “systematic internaliser” in Regulation 3(1) shall notify the Bank, without delay, of that fact. Such notification shall be transmitted to ESMA by the Bank.

*Bank to establish and maintain register of authorised investment firms*

6. The Bank shall—

- (a) establish and maintain a register of all authorised investment firms for which the Bank is the competent authority,
- (b) ensure that the register is publicly accessible and regularly updated and contains information on the investment services or activities for which the investment firms are authorised,
- (c) notify ESMA of all authorised investment firms, and
- (d) publish on that register all withdrawals of authorisation in accordance with Regulation 13(1)(d), (e) or (g), and the requirement under this paragraph to publish on that register such matters shall be construed

as requirement to keep those matters so published for a period of 5 years after the date of the withdrawal concerned.

*Requirements of investment firm authorisations*

7. An investment firm may not be authorised under this Part unless—

- (a) it has its head office in the State, and
- (b) if it is required to have a registered office, it also has its registered office in the State.

*Application to Bank for authorisation*

8. (1) A person who wishes to be granted an authorisation shall apply to the Bank in that behalf.

(2) The Bank may grant or refuse an application for authorisation.

(3) An application for authorisation may be granted—

- (a) unconditionally, or
- (b) subject to such conditions or requirements as the Bank sees fit.

(4) The Bank may from time to time vary conditions or requirements subsequent to granting an application for authorisation.

(5) Without prejudice to paragraphs (3)(b) and (4), the Bank may impose conditions or requirements (or both) in respect of the level of capital to be maintained by an investment firm where—

- (a) the Bank has identified particular risks that cannot be addressed other than by way of an additional capital requirement; or
- (b) the sole application of other measures is unlikely to address particular risks identified by the Bank, sufficiently or within an appropriate timeframe,

but, in either case, only if the imposition of such conditions or requirements (or both) is proportionate so as to address the particular risks identified.

(6) For the purpose of paragraph (5) “particular risks” means any risks which, in the Bank’s opinion, could undermine the sound and prudent management of an investment firm or the interests of its clients or the integrity of the market.

*Prerequisites to granting authorisation*

9. (1) The Bank shall not grant an application for authorisation by an investment firm unless it satisfies the Bank—

- (a) that it is—
  - (i) a company incorporated by statute or under the Companies Act 2014,

- (ii) incorporated outside the State,
  - (iii) a company established by Royal Charter,
  - (iv) a partnership,
  - (v) an industrial and provident society, or
  - (vi) an individual,
- (b) that the memorandum of association and articles of association or other constituting documents of the investment firm (if any) contain sufficient provision to enable it to operate in accordance with—
- (i) these Regulations, and
  - (ii) any conditions and requirements imposed by the Bank,
- (c) as to the probity and competence of each person who is a director or manager of the investment firm,
- (d) as to the organisational structure of the investment firm and that adequate levels of staff and expertise will be employed to carry out the investment firm's proposed activities,
- (e) as to the resources, procedures and arrangements for the provision of services and performance of activities, taking into account the nature, scale and complexity of its business and all the requirements the investment firm has to comply with,
- (f) that the investment firm has followed and will follow established procedures to enable—
- (i) the Bank to be supplied with all information necessary for the Bank's supervisory functions, and
  - (ii) the public to be supplied with any information which the Bank may specify,
- (g) that the organisation of the business structure of the investment firm is such that it and any of its related undertakings are capable of being supervised adequately by the Bank,
- (h) as to the conduct of—
- (i) the investment firm's business and financial resources, and
  - (ii) any other matters which the Bank considers necessary in the interests of the proper and orderly regulation and supervision of investment firms or in the interests of the protection of investors.



(2) The Bank shall not grant an application for authorisation by an investment firm unless it is satisfied that the members of the management body of the investment firm—

- (a) are of good repute,
- (b) possess sufficient knowledge, skills and experience, and
- (c) will commit sufficient time to perform their functions in the investment firm,

so as to ensure the effective, sound and prudent management and operation of the investment firm and the adequate consideration of the interests of its clients and the integrity of the market.

(3) Without prejudice to paragraph (2), the Bank shall not grant an application for authorisation by an investment firm if there are objective and demonstrable grounds for believing that the management body of the firm may pose a threat to the effective, sound and prudent management of the investment firm and to the adequate consideration of the interests of their clients and the integrity of the market.

(4) The Bank shall not grant an application for authorisation by an investment firm unless, after taking into account the need to ensure sound and prudent management of investment firms, the Bank is satisfied as to the suitability of the shareholders or members that have qualifying holdings in the investment firm.

(5) For the purposes of paragraph (4) in determining whether the criteria for a qualifying holding are fulfilled, there shall not be taken into account—

- (a) voting rights, or
- (b) shares,

which investment firms or credit institutions may hold as a result of providing the underwriting of financial instruments or the placing of financial instruments on a commitment basis as included under paragraph 6 of Part 1 of Schedule 1 provided that those rights are—

- (i) not exercised or otherwise used to intervene in the management of the issuer, and
- (ii) disposed of within one year of acquisition.

(6) Where close links exist between the investment firm and other persons, the Bank shall grant an application for authorisation only if those links do not prevent the effective exercise of the supervisory functions of the Bank.

(7) The Bank shall not grant an application for authorisation by an investment firm if the laws, regulations and administrative provisions of a third country governing one or more natural or legal persons with which the investment firm

has close links, or difficulties involved in their enforcement, prevent the effective exercise of its supervisory functions.

(8) The Bank shall not grant an application for authorisation by an investment firm unless it is satisfied that the investment firm will meet its obligations under the Investor Compensation Act 1998 (No. 37 of 1998).

(9) In relation to structured deposits, the obligation specified in paragraph (8) shall be met where the structured deposit is issued by a credit institution which is a member of a deposit guarantee scheme recognised under European Union (Deposit Guarantee Schemes) Regulations 2015 (S.I. No. 516 of 2015).

(10) The Bank shall not grant an application for authorisation by an investment firm unless the investment firm has sufficient initial capital in accordance with the requirements of Regulation (EU) No 575/2013 and the European Union (Capital Requirements) Regulations 2014 (S.I. No. 158 of 2014), having regard to the nature of the investment services it seeks authorisation to provide.

(11) In this Regulation “related undertaking”, in relation to an investment firm (“the first-mentioned person”), means—

- (a) if the first-mentioned person is a company, another company that is related within the meaning of the Companies Act 2014 to it,
- (b) a partnership of which the first-mentioned person is a member,
- (c) if the businesses of the first-mentioned person and another person have been so carried on that the separate business of each of them, or a substantial part thereof, is not readily identifiable, that other person,
- (d) if the decision as to how and by whom the businesses of the first-mentioned person and another person shall be managed can be made either by the same person or by the same group of persons acting in concert, that other person,
- (e) a person who performs a specific and limited purpose by or in connection with the business of the first-mentioned person, or
- (f) if provision is required to be made for the first-mentioned person and another person in any consolidated accounts compiled in accordance with Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013, that other person.

*Time limits for grant or refusal of applications for authorisation*

10. (1) The applicant for an authorisation of an investment firm shall be informed whether the application has been granted or refused—

- (a) within 6 months after the receipt by the Bank of the complete application, or

- (b) where further information or records have been requested by the Bank in relation to the application (which request the Bank has, by virtue of this Regulation, power to make) within 6 months after the receipt by the Bank of the further information or records.

(2) If the applicant does not provide a complete application within 12 months after the initiation of the application, the Bank may refuse the application for an authorisation.

*Unincorporated investment firms — special provisions*

11. (1) The Bank may impose conditions or requirements (or both) on an investment firm which is constituted as an unincorporated body of persons or which is a natural person in order to monitor the solvency of the firm or its proprietors (or both).

(2) The Bank may impose conditions or requirements (or both) on an investment firm which is constituted as an unincorporated body of persons or which is a natural person in order to achieve an equivalent level of supervision to that pertaining to an investment firm which is constituted as a corporate body.

*Scope of authorisation*

12. (1) An authorisation granted to an investment firm—

- (a) shall specify the investment services or activities which the firm is authorised to provide,
- (b) may cover one or more ancillary services but may not cover only the provision of ancillary services, and
- (c) may—
  - (i) extend to the provision of any investment business services, or
  - (ii) cover any investment instruments,

as defined in the Investment Intermediaries Act 1995.

(2) An investment firm seeking authorisation to extend its business to additional investment services or ancillary services for which the firm is not authorised shall apply to the Bank for the appropriate extension of the firm's authorisation and the Bank may grant the extension if the Bank considers it appropriate in the circumstances.

(3) An authorisation granted to an investment firm under this Part, together with any extension under paragraph (2)—

- (a) is valid for the entire European Union, and
- (b) allows an investment firm or a branch established by it to provide the services or perform the activities for which the firm has been authorised throughout the European Union, either through the right of

establishment, including through a branch, or through the freedom to provide services.

*Withdrawal of authorisation by Bank*

13. (1) The Bank may withdraw an authorisation of an investment firm if the investment firm—

- (a) fails to operate as an investment firm during the 12 month period after the date of the authorisation,
- (b) has not provided investment services or performed investment activities for the immediately preceding 6 months unless the Bank has provided for the authorisation to lapse in such cases,
- (c) expressly renounces the authorisation,
- (d) obtained the authorisation by making false statements or by any other irregular means,
- (e) no longer meets the conditions under which the authorisation was granted or the conditions of authorisation listed in Regulation (EU) No 575/2013,
- (f) is being wound up, or
- (g) has contravened any provision of these Regulations or Regulation (EU) No 600/2014 that governs the operation of investment firms and the contravention or contraventions is or are, in the opinion of the Bank, of a serious and systematic nature.

(2) Where the Bank has withdrawn an authorisation in accordance with paragraph (1) the Bank shall notify ESMA of the withdrawal.

*Revocation of authorisation by Court*

14. (1) Without prejudice to the power of the Bank to withdraw an authorisation under Regulation 13(1), the Bank may apply to the Court in a summary manner for an order revoking an authorisation that has been granted to an investment firm if the revocation is expedient—

- (a) in the interests of the proper and orderly regulation and supervision of investment firms,
- (b) in order to protect investors, or
- (c) in one or more of the circumstances described in paragraph (2),

and on the making of such an application the Court may grant such an order accordingly.

(2) The circumstances referred to in paragraph (1) are as follows:

- (a) the investment firm has been convicted on indictment of any offence—

- (i) under these Regulations,
  - (ii) under any enactment under which the Bank performs functions, or
  - (iii) involving fraud, dishonesty or breach of trust;
- (b) circumstances have materially changed since the granting of the authorisation such that, if an application for the authorisation were made at the time of the application to the Court, a different decision would be taken in relation to the application for authorisation;
- (c) the authorisation was obtained by a person knowingly or recklessly—
- (i) making false or misleading statements, or
  - (ii) using false or misleading information;
- (d) the investment firm has systematically failed to comply, or failed to comply to a material degree, with a condition provided in, or a requirement of, these Regulations or Regulation (EU) No 600/2014;
- (e) the investment firm no longer fulfils any or all of the conditions or requirements which were—
- (i) imposed when the authorisation was granted, or
  - (ii) subsequently imposed;
- (f) the investment firm—
- (i) no longer complies with capital or any other financial requirements specified by the Bank, or
  - (ii) is not maintaining, or is unlikely to be able to maintain, having regard to the nature and volume of the firm's business adequate capital resources or adequate other resources;
- (g) the investment firm becomes unable or, in the opinion of the Bank, is likely to become unable, to meet its obligations to its creditors or suspends payments lawfully due;
- (h) the investment firm has infringed to a material degree a code of conduct or rules of conduct or regulations issued under the Central Bank Acts 1942 to 2015;
- (i) a director, manager or qualifying shareholder of the investment firm no longer satisfies the Bank as to the matters specified in Regulation 9(1)(c) and (4);
- (j) the investment firm—

- (i) has not complied with a condition, requirement or direction imposed by or under these Regulations or Regulation (EU) No 600/2014, and
  - (ii) the circumstances are such that the Bank is of the opinion that the stability and soundness of the firm is or has been materially affected by the non-compliance;
- (k) the investment firm has so organised its business or corporate structure that—
- (i) the firm, and
  - (ii) where appropriate, any related undertaking or associated undertaking,

either collectively or individually, is no longer capable of being supervised to the satisfaction of the Bank under these Regulations or Regulation (EU) No 600/2014.

(3) On an application by the Bank to the Court under this Regulation, the Court may make such interim or interlocutory orders as it thinks fit in the circumstances.

(4) An application by the Bank to the Court under this Regulation may be heard otherwise than in public.

(5) The Bank shall not apply to the Court to revoke an authorisation on the grounds set out in paragraph (2)(i) unless the Bank has given the investment firm concerned an opportunity to—

- (a) remove the director, manager or qualifying shareholder, or
- (b) otherwise deal with the concerns of the Bank in relation to the probity or competence of the director, manager or qualifying shareholder,

within such period as the Bank may specify.

*Notice of proposed withdrawal of authorisation and publication of withdrawal*

15. (1) When the Bank proposes to withdraw the authorisation of an investment firm or to apply to the Court for an order to revoke the authorisation of an investment firm, the Bank shall—

- (a) serve notice on the investment firm of its intention, and
- (b) state its reasons in the notice.

(2) Within 28 days after the withdrawal or revocation of an authorisation of an investment firm, the Bank may publish notice of the withdrawal or revocation in the *Iris Oifigiúil* or in one or more newspapers circulating in the State.

*Prohibition against false or misleading application for investment firm authorisation*

16. A person shall not, knowingly or recklessly—
- (a) apply for an authorisation to operate as an investment firm using false or misleading information, or
  - (b) make false or misleading statements to the Bank in relation to an application for—
    - (i) an authorisation in respect of an investment firm, or
    - (ii) an approval or permission from the Bank concerning the operation of an investment firm.

PART 3

REGULATION AND SUPERVISION OF INVESTMENT FIRMS

Chapter 1

*Management bodies and persons with qualifying holdings*

*Management bodies*

17. (1) The Bank shall ensure that investment firms and their management bodies comply with Regulations 76 and 79 of the European Union (Capital Requirements) Regulations 2014.

(2) Without prejudice to the requirements under Regulation 79 of the European Union (Capital Requirements) Regulations 2014, the management body of an investment firm shall—

- (a) define, oversee and be accountable for the implementation of the governance arrangements that ensure effective and prudent management of the investment firm, including the segregation of duties in the investment firm and the prevention of conflicts of interest in a manner that promotes the integrity of the market and the interests of clients,
- (b) monitor, and periodically assess, the effectiveness of the investment firm's governance arrangements and the adequacy of the policies relating to the provision of services to clients and take appropriate steps to address any deficiencies, and
- (c) monitor and periodically assess the adequacy and the implementation of the investment firm's strategic objectives in the provision of investment services and activities and ancillary services and take appropriate steps to address any deficiencies.

(3) The governance arrangements referred to in paragraph (2)(a) shall ensure that the management body defines, approves and oversees—

- (a) the organisation of the investment firm for the provision of investment services and activities and ancillary services, including—
  - (i) the skills, knowledge and expertise required by personnel, and
  - (ii) the resources, the procedures and the arrangements for the provision of services and activities,

taking into account the nature, scale and complexity of its business and all the requirements the investment firm has to comply with,

- (b) a policy as to services, products and operations offered and provided, in accordance with the risk tolerance of the investment firm and the characteristics and needs of its clients to whom they will be offered or provided, including carrying out appropriate stress testing, where appropriate,
- (c) a remuneration policy for persons involved in the provision of services to clients aiming to encourage responsible business conduct, fair treatment of clients as well as avoiding conflict of interest in the relationships with clients.

(4) Members of the management body shall have adequate access to information and documents which are needed to oversee and monitor management decision-making.

(5) When granting an authorisation the Bank may authorise members of the management body to hold one non-executive directorship additional to that allowed in accordance with Regulation 79 of the European Union (Capital Requirements) Regulations 2014.

(6) The Bank shall regularly inform ESMA of authorisations given under paragraph (5).

(7) An investment firm shall notify the Bank of all members of its management body and of any changes to its membership, together with all information needed to assess whether the firm complies with paragraphs (1) to (5).

(8) An investment firm shall ensure that at least 2 persons meeting the requirements specified in Regulations 76 and 79 of the European Union (Capital Requirements) Regulations 2014 effectively direct the business of the investment firm.

(9) However, notwithstanding paragraph (8), the Bank may grant an authorisation to an investment firm—

- (a) that is an individual, or
- (b) that is managed by an individual,



if the Bank is satisfied that there are arrangements in place which ensure the sound and prudent management of the investment firm and the adequate consideration of the interests of its clients and the integrity of the market and that the individual concerned is of good repute, possesses sufficient knowledge, skills and experience and commits sufficient time to perform his or her duties.

*Shareholders and members with qualifying holdings*

18. (1) Where the Bank has reason to believe that a person who has a qualifying holding in the shares of, or voting rights attaching to shares in, an investment firm is exercising an influence on the direction of the affairs of the investment firm which is, or is likely to be, prejudicial to the prudent and sound management of the investment firm, it shall, subject to paragraph (2), notify the person that it so believes and direct the person in writing to take specified measures to bring that influence to an end within a specified period.

(2) Before issuing a direction to a person under paragraph (1), the Bank shall notify the person of its intention to issue the direction and shall give the person an opportunity to make such representations on the matter as he or she may wish to make within a period specified by the Bank in the notification.

(3) A direction issued under paragraph (1) is an appealable decision for the purposes of Part VIIA of the Act of 1942.

(4) Where the Bank is of the opinion that a direction under paragraph (1) has not been complied with by the person concerned, or has not been complied with within the specified period of time, the Bank may, without prejudice to any of its other functions, apply to the Court in a summary manner for any one or more of the following:

- (a) an injunction prohibiting the person concerned from issuing directions to directors or to any manager, secretary, officer or staff of, or persons engaged by, the investment firm or market operator and prohibiting any director, manager, secretary, officer or any other person acting on behalf of the investment firm or market operator from seeking directions from, or consulting, the person concerned, or from acting on such directions without the consent of the Bank;
- (b) an order suspending the exercise by the person concerned of any interest in or voting rights attaching to shares held by that person in the investment firm or market operator;
- (c) an order requiring the person concerned to dispose of some or all of his shareholding, interests or rights in the investment firm or market operator within a period specified by the Court;
- (d) such other order as the Court considers appropriate.

(5) Where the Court is satisfied, because of the nature or the circumstances of the case or otherwise in the interests of justice that it is desirable, the whole or any part of proceedings before it under this Regulation may be heard otherwise than in public.

(6) The Bank shall refuse authorisation, taking into account the sound and prudent management of the investment firm, if it is not satisfied as to:

- (a) the suitability of the shareholders or members that have qualifying holdings; or
- (b) where close links exist between the investment firm and other natural or legal persons, and such links may prevent the effective exercise of the supervisory functions of the Bank.

## Chapter 2

### *Proposed acquisitions and disposals*

#### *Interpretation of Chapter*

19. (1) In this Chapter—

“proposed acquirer”, in relation to an investment firm, means a person who proposes to make a relevant acquisition in the investment firm and includes a group of persons acting in concert to make such a relevant acquisition;

“proposed disponent”, in relation to an investment firm, means a person who proposes to make a relevant disposal in the investment firm;

“relevant acquisition”, in relation to an investment firm, means an acquisition by which, whether directly or indirectly, a qualifying holding in the investment firm is acquired, or a qualifying holding in the investment firm is increased, and as a result of which—

- (a) the percentage of the voting rights or capital held by the proposed acquirer would reach or exceed one or more of the percentages specified in paragraph (2), or
- (b) the investment firm would become a subsidiary of the proposed acquirer

and any reference to “proposed acquisition” is a reference to a proposed relevant acquisition;

“relevant disposal”, in relation to an investment firm, means a disposal by which a qualifying holding in the investment firm is, whether directly or indirectly, either disposed of or reduced so that—

- (a) the percentage of the voting rights or capital held by the proposed disponent would fall below one or more of the percentages specified in paragraph (2), or
- (b) the investment firm would cease to be a subsidiary of the proposed disponent.

(2) The percentages referred to in—

- (a) subparagraph (a) of the foregoing definition of “relevant acquisition”, and
- (b) subparagraph (a) of the foregoing definition of “relevant disposal”,

are: 20%, 33% and 50%, each being a percentage of the total voting rights or, as the case may be, capital in the investment firm; each such percentage is subsequently referred to in this Chapter as a “threshold”.

*Notification of proposed acquisitions*

20. (1) Before a proposed acquirer makes a relevant acquisition in an investment firm, the proposed acquirer shall notify the Bank in writing of the investment firm, indicating the size of the intended holding and the information specified by the Bank.

(2) Before a proposed disposer makes a relevant disposal in an investment firm, the proposed disposer shall notify the Bank in writing, indicating the size of the intended holding.

(3) The Bank may publish from time to time the form of notification to be used for the purpose of making a notification under paragraph (1) or (2) and the form standing so published shall be used for that purpose accordingly.

(4) If a proposed acquirer is—

- (a) an investment firm, a credit institution, an insurance undertaking, an assurance undertaking, a reinsurance undertaking or a UCITS management company authorised in a Member State other than the State or in a sector other than that in which the acquisition is proposed,
- (b) the parent undertaking of an investment firm, a credit institution, an insurance undertaking, an assurance undertaking, a reinsurance undertaking or a UCITS management company authorised in a Member State other than the State or in a sector other than that in which the acquisition is proposed, or
- (c) a person controlling an investment firm, a credit institution, an insurance undertaking, an assurance undertaking, a reinsurance undertaking or a UCITS management company authorised in a Member State or in a sector other than that in which the acquisition is proposed,

and, if as a result of the relevant acquisition, the undertaking would become the acquirer’s subsidiary or come under the acquirer’s control, the assessment of the acquisition shall be subject to the prior consultation provided for in paragraphs (5) and (6).

(5) In a case to which paragraph (4) applies, the Bank shall, without undue delay, provide any other competent authority concerned with any information that is essential or relevant for the assessment of a proposed acquisition and the

Bank shall communicate to each such other competent authority all relevant information upon request and all essential information on its own initiative.

(6) A decision by the Bank, having authorised the investment firm in which an acquisition is proposed, shall indicate any views or reservations expressed by the Bank or other competent authority responsible.

(7) If an investment firm becomes aware of any acquisition or disposal of holdings in its capital that cause holdings to exceed or fall below any of the thresholds specified in Regulation 19(2), the investment firm shall inform the Bank without delay.

(8) An investment firm shall inform the Bank, at least annually, of the names of shareholders and members possessing qualifying holdings and the sizes of such holdings.

(9) Where a person fails to comply with the obligation to provide prior information in relation to the acquisition or increase of a qualifying holding in accordance with paragraph (1), the Bank shall take measures in accordance with paragraph (4) of Regulation 18 to put an end to that situation (and, accordingly, paragraph (4) of Regulation 18 applies in the case of a foregoing failure to comply as it applies in the case of a failure to comply with a direction under paragraph (1) of Regulation 18).

(10) If a holding is acquired despite the opposition of the Bank, the voting rights of the acquired holding shall, if the Bank so directs, stand suspended for such period as the Bank specifies in the direction.

(11) A person who concludes an acquisition to which paragraph (1) applies without having notified the Bank may make an application to the Court under this Regulation and the Court may, if it is satisfied that the failure was inadvertent and that it is in the interests of justice to do so, make an order—

(a) requiring the person to provide the Bank with the information required under paragraph (1), and

(b) requiring the Bank to carry out an assessment in accordance with paragraph (5) and Regulations 21 and 22.

(12) An application under paragraph (11) shall be on notice to the Bank and the Bank shall be entitled to appear, be heard and adduce evidence at the hearing of the application.

(13) Notice of an application under paragraph (11) shall be served on the Bank at least 14 days before the date of hearing of the application.

(14) An affidavit giving the names and addresses of, and the places and dates of service on, all persons who have been served with the notice of application, grounding affidavit and exhibits (if any) shall be filed by the applicant at least 4 days before the application is heard.

(15) Where any person who ought under this Regulation to have been served has not been so served, the affidavit shall state that fact and the reason for it.

(16) Where the Bank carries out an assessment on foot of an order under paragraph (11), it may—

- (a) lift a suspension of voting rights under paragraph (10) and
- (b) retrospectively validate the exercise of voting rights during such a suspension.

*Assessment period*

21. (1) Within two working days after receiving a completed notification under Regulation 20(1) from a proposed acquirer, the Bank shall acknowledge receipt of the notification in writing.

(2) The Bank shall carry out an assessment of the proposed acquisition within the period of 60 working days after the date of the written acknowledgement of receipt of the notification and the information required by the Bank (referred to in this Regulation as “the assessment period”).

(3) In its acknowledgement of receipt of a notification referred to in paragraph (1), the Bank shall inform the proposed acquirer of the date on which the Bank is required to complete the assessment.

(4) No later than the 50th working day after the beginning of the period within which the Bank is, under paragraph (2), required to complete the assessment, the Bank may request any additional information necessary to complete the assessment.

(5) A request under paragraph (4) shall be made in writing and shall specify the additional information needed.

(6) If the Bank makes such a request it shall acknowledge the receipt of any information received in response to the request.

(7) If the Bank makes such a request for additional information the assessment period is taken to be interrupted for the shorter of—

- (a) the period between the date of the request and the date of the receipt of a response from the proposed acquirer, and
- (b) 20 working days.

(8) The Bank may request further information for completion or clarification of information already supplied but such a further request does not cause the assessment period to be interrupted.

(9) The Bank may, by written notice to a proposed acquirer, extend the applicable period referred to in paragraph (7) in relation to a proposed acquisition by up to 30 working days if the proposed acquirer—

- (a) is a person situated or regulated outside the European Union, or
- (b) is a natural or legal person not subject to supervision under these Regulations or the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (S.I. No. 352 of 2011), the European Union (Insurance and Reinsurance) Regulations 2015 S.I. No. 485 of 2015) or the European Union (Capital Requirements) Regulations 2014.

(10) If on completing the assessment of a proposed acquisition the Bank decides to oppose it, the Bank shall, within two working days and before the end of the assessment period, inform the proposed acquirer concerned in writing and give reasons for that decision.

(11) Subject to section 33BC of the Act of 1942, the Bank shall publish an appropriate statement of the reasons for the decision if the proposed acquirer requests it to do so.

(12) The Bank may publish such a statement even without any request by the proposed acquirer.

(13) If the Bank does not give notice in writing within the assessment period in relation to a proposed acquisition that it opposes the acquisition, the acquisition is taken, for the purposes of any law that requires the acquisition to be approved by the Bank, to have been so approved.

(14) The Bank may fix a maximum period within which the proposed acquisition is to be concluded (and the performance of the functions of the Bank under this Chapter in relation to the proposed acquisition is to be completed) and may extend that maximum period where appropriate.

#### *Assessment*

22. (1) In assessing a notification under Regulation 20(1) and any information referred to in Regulation 21(4) or (8), the Bank shall, in order to ensure the sound and prudent management of the investment firm in which an acquisition is proposed and having regard to the likely influence of the proposed acquirer on the investment firm, appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following criteria:

- (a) the reputation of the proposed acquirer;
- (b) the reputation and experience of the individuals who will direct the business of the investment firm as a result of the proposed acquisition;
- (c) the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the investment firm in which the acquisition is proposed;
- (d) whether the investment firm will be able to comply and continue to comply with the prudential requirements in these Regulations and,

where applicable, prudential requirements based on Directives other than the Directive, in particular by the European Communities (Financial Conglomerates) Regulations 2004 (S.I. No. 727 of 2004), the European Union (Capital Requirements) Regulations 2014 or the European Union (Capital Requirements) (No.2) Regulations 2014 (S.I. No. 159 of 2014);

- (e) whether the group of which it will become a part has a structure that makes it possible to exercise effective supervision, effectively exchange information among the competent authorities and determine the allocation of responsibilities among the competent authorities;
- (f) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing (within the meaning of Article 1 of Directive 2005/60/EC) is being or has been committed or attempted, or that the proposed acquisition could increase the risk of money laundering or terrorist financing.

(2) The Bank may oppose the proposed acquisition only if there are reasonable grounds for doing so on the basis of the criteria set out in paragraph (1) or if the information provided by the proposed acquirer is incomplete.

(3) The Bank shall not—

- (a) examine a proposed acquisition in terms of the economic needs of the market, or
- (b) impose prior conditions in respect of the level of holding that must be acquired,

but without prejudice to subparagraph (b), if the Bank has given notice in relation to a proposed acquisition that the Bank does not oppose the acquisition, the Bank may impose either a condition or a requirement or both, being a condition or a requirement that the Bank considers necessary for the proper and orderly regulation and supervision of an investment firm and may at any time revoke or vary any condition or requirement so imposed.

(4) Where two or more proposals to acquire or increase qualifying holdings in the same investment firm have been notified to the Bank, the Bank shall treat the proposed acquirers in a non-discriminatory manner.

(5) The Bank shall make publicly available a list specifying the information that is necessary to carry out the assessment and that must be provided to the relevant competent authorities at the time of the notification referred to in Regulation 20(1).

(6) The information referred to in paragraph (5) shall be proportionate, and adapted, to the nature of the proposed acquirer and the proposed acquisition.

(7) The Bank shall not require information, as referred to in paragraph (5), that is not relevant for a prudential assessment.

### Chapter 3

#### *Organisational requirements*

##### *Organisational requirements*

23. (1) An investment firm shall—

- (a) establish adequate policies and procedures sufficient to ensure compliance of the investment firm and the persons who are its managers, employees and tied agents with—
  - (i) the investment firm's obligations under these Regulations, and
  - (ii) the appropriate rules governing personal transactions by such persons (that is to say, the arrangements required under Article 29 of Commission Delegated Regulation 2017/535 to be established, implemented and maintained),
- (b) maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest, as identified in Regulation 30, from adversely affecting the interests of the investment firm's clients,
- (c) when devising or otherwise creating financial instruments for sale to clients—
  - (i) maintain, operate and review a product approval process for each financial instrument and for significant adaptations of existing financial instruments before it is marketed or distributed to clients, and
  - (ii) make available to any distributor all appropriate information on the financial instrument and the product approval process, including the identified target market of the financial instrument,
- (d) regularly review financial instruments which it offers or markets, taking into account any event that could materially affect the potential risk to the identified target market, to assess at least—
  - (i) whether the financial instrument remains consistent with the needs of the identified target market, and
  - (ii) whether the intended distribution strategy remains appropriate,
- (e) where offering or recommending financial instruments which it does not devise or otherwise create, have in place adequate arrangements to obtain the information referred to in paragraph (c)(ii) and to



understand the characteristics and identified target market of each financial instrument,

- (f) take reasonable steps to ensure continuity and regularity in the performance of investment services and activities by employing appropriate and proportionate systems, resources and procedures,
- (g) ensure that it takes reasonable steps to avoid undue additional operational risk when relying on a third party for the performance of operational functions which are critical for—
  - (i) the provision of continuous and satisfactory service to clients, and
  - (ii) the performance of investment activities on a continuous and satisfactory basis,
- (h) ensure that any outsourcing by the investment firm of important operational functions is not to be undertaken in such a way as to impair materially—
  - (i) the quality of its internal control, and
  - (ii) the ability of the Bank to monitor the investment firm's compliance with all of the investment firm's obligations,
- (i) ensure that the firm has—
  - (i) sound administrative and accounting procedures,
  - (ii) internal control mechanisms,
  - (iii) effective procedures for risk assessment, and
  - (iv) effective control and safeguard arrangements for information processing systems,
- (j) maintain the confidentiality of data at all times, without prejudice to the Bank's ability to require access to communications in accordance with these Regulations and Regulation (EU) No 600/2014, by putting in place sound security mechanisms—
  - (i) to guarantee the security and authentication of the means of transfer of information,
  - (ii) to minimise the risk of data corruption and unauthorized access, and
  - (iii) to prevent information leakage,
- (k) when holding financial instruments belonging to clients, make adequate arrangements to—

- (i) safeguard clients' ownership rights, especially in the event of the investment firm's insolvency, and
  - (ii) prevent the use of a client's financial instruments on own account, except with the client's express consent,
  - (l) when holding funds belonging to clients, make adequate arrangements to safeguard the clients' rights and, except in the case of credit institutions, prevent the use of client funds for the firm's own account, and
  - (m) not conclude title transfer financial collateral arrangements with retail clients for the purpose of securing or covering present or future, actual or contingent or prospective obligations of clients.
- (2) For the purposes of paragraph (1)(c) "product approval process" means a system which—
- (a) specifies an identified target market of end clients within the relevant category of clients for each financial instrument, and
  - (b) ensures that all relevant risks to the identified target market are assessed and that the intended distribution strategy is consistent with the identified target market.
- (3) The policies, processes and arrangements referred to in paragraph (1)(b), (c), (d) and (e) are to be implemented without prejudice to all the requirements under these Regulations and Regulation (EU) No 600/2014, including those relating to disclosure, suitability or appropriateness, identification and management of conflicts of interests and inducements.
- (4) An investment firm shall arrange for records to be kept of all services, activities and transactions undertaken by the investment firm and ensure that the records are sufficient to enable the Bank to fulfil its supervisory tasks and take enforcement action under these Regulations, Regulation (EU) No 596/2014, Regulation (EU) No 600/2014 and the European Union (Market Abuse) Regulations 2016 (S.I. No. 349 of 2016) and, in particular, to ascertain whether the firm has complied with all obligations including those with respect to clients or potential clients and to the integrity of the market.
- (5) The records that must be kept include recordings of telephone conversations or electronic communications relating to at least—
- (a) transactions concluded when dealing on own account,
  - (b) the provision of client order services that relate to the reception, transmission and execution of client orders, and
  - (c) telephone conversations and electronic communications that are intended to result in transactions concluded when dealing on own account or in the provision of client order services that relate to the reception, transmission and execution of client orders, even if those

conversations or communications do not result in the conclusion of such transactions or in the provision of client order services.

(6) An investment firm shall take all reasonable steps to record relevant telephone conversations and electronic communications made with, sent from or received by equipment provided by the investment firm to an employee or contractor or the use of which by an employee or contractor has been accepted or permitted by the investment firm.

(7) An investment firm shall not, by telephone, provide investment services or perform other activities which relate to the reception, transmission and execution of client orders to or for new and existing clients who have not, on at least one occasion before the provision of investment services or performance of other activities, been notified that telephone communications or conversations between the investment firm and its clients that result, or may result, in transactions, will be recorded.

(8) Where orders are placed by clients through other channels such as mail, fax, email or documentation of client orders made at meetings, they shall be considered equivalent to orders received by telephone and the investment firm shall ensure that all relevant communications are made in a durable medium.

(9) The content of relevant face-to-face conversations with a client may be recorded using written minutes or notes and such orders shall be considered equivalent to orders received by telephone.

(10) An investment firm shall take all reasonable steps to prevent an employee or contractor from making, sending or receiving relevant telephone conversations and electronic communications on privately owned equipment which the investment firm is unable to record or copy.

(11) The records kept in accordance with this Regulation shall be retained by the investment firm—

(a) for a period of 5 years, or

(b) for such longer period not exceeding 7 years as the Bank requires.

(12) Investment firms shall, on request, provide to clients any records relating to their account or accounts kept in accordance with paragraph (11).

(13) If a branch of an investment firm is located in the State, the Bank shall, without prejudice to the possibility of the competent authority of the home Member State of the investment firm to have direct access to those records, enforce the obligations laid out in paragraphs (4) to (12) with regard to transactions undertaken by the branch.

(14) The requirements specified in Schedule 3 shall have effect for the purposes of this Regulation.

*Algorithmic trading*

24. (1) An investment firm engaging in algorithmic trading shall have effective systems and risk controls suitable to the business it operates to ensure that its trading systems—

- (a) are resilient,
- (b) have sufficient capacity,
- (c) are subject to appropriate trading thresholds and limits,
- (d) prevent the sending of erroneous orders or the systems otherwise functioning in a way that may create or contribute to a disorderly market, and
- (e) cannot be used for any purpose that is contrary to Regulation (EU) No 596/2014 or to the rules of a trading venue to which it is connected.

(2) An investment firm engaging in algorithmic trading shall—

- (a) have effective business continuity arrangements to deal with any failure of its trading systems, and
- (b) ensure that its trading systems are fully tested and monitored to ensure compliance with the requirements of paragraph (1).

(3) An investment firm that engages in algorithmic trading in the State shall notify the Bank or the competent authority of its home Member State and the competent authority of the trading venue at which it is engaging in algorithmic trading as a member or participant.

(4) The Bank may require an investment firm to provide, on a regular or ad hoc basis, a description of the nature of its algorithmic trading strategies, details of the trading parameters or limits to which the system is subject and the key compliance and risk controls and details of the testing it has in place pursuant to paragraphs (1) and (2).

(5) Without prejudice to paragraph (4), the Bank may, at any time, request further information from an investment firm about its algorithmic trading and the systems used for that trading and an investment firm shall provide the information to the Bank.

(6) The Bank shall, on the request of a competent authority of a trading venue at which an investment firm is engaged in algorithmic trading as a member or participant and without undue delay, communicate the information referred to in paragraph (4) or (5) that it receives from the investment firm.

(7) An investment firm that engages in algorithmic trading shall arrange for records to be kept in relation to the matters referred to in paragraphs (3) to (6) and shall ensure that those records are sufficient to enable the Bank to monitor compliance with the requirements of these Regulations.

(8) Where an investment firm engages in a high-frequency algorithmic trading technique, it shall store in a form approved by the Bank accurate and time sequenced records of all placed orders, including cancellations of orders, executed orders and quotations on trading venues and shall make them available to the Bank on request.

(9) Where an investment firm engages in algorithmic trading to pursue a market making strategy, it shall, taking into account the liquidity, scale and nature of the specific market and the characteristics of the instruments traded—

- (a) carry out the market making continuously during a specified proportion of the trading venue's trading hours, except under exceptional circumstances, with the result of providing liquidity on a regular and predictable basis to the trading venue,
- (b) enter into a binding written agreement with the trading venue which shall at least specify the obligations of the investment firm in accordance with subparagraph (a), and
- (c) have in place effective systems and controls to ensure that it fulfils its obligations under the agreement referred to in subparagraph (b) at all times.

(10) For the purposes of this Regulation and Regulation 72, an investment firm that engages in algorithmic trading shall be considered to be pursuing a market making strategy when, as a member of or participant in, one or more trading venues, its strategy, when dealing on own account, involves posting firm, simultaneous two-way quotes of comparable size and at competitive prices relating to one or more financial instruments on a single trading venue or across different trading venues, with the result of providing liquidity on a regular and frequent basis to the overall market.

(11) An investment firm shall not provide direct electronic access unless it has in place effective systems and controls which ensure—

- (a) a proper assessment and review of the suitability of clients using the service,
- (b) that clients using the service are prevented from exceeding appropriate pre-set trading and credit thresholds,
- (c) that trading by clients using the service is properly monitored, and
- (d) that appropriate risk controls prevent trading that may create risks to the investment firm itself or that could create or contribute to a disorderly market or could be contrary to Regulation (EU) No 596/2014 or the rules of the trading venue.

(12) An investment firm that provides direct electronic access to a trading venue shall—

- (a) notify the Bank and, if different, the competent authority of the trading venue,
- (b) be responsible for ensuring that clients using the service comply with the requirements of these Regulations and the rules of the trading venue by—
  - (i) monitoring transactions in order to identify infringements of these Regulations, disorderly trading conditions or conduct that may involve market abuse, and
  - (ii) reporting any infringements to the Bank,

and

- (c) ensure that there is a binding written agreement between the investment firm and its client or clients regarding the essential rights and obligations arising from the provision of the service and under the written agreement the investment firm shall retain responsibility under these Regulations.

(13) The Bank may require an investment firm to provide, on a regular or ad hoc basis, a description of the systems and controls referred to in paragraph (11) and evidence that such systems and controls have been applied.

(14) The Bank shall, at the request of the competent authority of a trading venue in relation to which an investment firm provides direct electronic access, communicate without undue delay the information referred to in paragraph (13) which it receives from the investment firm.

(15) An investment firm shall arrange for records to be kept in relation to the matters referred to in paragraphs (11) to (14) and shall ensure that those records are sufficient to enable the Bank to monitor compliance with the requirements of this Regulation.

(16) An investment firm acting as a general clearing member for other persons shall—

- (a) have in place effective systems and controls to ensure clearing services are only applied to persons who are suitable and meet clear criteria and that appropriate requirements are imposed on those persons to reduce risks to the investment firm and to the market, and
- (b) ensure that there is a binding written agreement between it and those persons outlining the essential rights and obligations arising from the provision of that service.

*Trading process and finalisation of transactions in MTF and OTF*

25. (1) In addition to complying with the requirements of Regulation 23, an investment firm or market operator, when operating an MTF or OTF, shall—

- (a) establish—
  - (i) transparent rules and procedures for fair and orderly trading, and
  - (ii) objective criteria for the efficient execution of orders,
- (b) have arrangements for the sound management of the technical operations of the facility, including the establishment of effective contingency arrangements to cope with risks of systems disruptions,
- (c) establish transparent rules regarding the criteria for determining the financial instruments that can be traded under its systems,
- (d) ensure that there is access to sufficient publicly available information to enable the users of the MTF or an OTF to form an investment judgement, taking into account both the nature of the users and the types of instruments traded,
- (e) establish, publish, maintain and implement transparent and non-discriminatory rules, based on objective criteria, governing access to the MTF or OTF,
- (f) have arrangements to identify clearly and manage the potential adverse consequences for the operation of the MTF or an OTF, or for the members or participants and users, of any conflict of interest between the interest of the MTF, the OTF, its owners or the investment firm or market operator operating the MTF or OTF and the sound functioning of the MTF or OTF,
- (g) comply with Regulations 72 and 73 and have in place all the necessary effective systems, procedures and arrangements to do so,
- (h) clearly inform the members or participants of the MTF or OTF of their respective responsibilities for the settlement of the transactions executed in that facility,
- (i) ensure that the necessary arrangements are in place in order to facilitate the efficient settlement of the transactions concluded under the systems of the MTF or OTF, and
- (j) comply immediately with any instruction from the Bank, pursuant to Regulation 92(4) to suspend or remove a financial instrument from trading.

(2) MTFs and OTFs shall have at least three materially active members or users, each having the opportunity to interact with all the others in respect to price information.

(3) Where a transferable security which has been admitted to trading on a regulated market is also traded on an MTF or an OTF without the consent of the issuer of the transferable security, that issuer is not subject to any obligation

relating to initial, ongoing or ad hoc financial disclosure with regard to that MTF or OTF.

(4) Without prejudice to Regulation 27(1)(a), (4) and (5), an investment firm and market operator operating an MTF or OTF shall provide to the Bank a detailed description of the functioning of the MTF or OTF including—

- (a) any links to or participation by a regulated market, an MTF, an OTF or a systematic internaliser owned by the same investment firm or market operator, and
- (b) a list of their members, participants and users.

(5) The Bank shall make the information in paragraph (4) available to ESMA on request.

(6) Every authorisation granted to an investment firm or market operator to operate as an MTF or an OTF shall be notified to ESMA by the Bank.

*Specific requirements for MTFs*

26. (1) In addition to the requirements in Regulations 23 and 25 investment firms and market operators operating an MTF shall establish and implement non-discretionary rules for the execution of orders in the system.

(2) An investment firm or market operator operating an MTF shall require that the rules governing access to its MTF comply with the conditions established in Regulation 77(3).

(3) An investment firm or market operator operating an MTF shall have arrangements—

- (a) to be adequately equipped to manage the risks to which it is exposed, to implement appropriate arrangements and systems to identify all significant risks to the operation and to put in place effective measures to mitigate those risks,
- (b) to effectively facilitate the efficient and timely finalisation of the transactions executed under its systems, and
- (c) to have available, at the time of authorisation and on an ongoing basis, sufficient financial resources to facilitate its orderly functioning, having regard to the nature and extent of the transactions concluded on the market and the range and degree of the risks to which it is exposed.

(4) Where transactions are concluded under the rules governing an MTF between its members or participants or between the MTF and its members or participants in relation to the use of the MTF, Regulations 31, 32, 33, 35(1) to (4) and (7) to (12) and 36 shall not apply.



(5) However, where the members of or participants in an MTF acting on behalf of their clients execute their orders through the systems of the MTF, they shall comply with the obligations provided for in Regulations 31, 32, 33, 35 and 36 with respect to their clients.

(6) An investment firm or market operator operating an MTF shall not execute client orders against proprietary capital or engage in matched principal trading.

*Specific requirements for OTFs*

27. (1) An investment firm or market operator operating an OTF shall establish arrangements—

- (a) preventing the execution of client orders in the OTF against the proprietary capital of the investment firm or market operator operating the OTF or from any entity that is part of the same group or legal person as the investment firm or market operator, and
- (b) ensuring compliance with matched principal trading.

(2) An investment firm or market operator operating an OTF may engage in matched principal trading in bonds, structured finance products, emission allowances and certain derivatives only where the client has consented to the process but shall not use matched principal trading to execute client orders in an OTF in derivatives pertaining to a class of derivatives that has been declared subject to the clearing obligation in accordance with Article 5 of Regulation (EU) No 648/2012.

(3) An investment firm or market operator operating an OTF may engage in dealing on own account other than matched principal trading only with regard to sovereign debt instruments for which there is not a liquid market.

(4) Without prejudice to paragraph (3) and in accordance with paragraphs (1), (2), (5) and (6), an investment firm or market operator operating the OTF may facilitate negotiation between clients so as to bring together two or more potentially compatible trading interest in a transaction in a system that arranges transactions in non-equities.

(5) An investment firm or market operator operating an OTF shall not—

- (a) operate within the same legal entity as a systematic internaliser,
- (b) connect with a systematic internaliser in a way which enables orders in an OTF and orders or quotes in a systematic internaliser to interact, or
- (c) connect with another OTF in a way which enables orders in different OTFs to interact.

(6) An investment firm or market operator operating an OTF may engage another investment firm to carry out market making on that OTF on an independent basis.

(7) For the purposes of paragraph (6), an investment firm shall not be deemed to be carrying out market making on an OTF on an independent basis if it has close links with the investment firm or market operator operating the OTF.

(8) An investment firm or market operator operating an OTF shall ensure that the execution of orders on the OTF is carried out on a discretionary basis as is referred to in paragraph (9).

(9) Without prejudice to Regulations 25 and 35 an investment firm or market operator operating an OTF shall exercise discretion in the execution of orders only in one or more of the following circumstances:

- (a) when deciding to place or retract an order on the OTF operated by it;
- (b) when deciding not to match a specific client order with other orders available in the systems at a given time, provided it is in compliance with specific instructions received from a client and with its obligations in accordance with Regulation 35;
- (c) if, when and how much of two or more orders it wants to match within a system that crosses client orders.

(10) In accordance with the requirements of this Regulation and without prejudice to the requirements of paragraph (3), in a system that arranges transactions in non-equities, an investment firm or market operator operating an OTF may facilitate negotiation between clients so as to bring together two or more potentially compatible trading interests in a transaction.

(11) The Bank may require, either when an investment firm or market operator requests to be authorised for the operation of an OTF or on ad hoc basis—

- (a) a detailed explanation as to why the system does not correspond to and cannot operate as a regulated market, MTF, or systematic internaliser,
- (b) a detailed description as to how discretion will be exercised, in particular when an order to the OTF may be retracted and when and how two or more client orders will be matched within the OTF, or
- (c) information explaining its use of matched principal trading so that the Bank can monitor an investment firm's or market operator's engagement in matched principal trading to ensure that it continues to fall within the definition of such trading and that its engagement in matched principal trading does not give rise to conflicts of interest between the investment firm or market operator and its clients.

(12) An investment firm or market operator shall ensure that Regulations 31, 32, 33, 35 and 36 are applied to the transactions concluded on an OTF.

## PART 4

## OPERATING CONDITIONS FOR INVESTMENT FIRMS

## Chapter 1

*General provisions**Regular review of conditions for initial authorisation*

28. (1) An authorised investment firm shall comply at all times with the conditions and requirements of its authorisation.

(2) The Bank shall monitor compliance by an investment firm with its obligations under paragraph (1).

(3) An investment firm shall notify the Bank, without delay, of any material change in the conditions and circumstances as they obtain for the time being (and which relate to the firm) from those that obtained at—

(a) the time of the grant of its authorisation (and which related to the firm), or

(b) any subsequent time (and which related to the firm), being a time that was the occasion of the Bank imposing or amending any condition or requirement of the authorisation.

(4) The reference in paragraph (3) to conditions and circumstances obtaining at any time includes a reference to the conditions and circumstances that import any consideration to which the Bank is to have, or may have, regard under these Regulations in deciding whether to grant an authorisation or impose or amend any condition or requirement of an authorisation.

*General obligation in respect of on-going supervision*

29. (1) The Bank—

(a) shall monitor the activities of investment firms so as to assess compliance with the operating conditions provided for in these Regulations, and

(b) may require any person who possesses information which the Bank considers necessary for assessing the compliance of an investment firm with those operating conditions to provide it to the Bank.

(2) A person required under paragraph (1)(b) to provide information shall do so without delay.

*Conflicts of interest*

30. (1) An investment firm shall take all appropriate steps to identify and prevent or manage conflicts of interest that arise in the course of providing any investment services or ancillary services, or a combination thereof, including (but not limited to) those caused by the receipt of inducements from third parties or by the investment firm's own remuneration and other incentive structures—

- (a) within the investment firm,
- (b) between the investment firm and any person, including (but not limited to)—
  - (i) its managers, employees and tied agents,
  - (ii) one or more persons directly or indirectly linked to the investment firm by control, or
  - (iii) the clients of the investment firm,

or

- (c) between a client of the investment firm and one or more of the other clients of the investment firm.

(2) Where organisational or administrative arrangements made by an investment firm, in accordance with Regulation 23(1)(b) to (e), (2) and (3) to prevent conflicts of interest from adversely affecting the interest of its client are insufficient to ensure, with reasonable confidence, that risks of damage to client interests will be prevented, the investment firm shall clearly disclose to the client—

- (a) the general nature,
- (b) the sources, and
- (c) the steps taken to mitigate those risks,

before undertaking business on the client's behalf.

(3) Disclosure to clients pursuant to paragraph (2) shall—

- (a) be made in a durable medium, and
- (b) include sufficient detail, taking into account the nature of the client, to enable the client to make an informed decision with respect to the investment service or ancillary service, or a combination thereof, in the context of which the conflict of interest arises.

## Chapter 2

*Provisions to ensure investor protection**Duty to act in interests of clients and comply with principles*

31. (1) When providing investment services or, where appropriate, ancillary services, to its clients, an investment firm shall—

- (a) act honestly, fairly and professionally in accordance with the best interests of its clients, and
- (b) comply, in particular, with the principles set out in Regulations 32 and 33.

*General principles and information to clients*

32. (1) Where an investment firm devises or otherwise creates financial instruments for sale to clients, it shall ensure that—

- (a) the financial instruments are designed to meet the needs of an identified target market of end clients within the relevant category of clients,
- (b) the strategy for distribution of the financial instruments is compatible with the identified target market, and
- (c) the investment firm takes reasonable steps to ensure that the financial instruments are distributed to the identified target market.

(2) An investment firm shall—

- (a) understand the financial instruments it offers or recommends,
- (b) assess the compatibility of the financial instruments with the needs of the clients to whom it provides investment services,
- (c) take account of the identified target market of end clients as referred to in Regulation 23(1)(b) to (e), (2) and (3), and
- (d) ensure that financial instruments are offered or recommended only when this is in the interest of the client.

(3) An investment firm shall ensure that—

- (a) all information, including marketing communications, addressed by the investment firm to clients or potential clients is fair, clear and not misleading, and
- (b) marketing communications are clearly identifiable as such.

(4) An investment firm shall ensure that appropriate information is provided in good time to clients or potential clients with regard to—

- (a) the investment firm and its services,
- (b) financial instruments and proposed investment strategies,
- (c) execution venues, and
- (d) all costs and related charges.

(5) For the purposes of paragraph (4), when investment advice is provided to a client by an investment firm, the obligation of the investment firm includes its informing the client in good time—

- (a) whether or not the advice is provided on an independent basis,
- (b) whether the advice is based on a broad or a more restricted analysis of different types of financial instruments and, in particular whether the range is limited to financial instruments issued or provided by entities having close links with the investment firm or any other legal or economic relationships, such as contractual relationships, so close as to pose a risk of impairing the independent basis of the advice provided, and
- (c) whether the investment firm will provide the client with a periodic assessment of the suitability of the financial instruments recommended to the client.

(6) For the purposes of paragraph (4), the information on financial instruments and proposed investment strategies shall include appropriate guidance on, and warnings of the risks associated with investments in, those financial instruments or in respect of particular investment strategies and whether the financial instrument is intended for retail or professional clients, taking account of the identified target market in accordance with paragraph (1).

(7) For the purposes of paragraph (4), the information on all costs and associated charges shall include information relating to both investment services and ancillary services, including the cost of advice, where relevant, the cost of the financial instrument recommended or marketed to the client and how the client may pay for it, also encompassing any third-party payments.

(8) For the purposes of paragraph (4), the information about all costs and charges, including costs and charges in connection with the investment service and the financial instrument, which are not caused by the occurrence of underlying market risk, shall be aggregated in order to allow the client to understand the overall cost as well as the cumulative effect on return of the investment, and where the client requests an itemised breakdown shall be provided.

(9) Where applicable, the information referred to in paragraph (8) shall be provided to the client on a regular basis, at least annually, over the lifetime of the investment.

(10) The information referred to in paragraphs (4) to (8) and (17) shall be provided in a comprehensible form in such manner that the clients or potential clients are reasonably able to understand the nature and risk of the investment service and of the specific type of financial instrument that is being offered and, consequently, to take investment decisions on an informed basis.

(11) Information to be given for the purposes of paragraphs (4), (8) or (17) may be provided in a standardised format.

(12) Where an investment service is offered as part of a financial product which is already subject to other provisions giving effect to European Union law relating to credit institutions or consumer credit with respect to information requirements, the investment service shall not be subject to the obligations in paragraphs (3) to (11).

(13) Where an investment firm informs a client that investment advice is provided on an independent basis, the investment firm shall—

- (a) assess a sufficient range of financial instruments available on the market which must be sufficiently diverse with regard to their type and issuers or product providers to ensure that the client's investment objectives can be suitably met and must not be limited to financial instruments issued or provided by—
  - (i) the investment firm itself or by entities having close links with the investment firm, or
  - (ii) other entities with which the investment firm has such close legal or economic relationships, such as contractual relationships, as to pose a risk of impairing the independent basis of the advice provided,

or

- (b) subject to paragraph (15), not accept and retain fees, commissions or any monetary or non-monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to a client.

(14) Subject to paragraph (15), when providing portfolio management, an investment firm shall not accept and retain fees, commissions or any monetary or non-monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to the client.

(15) Minor non-monetary benefits that are capable of enhancing the quality of the service provided to the client and are of a scale and nature such that they could not be judged to impair compliance with the investment firm's duty to act in the best interest of the client shall be clearly disclosed and are excluded from paragraphs (13)(b) and (14).

(16) For the purposes of paragraph (17), a reference in that paragraph to a fee, commission or non-monetary benefit does not include a reference to a fee, commission or non-monetary benefit that is—

- (a) a fee, commission or non-monetary benefit paid or provided to or by the client or a person on behalf of the client, or
- (b) a fee, commission or non-monetary benefit that—
  - (i) enables or is necessary for the provision of investment services, such as custody costs, settlement and exchange fees, regulatory levies or legal fees, and
  - (ii) by its nature, cannot give rise to conflicts with the investment firm's duties to act honestly, fairly and professionally in accordance with the best interests of its clients.

(17) An investment firm is not to be regarded as fulfilling its obligations under Regulation 30 and this Regulation if, in connection with the provision of an investment service or ancillary service to the client, the investment firm pays or is paid any fee or commission, or provides or is provided with any non-monetary benefit, in connection with the provision of an investment service or an ancillary service, unless—

- (a) the fee, commission or non-monetary benefit—
  - (i) is designed to enhance the quality of the relevant service to the client, and
  - (ii) does not impair compliance with the investment firm's duty to act honestly, fairly and professionally in the best interests of the client,
- (b) the existence, nature and amount of the fee, commission or benefit, or, where the amount cannot be ascertained, the method of calculating that amount, is clearly disclosed to the client, in a manner that is comprehensive, accurate and understandable, prior to the provision of the relevant investment service or ancillary service, and
- (c) where applicable, the investment firm also informs the client on mechanisms for transferring to the client the fee, commission, monetary or non-monetary benefit received in relation to the provision of the investment or ancillary service.

(18) When providing investment services to clients, an investment firm shall ensure that it does not remunerate or assess the performance of its staff in a way that conflicts with its duty to act in the best interests of its clients, and in particular it shall not make any arrangement by way of remuneration, sales targets or otherwise that could provide an incentive to its staff to recommend a particular financial instrument to a retail client when the investment firm could offer a different financial instrument which would better meet the client's needs.



(19) When an investment service is offered together with another service or product as part of a package or as a condition for the same agreement or package, the investment firm shall inform the client whether it is possible to buy the different components separately and shall provide for a separate evidence of costs and charges of each component.

(20) Where the risks resulting from such an agreement of package offered to the retail client are likely to be different from the risks associated with the components taken separately, the investment firm shall provide an adequate description of the different components of the agreement or package and the way in which its interaction modifies the risks.

(21) The requirements specified in Schedules 4 and 5 shall have effect for the purposes of this Regulation.

*Assessment of suitability and appropriateness and reporting to clients*

33. (1) An investment firm shall ensure and demonstrate to the Bank on request that individuals giving investment advice or information about financial instruments, investment services or ancillary services to clients on behalf of the investment firm possess the necessary knowledge and competence to fulfil their obligations under Regulation 32 and this Regulation.

(2) The Bank shall publish criteria to be used by the Bank to assess the knowledge and competency of the individuals referred to in paragraph (1).

(3) When providing investment advice or portfolio management an investment firm shall obtain the necessary information about—

- (a) the client's or potential client's knowledge and experience in the investment field relevant to the specific type of product or service offered to the client by the investment firm,
- (b) the client's or potential client's financial situation, including his or her ability to bear losses, and
- (c) the client's or potential client's investment objectives, including his or her risk tolerance,

that is necessary to enable the investment firm to recommend to the client or potential client those investment services and financial instruments that are suitable for the client and, in particular, are in accordance with his or her risk tolerance and ability to bear losses.

(4) An investment firm shall ensure that where it provides investment advice recommending a package of services or products bundled pursuant to Regulation 32(19) and (20), the overall bundled package is suitable.

(5) When providing investment services other than investment advice and portfolio management, an investment firm shall—

- (a) ask the client or potential client to provide information regarding his or her knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded,
- (b) take that information into account in order to assess whether the investment service or product envisaged is appropriate for the client, and
- (c) where a bundle of services or products is envisaged pursuant to Regulation 32(19) and (20), consider the appropriateness of the overall bundled package for the client.

(6) Where the investment firm considers, on the basis of the information provided pursuant to paragraph (5), that the product or service is not appropriate for the client or potential client, the investment firm shall warn the client or potential client; and the warning may be provided in a standardised format.

(7) Where a client or potential client—

- (a) does not provide the information referred to in paragraph (5), or
- (b) provides insufficient information regarding the client's or potential client's knowledge and experience,

the investment firm shall warn the client or potential client that the investment firm is not in a position to determine whether the service or product envisaged is appropriate for the client or potential client; and the warning may be provided in a standardised format.

(8) When an investment firm provides to its clients investment services that consist only of—

- (a) the execution of client orders, or
- (b) the reception and transmission of client orders,

with or without ancillary services, excluding the granting of credits or loans as specified in paragraph 1 of Part 2 of Schedule 1 that do not comprise existing credit limits of loans, current accounts and overdraft facilities of clients, the investment firm may do so without the need to obtain the information, or to make the determination, provided for in paragraphs (5) to (7) if all of the conditions in paragraph (9) are met.

(9) The conditions referred to in paragraph (8) are that—

- (a) the services relate to any of the following financial instruments:
  - (i) shares in companies admitted to trading on a regulated market or on an equivalent third-country market or on an MTF other than shares in AIFs and shares that embed a derivative;

- (ii) bonds or other forms of securitised debt admitted to trading on a regulated market or on an equivalent third-country market or on a MTF other than those that embed a derivative or incorporate a structure which makes it difficult for the client to understand the risk involved;
  - (iii) money market instruments other than those that embed a derivative or incorporate a structure which makes it difficult for the client to understand the risk involved;
  - (iv) shares or units in UCITS other than structured UCITS as referred to in the second subparagraph of Article 36(1) of Regulation (EU) No 583/2010;
  - (v) structured deposits other than those that incorporate a structure which makes it difficult for the client to understand the risk of return or the cost of exiting the product before term;
  - (vi) other non-complex financial instruments,
- (b) those services are provided at the initiative of the client or potential client,
- (c) the investment firm has clearly informed the client or potential client that—
- (i) in the provision of those services, the investment firm is not required to assess the appropriateness of the financial instrument or service provided or offered, and
  - (ii) therefore the client or potential client does not benefit from the corresponding protection of the relevant conduct of business rules,
- by means of a clear warning that may, be provided in a standardised format,
- (d) the investment firm complies with its obligations under Regulation 30.
- (10) (a) The Bank may make a request to the European Commission to adopt an equivalence decision in respect of a third-country market.
- (b) The Bank's request shall state why it considers that the legal and supervisory framework of the third country concerned is to be considered equivalent and shall provide relevant data to that end.
- (11) An investment firm shall establish and maintain a record that includes the document or documents agreed between the firm and its clients that set out—
- (a) the rights and obligations of the firm and the clients, and

(b) the other terms on which the firm will provide services to the clients.

(12) The rights and obligations referred to in paragraph (11) may be incorporated by reference to other documents or legal texts.

(13) An investment firm shall provide to its clients adequate reports on the services provided by the investment firm to them in a durable medium, including—

(a) periodic communications to clients which take into account the type and the complexity of the financial instruments involved and the nature of the services being provided to the clients, and

(b) where applicable, the costs associated with the transactions and services undertaken on behalf of the clients.

(14) When providing investment advice, an investment firm shall, before a transaction is made, provide a retail client with—

(a) a statement on suitability in a durable medium specifying the advice given, and

(b) how the advice meets the preferences, objectives and other characteristics of the retail client.

(15) Where the agreement to buy or sell a financial instrument is concluded by means of distance communication which prevents the prior delivery of the suitability statement in paragraph (14), the investment firm may provide a written statement on suitability in a durable medium immediately after the retail client is bound by any agreement if—

(a) the retail client consented to receiving the suitability statement without undue delay after the conclusion of the transaction, and

(b) the investment firm has given the retail client the option of delaying the transaction in order to receive the statement on suitability in advance.

(16) Where an investment firm provides portfolio management or has informed a retail client that it will carry out a periodic assessment of suitability, the periodic report shall contain an updated statement of how the investment meets the client's preferences, objectives and other characteristics of the retail client.

(17) Where an investment service is offered by an investment firm for a credit agreement relating to residential immovable property which—

(a) is subject to the provisions of the European Union (Consumer Mortgage Credit Agreements) Regulations 2016 (S.I. No. 142 of 2016) concerning creditworthiness assessment of consumers, and

- (b) has as a prerequisite the provision to that same consumer of an investment service in relation to mortgage bonds specifically issued to secure the financing of and having identical terms as the aforementioned credit agreement, in order for the loan to be payable, refinanced or redeemed,

the investment service offered shall not be subject to the obligations set out in these Regulations.

*Provision of services through the medium of another investment firm*

34. (1) An investment firm which receives an instruction to provide investment services or ancillary services on behalf of a client through the medium of another investment firm may rely on client information transmitted by the other investment firm.

(2) The investment firm which mediates the instructions will remain responsible for the completeness and accuracy of the information transmitted.

(3) An investment firm which receives an instruction on behalf of a client to perform investment or ancillary services through the medium of another investment firm shall rely on any recommendations in respect of the services or transactions that have been provided to the client by that other investment firm.

(4) The investment firm which mediates the instructions remains responsible for the suitability for the client of the recommendations or advice provided.

(5) An investment firm that receives client instructions or orders through the medium of another investment firm remains responsible for concluding the service or transaction, based on any such information or recommendations in accordance with these Regulations.

*Obligation to execute orders on terms most favourable to client*

35. (1) When executing orders, an investment firm shall—

- (a) take all sufficient steps to obtain the best possible result for their clients taking into account price, costs, speed, likelihood of execution and settlement, size, nature and any other consideration relevant to the execution of the order, and
- (b) notwithstanding subparagraph (a), whenever there is a specific instruction from a client, execute the order in line with the specific instruction.

(2) Where an investment firm executes an order on behalf of a retail client, the best possible result shall be determined in terms of the total consideration, representing—

- (a) the price of the financial instrument, and
- (b) the costs related to execution, including—

- (i) all expenses incurred by the client which are directly related to the execution of the order, and
- (ii) execution venue fees, clearing and settlement fees and any other fees paid to third parties involved in the execution of the order.

(3) For the purposes of delivering the best possible result in accordance with paragraph (2) where there is more than one competing venue to execute an order for a financial instrument, in order to assess and compare the results for the client that would be achieved by executing the order on each of the execution venues listed in the investment firm's order execution policy that is capable of executing that order, the investment firm's own commissions and costs for executing the order on each of the eligible execution venues shall be taken into account in that assessment.

(4) An investment firm shall not receive any remuneration, discount or non-monetary benefit for routing client orders to a particular trading venue or an execution venue which would infringe the requirements on conflicts of interest or inducements set out in—

- (a) paragraphs (1) to (3) of this Regulation,
- (b) Regulation 23(1)(b) to (e), (2) and (3), and
- (c) Regulations 30 to 32.

(5) Each execution venue shall, in relation to—

- (a) financial instruments subject to the trading obligations in Articles 23 and 28 of Regulation (EU) No 600/2014, and
- (b) other financial instruments,

make available to the public, on at least an annual basis, without any charges, periodic reports containing data relating to the quality of execution of transactions on the venue and, following the execution of a transaction on behalf of a client, the investment firm shall inform the client where the order was executed.

(6) Such periodic reports shall include details about the price, costs, speed and likelihood of execution for individual financial instruments.

(7) An investment firm shall establish and implement effective arrangements for complying with paragraphs (1) to (3) including but not limited to establishing and implementing an order execution policy to allow it to obtain, for its client orders, the best possible results in accordance with those paragraphs.

(8) An investment firm shall—

- (a) ensure that its order execution policy includes, for each class of financial instruments, information about—

- (i) the different venues where the investment firm executes its client orders, and
- (ii) the factors affecting the choice of execution venues,

including information on those venues that enable the investment firm to consistently obtain the best possible result of the execution of client orders,

- (b) provide appropriate information to its clients on the investment firm's order execution policy that shall explain clearly, in sufficient detail and in a way that can be easily understood by clients, how orders will be executed by the investment firm for the client, and
- (c) obtain the consent of the investment firm's clients to the execution policy prior to the execution of orders on the client's behalf.

(9) Where the order execution policy of an investment firm provides for the possibility that client orders may be executed outside a trading venue, the investment firm shall, in particular—

- (a) inform its clients of that fact, and
- (b) obtain the prior express consent of its clients, before proceeding to execute the client's orders outside a trading venue.

(10) Such consent may be either in the form of a general agreement or in respect of individual transactions.

(11) An investment firm that executes client orders shall—

- (a) summarise and make public on an annual basis, for each class of financial instrument, the top five execution venues in terms of trading volumes where it executed client orders in the preceding year,
- (b) provide information on the quality of the execution obtained,
- (c) regularly monitor the effectiveness of its order execution arrangements and order execution policy, in order to identify and, where appropriate, correct any deficiencies,
- (d) assess, on a regular basis, whether the execution venues included in the order execution policy provide for the best possible result for its clients or whether it needs to make any changes to its execution arrangements, taking account of (among other things) the information published under paragraphs (5) and (6) and subparagraphs (a) and (b), and
- (e) notify the clients with whom the investment firm has an ongoing client relationship of any material changes to the firm's order execution arrangements or its order execution policy.

(12) An investment firm shall demonstrate to its clients, at the clients' request, that the investment firm has executed its orders in accordance with the investment firm's order execution policy and shall demonstrate to the Bank, at the Bank's request, compliance with this Regulation.

*Client order handling rules*

36. (1) An investment firm authorised to execute orders on behalf of clients shall implement procedures and arrangements which—

- (a) provide for the prompt, fair and expeditious execution of client orders by that investment firm relative to—
  - (i) other client orders, and
  - (ii) the trading interests of the investment firm,

and

- (b) allow for the execution of comparable client orders in accordance with the time of their receipt by the investment firm.

(2) In the case of a client limit order that—

- (a) in respect of shares admitted to trading on a regulated market or traded on a trading venue, and
- (b) is not immediately executed under prevailing market conditions,

unless the client otherwise expressly instructs the investment firm, the investment firm shall take measures to facilitate the earliest possible execution of the order by making the order public without delay, in a manner easily accessible to other market participants.

(3) An investment firm is deemed to comply with paragraph (2) if the investment firm transmits the client limit order to a trading venue.

(4) Unless the Bank otherwise directs, an investment firm shall not have to comply with the obligation under this Regulation to make public a client limit order, where that order is large in scale compared with normal market size, as determined under Article 4 of Regulation (EU) No 600/2014.

(5) A direction that paragraph (4) does not apply may be given by the Bank on a firm by firm basis or by a generally applicable notice.

*Obligations of investment firms when appointing tied agents*

37. (1) An investment firm may appoint persons as tied agents for the purposes of—

- (a) promoting the services of the investment firm,
- (b) soliciting business or receiving orders from clients or potential clients and transmitting them,



- (c) placing financial instruments, or
- (d) providing advice to clients in respect of—
  - (i) financial instruments, and
  - (ii) services offered by the investment firm.

(2) An investment firm that appoints a tied agent—

- (a) remains fully and unconditionally responsible for any act or omission on the part of the tied agent when acting on behalf of the investment firm, and
- (b) shall ensure that the tied agent discloses—
  - (i) the capacity in which the tied agent is acting, and
  - (ii) the investment firm which the tied agent is representing,

when contacting, or before dealing with, any client or potential client.

(3) Tied agents operating in the State may not handle clients' money or clients' financial instruments.

(4) An investment firm shall monitor the activities of its tied agents to ensure the investment firm's compliance with these Regulations when the tied agents are acting on behalf of the firm.

(5) The Bank shall establish, update on a regular basis and, in such manner as it sees fit, make available a public register of tied agents of investment firms and include on the public register all tied agents established within the State.

(6) The Bank may include a tied agent on the public register only if satisfied that the tied agent—

- (a) is of good repute, and
- (b) possesses the appropriate general, commercial and professional knowledge and competence to enable the tied agent to deliver—
  - (i) the investment services or ancillary services which the tied agent is to deliver, and
  - (ii) the accurate communication of all relevant information about those services,

to the client or potential client of the investment firm for whom the tied agent acts or will act.

(7) For the purposes of paragraph (6), an investment firm shall demonstrate to the Bank that a tied agent satisfies that paragraph, but the Bank shall not be

bound by what has been put forward to it by the firm in that regard in deciding whether to include a tied agent on the public register.

(8) If an investment firm appoints a tied agent who provides on behalf of the investment firm—

- (a) services and activities not covered by these Regulations, and
- (b) services and activities to which these Regulations apply,

the investment firm shall take adequate measures to avoid any negative impact that the services and activities not covered by these Regulations could have on the services and activities to which these Regulations apply.

(9) The Bank may collaborate with investment firms and credit institutions, their associations and other entities in registering tied agents and in monitoring compliance of tied agents with the requirements of paragraphs (5) to (7).

(10) Tied agents may be registered by an investment firm, credit institution or their associations and other entities under the supervision of the Bank.

(11) An investment firm shall appoint only tied agents entered in the register established and maintained under this Regulation or, where an investment firm proposes to appoint a tied agent established in another Member State, only tied agents entered in the public register established and maintained in that Member State for the purposes of the Directive.

(12) The Bank may adopt or retain additional requirements more stringent than those set out in paragraph (6) to those contained in these Regulations on tied agents registered in the State.

(13) A tied agent may act on behalf of one investment firm only.

*Transactions executed with eligible counterparties*

38. (1) An investment firm authorised to—

- (a) execute orders on behalf of clients,
- (b) deal on own account,
- (c) receive and transmit orders, or
- (d) do any combination of the foregoing,

may bring about or enter into transactions with eligible counterparties without being obliged to comply with Regulations 31, 32(1) to (3) and (12) to (20), 33(1) to (12) and (17), 35 and 36(1) in respect of those transactions or in respect of any ancillary service directly relating to those transactions.

(2) When dealing with eligible counterparties, an investment firm shall—

- (a) act honestly, fairly and professionally, and

(b) communicate in a way which is fair, clear and not misleading,

taking into account the nature of the eligible counterparty and its business.

(3) For the purposes of this Regulation the following are eligible counterparties—

- (a) investment firms,
- (b) credit institutions,
- (c) insurance companies,
- (d) UCITS and their management companies,
- (e) pension funds and their management companies,
- (f) other financial institutions authorised or regulated under the law of the European Union or under the national law of a Member State,
- (g) national governments and their corresponding offices including public bodies that deal with public debt at a national level,
- (h) central banks, and
- (i) supranational organisations.

(4) An entity that is an eligible counterparty—

- (a) may request an investment firm, either on a general form or on a trade-by-trade basis, to allow the entity to be treated under these Regulations as a client of an investment firm whose business with the investment firm is subject to the provisions specified in paragraph (1), and
- (b) if the investment firm accedes to the request, the entity shall be treated under these Regulations as set out in subparagraph (a).

(5) Entities other than those specified in paragraph (3) may also be recognised as an eligible counterparty by an investment firm if they meet the pre-determined proportionate requirements, including quantitative thresholds as set out in Commission Delegated Regulation EU 2017/565.

(6) In the event of a transaction where the prospective counterparties are located in different jurisdictions, the investment firm shall defer to the status of the other undertaking as determined by the law or measures of the Member State in which that undertaking is established.

(7) An investment firm which enters into a transaction with an entity who may be treated as an eligible counterparty in accordance with paragraphs (3) and (5) must obtain the express confirmation from the prospective counterparty, either—

- (a) in the form of a general agreement, or
- (b) on a transaction by transaction basis,

that the entity agrees to be treated as an eligible counterparty.

(8) Investment firms may also recognise as eligible counterparties—

- (a) third country entities equivalent to those categories of entities referred to in paragraph (3), and
- (b) third country undertakings equivalent to those referred to in paragraphs (3) and (5) on the same conditions and subject to the same requirements as in paragraphs (6) and (7).

### Chapter 3

#### *Market transparency and integrity*

##### *Monitoring of compliance with rules of MTF or OTF and with other legal obligations*

39. (1) An investment firm or market operator operating an MTF or OTF shall—

- (a) establish and maintain effective arrangements and procedures, relevant to the MTF or OTF, for the regular monitoring of the compliance by its members or participants or users with its rules,
- (b) monitor the orders sent, including cancellations and the transactions undertaken by their members or participants or users under their systems, in order to identify—
  - (i) infringements of its rules,
  - (ii) disorderly trading conditions,
  - (iii) conduct that may indicate behaviour that is prohibited under Regulation (EU) No 596/2014, or
  - (iv) system disruptions in relation to a financial instrument,
- (c) deploy the resources necessary to ensure that the monitoring carried out under subparagraph (b) is effective,
- (d) inform the Bank immediately of—
  - (i) significant infringements of its rules,
  - (ii) disorderly trading conditions,
  - (iii) conduct that may involve market abuse, or

(iv) systems disruption in relation to a financial instrument,

and

(e) provide, without undue delay, full assistance to the Bank in investigating and prosecuting market abuse occurring on or through its systems.

(2) The Bank shall notify the competent authorities of the other Member States and ESMA of information received pursuant to paragraph (1)(d), but in the case of conduct that may involve market abuse, the Bank must be convinced that such behaviour is being or has been carried out.

*Suspension and removal of financial instruments from trading on MTF or OTF*

40. (1) Without prejudice of the right of the Bank under Regulation 92(4) to demand the suspension or removal of a financial instrument from trading, an investment firm or market operator operating an MTF or OTF may suspend or remove from trading a financial instrument which no longer complies with the rules of the MTF or OTF unless the suspension or removal would be likely to cause significant damage to—

(a) the investors' interests, or

(b) the orderly functioning of the market.

(2) An investment firm or a market operator operating an MTF or OTF that suspends or removes from trading a financial instrument shall also suspend or remove derivatives referred to in paragraphs 4 to 10 of Part 3 of Schedule 1 that relate or are referenced to the financial instrument where necessary to support the objectives of the suspension or removal of the underlying financial instrument.

(3) Where a decision to suspend or remove a financial instrument or related derivative has been made under paragraphs (1) or (2), the investment firm or market operator operating that MTF or OTF shall make public its decision and communicate the decision to the Bank.

(4) Where paragraphs (2) and (3) apply, the Bank shall require that other regulated markets, MTFs, OTFs and systematic internalisers which fall under its jurisdiction and trade the same financial instrument, or derivatives referred to in paragraphs 4 to 10 of Part 3 of Schedule 1 that relate or are referenced to the financial instrument, to also suspend or remove the financial instrument or derivatives from trading, where the suspension or removal is due to—

(a) suspected market abuse,

(b) a takeover bid, or

- (c) the non-disclosure of inside information about the issuer or financial instrument infringing Articles 7 and 17 of Regulation (EU) No 596/2014,

except where such suspension or removal could cause significant damage to the investors interests or to the orderly functioning of the market.

- (5) (a) Where the Bank requires the suspension or removal of a financial instrument from trading on one or more regulated markets the Bank shall without delay make public its decision and communicate this decision to ESMA and the competent authorities of the other Member States.
- (b) Where the Bank makes a decision not to suspend or remove from trading the financial instrument or derivatives referred to in paragraphs 4 to 10 of Part 3 of Schedule 1 that relate or are referenced to that financial instrument it shall communicate its decision to the competent authorities of the other Member States and ESMA and provide an explanation for this decision.

(6) Where the Bank is informed by the competent authority of another Member State of the suspension or removal of a financial instrument or derivative referred to in paragraphs 4 to 10 of Part 3 of Schedule 1 that relate or are referenced to a financial instrument from trading on one or more of its regulated markets, MTFs, OTFs or systematic internalisers, the Bank shall direct the suspension or removal of that financial instrument or derivatives from trading, where the suspension or removal is due to—

- (a) suspected market abuse,
- (b) a take-over bid, or
- (c) the non-disclosure of inside information about the issuer or financial instrument infringing Articles 7 and 17 of Regulation (EU) No 596/2014,

except where such suspension or removal could cause significant damage to the investors interests or to the orderly functioning of the market.

- (7) The notification procedure referred to in paragraph (5) shall also apply—
  - (a) when the suspension from trading of a financial instrument or derivatives referred to in paragraphs 4 to 10 of Part 3 of Schedule 1 that relate or are referenced to a financial instrument is lifted, or
  - (b) where the decision to suspend or remove from trading a financial instrument or derivatives referred to in paragraphs 4 to 10 of Part 3 of Schedule 1 that relate or are referenced to that financial instrument is taken by the Bank pursuant to Regulation 92(4)(m) or (n).

## Chapter 4

*SME growth markets**SME growth markets*

41. (1) The operator of a MTF may apply to the Bank to have the MTF registered as an SME growth market.

(2) The Bank may register the MTF as an SME growth market where it is satisfied that—

- (a) at least 50% of the issuers whose financial instruments are admitted to trading on the MTF are SMEs at the time when the MTF is registered as an SME growth market and in any calendar year thereafter,
- (b) appropriate criteria are set for initial and ongoing admission to trading of financial instruments of issuers on the market,
- (c) on initial admission to trading of financial instruments on the market there is sufficient information published to enable investors to make an informed judgment about whether or not to invest in the financial instruments, in the form of either an appropriate admission document or of a prospectus if the requirements laid down in the Prospectus (Directive 2003/71/EC) Regulations 2005 are applicable in respect of a public offer being made in conjunction with the initial admission to trading of the financial instrument on the MTF,
- (d) there is appropriate ongoing periodic financial reporting by or on behalf of an issuer on the market, for example audited annual reports,
- (e) issuers on the market as defined in point (21) of paragraph (1) of Article 3 of Regulation (EU) No 596/2014, persons discharging managerial responsibilities as defined in point (25) of that paragraph and persons closely associated with them as defined in point (26) of that paragraph comply with relevant requirements applicable to them under that Regulation,
- (f) regulatory information concerning the issuers on the market is stored and disseminated to the public, and
- (g) there are effective systems and controls aiming to prevent and detect market abuse on that market as required under Regulation (EU) No 596/2014.

(3) The investment firm or market operator operating the MTF—

- (a) shall also comply with other obligations under these Regulations relevant to the operation of a MTF, and
- (b) may impose on issuers requirements additional to those in paragraph (2).

(4) The Bank may deregister a MTF as an SME growth market where—

- (a) the investment firm or market operator operating the market applies for its deregistration, or
- (b) the requirements in paragraph (2) are no longer complied with in relation to the MTF.

(5) The Bank shall notify ESMA as soon as possible of the registration or deregistration of a MTF as an SME growth market.

(6) Where a financial instrument of an issuer is admitted to trading on one SME growth market, the financial instrument may also be traded on another SME growth market only where the issuer—

- (a) has been informed, and
- (b) has not objected,

and in such a case the issuer will not be subject to any obligation relating to corporate governance or initial, ongoing or ad hoc disclosure with regard to the latter SME growth market.

## PART 5

### RIGHTS OF EU INVESTMENT FIRMS AND CREDIT INSTITUTIONS

#### *Freedom to provide investment services and activities*

42. (1) Each of the following—

- (a) any investment firm authorised and supervised by the competent authority of a Member State other than the State in accordance with the Directive (referred to in this Part as a “Member State investment firm”), and
- (b) any credit institution authorised in a Member State, other than the State, in accordance with Directive 2013/36/EU (referred to in this Part as a “Member State credit institution”),

may provide investment services or perform investment activities (or both), as well as ancillary services, within the State, provided that the services and activities are covered by its authorisation and that ancillary services may only be provided together with investment services or investment activities.

(2) The Bank shall not impose any additional requirements on a Member State investment firm or Member State credit institution in respect of matters covered by these Regulations.

(3) A Member State investment firm intending to—



- (a) provide investment services or investment activities (with or without ancillary services) in the State for the first time, or
- (b) change the range of investment services or activities which the firm provides within the State,

shall communicate to its home competent authority the information specified in paragraph (4).

(4) The information referred to in paragraph (3) is the following:

- (a) the Member State investment firm's intention to operate in the State;
- (b) the Member State investment firm's proposed programme of operations in the State, including in particular the investment services, investment activities and ancillary services that it intends to provide and whether it intends to use tied agents in the State, and if that is its intent, the identity of the tied agents.

(5) The Bank shall publish the identity of the tied agents that the Member State investment firm intends to use to provide investment services and activities in the State.

(6) In the event of a change in any of the particulars of the information communicated under paragraph (3), the Member State investment firm shall give written notice of the change to the competent authority of its home Member State at least one month before implementing the change.

(7) A Member State credit institution intending to provide investment services or activities as well as ancillary services in accordance with paragraph (1) through tied agents shall communicate to the competent authority of its home Member State the identity of those tied agents.

(8) The Bank shall publish the identity of the tied agents that the Member State credit institution intends to use to provide investment services and activities in the State.

(9) Investment firms and market operators from other Member States operating MTFs and OTFs may provide appropriate arrangements in the State so as to facilitate access to and trading on those markets by remote users, members or participants established in the State.

(10) A Member State investment firm or market operator operating an MTF or an OTF shall communicate to the competent authority of its home Member State when it intends to provide such arrangements in the State.

(11) The Bank may request the identity of the remote members or participants of the MTF established in the State from the home Member State of the MTF.

*Member State investment firms and Member State credit institutions establishing branches in the State*

43. (1) A Member State investment firm or Member State credit institution may provide within the State investment services or activities, and ancillary services, in accordance with these Regulations and European Union (Capital Requirements) Regulations 2014, either—

- (a) through the establishment of a branch, or
- (b) by the use of a tied agent established in a Member State outside its home Member State,

if the services and activities are permitted under the authorisation granted to a Member State investment firm or Member State credit institution in its home Member State.

(2) Ancillary services may only be provided together with an investment service or activity.

(3) The Bank shall not impose any additional requirements except those allowed under paragraph (12), on the organisation and operation of the branch in respect of the matters covered by these Regulations.

(4) A Member State investment firm intending to establish a branch in the State or to use tied agents in the State shall communicate to the competent authority of the Member State investment firm's home Member State—

- (a) its intention to establish a branch or use tied agents in the State,
- (b) its proposed programme of operations in the State, stating in particular—
  - (i) the investment services and activities and ancillary services that it intends to provide,
  - (ii) the organisational structure of the branch, and
  - (iii) whether the branch intends to use tied agents in the State and, if so, the identity of the tied agents, a description of the intended use of the tied agents and their organisational structure, including reporting lines, indicating how the agents fit into the corporate structure of the Member State investment firm,
- (c) the address in the State from which documents may be obtained, and
- (d) the names of those responsible for the management of the branch or of the tied agent.

(5) Where a Member State investment firm uses a tied agent established in a Member State outside its home Member State, the tied agent—

- (a) shall be assimilated to the branch if one is established in the State, and

(b) is subject to the provisions of these Regulations relating to branches.

(6) A Member State investment firm may establish a branch in the State and commence business on the earlier of—

(a) the date the Bank confirms receipt from the competent authority of its home Member State of—

(i) the information referred to in paragraph (4), and

(ii) details of the accredited compensation scheme of which it is a member in accordance with Directive 97/9/EC,

or

(b) 2 months after the date on which the competent authority of its home Member State communicates to the Bank the information and details mentioned in subparagraph (a).

(7) In the event of a change in any of the information communicated in accordance with paragraph (4) by a Member State investment firm it shall give written notice of that change to the competent authority of its home Member State at least one month before implementing the change.

(8) Any Member State credit institution intending to establish a branch in the State or to use a tied agent established in a Member State other than its home Member State to provide investment services or activities as well as ancillary services in accordance with these Regulations shall notify the competent authority of its home Member State and provide it with the identity of the tied agent and the information referred to in paragraph (4).

(9) On receipt of a communication from the Bank or, failing such communication from the Bank, at the latest after two months from the date of transmission of the communication by the competent authority of the home Member State, the tied agent can commence business.

(10) The tied agent shall be subject to the provisions of these Regulations relating to branches.

(11) The Bank shall be responsible for ensuring the compliance of the branch of a Member State investment firm with Regulations 31 to 33, 35 and 36 and Articles 14 to 26 of Regulation (EU) No 600/2014.

(12) In monitoring and enforcing compliance of a branch with Regulations 31 to 33, 35 and 36 and Articles 14 to 26 of Regulation (EU) No 600/2014, the Bank—

(a) has the same powers, duties and responsibilities under this Part as it has in relation to an investment firm, and

- (b) without prejudice to the generality of subparagraph (a), has the right—
  - (i) to examine branch arrangements, and
  - (ii) to request any changes as are strictly needed to enable the Bank to enforce Regulations 31 to 33, 35 and 36 and Articles 14 to 26 of Regulation (EU) No 600/2014 with respect to the services the investment firm provides in the State through the branch.

(13) Where a Member State investment firm has a branch in the State, the competent authority of the home Member State, in the exercise of its responsibilities and after informing the Bank, may carry out on-site inspections in that branch.

*Authorised investment firms and credit institutions establishing branches in other Member States*

44. (1) An investment firm authorised in the State intending to establish a branch in another Member State shall communicate to the Bank the following information—

- (a) its intention to establish a branch in the other Member State,
- (b) its proposed programme of operations in the host Member State, stating in particular—
  - (i) the investment services and ancillary services that it intends to provide,
  - (ii) the organisational structure of the branch, and
  - (iii) whether the branch intends to use tied agents in the other Member State and, if so, the identity of the agents,
- (c) the address in the host Member State from which documents may be obtained,
- (d) the names of those responsible for the management of the branch.

(2) Unless the Bank has reason to doubt the adequacy of the administrative structure or the financial situation of an investment firm that communicates information to the Bank under paragraph (1), taking into account the services that the firm intends to provide, the Bank, within 3 months after receiving the information, shall—

- (a) communicate to the competent authority of the host Member State—
  - (i) that information, and
  - (ii) details of the investor compensation scheme of which the investment firm is a member in accordance with the Investor Compensation Act 1998,

and

- (b) inform the investment firm of the communication referred to in subparagraph (a).

(3) In the event of a change in any of the information communicated in accordance with paragraph (1) by an investment firm—

- (a) the investment firm shall give written notice of that change to the Bank at least one month before implementing the change, and
- (b) the Bank shall inform the competent authority of the host Member State of that change.

(4) In the event that the Bank decides not to communicate the information referred to paragraph (2) to the competent authority of the host Member State, the Bank shall give the reasons for that decision to the investment firm within 3 months after receiving all the information referred in paragraph (1).

(5) In the event of a change in any of the information communicated by an authorised investment firm in accordance with paragraph (1)—

- (a) the authorised investment firm shall give written notice of that change to the Bank at least one month before implementing the change, and
- (b) the Bank shall also inform the competent authority of the host Member State of that change.

(6) A credit institution intending to use a tied agent to provide investment services or activities as well as ancillary services in another Member State, in accordance with the Directive, shall notify the Bank and in the case of a tied agent established in another Member State provide it with the information referred to in paragraph (1).

(7) The Bank shall—

- (a) in the case of a tied agent established in the State, within one month of the receipt of all the information referred to in paragraph (1), communicate to the competent authority of the host Member State designated as contact point in accordance with Article 79(1) of the Directive the identity of the tied agents that the credit institution intends to use to provide investment services in that State, or
- (b) in the case of a tied agent established in another Member State, unless the Bank has reason to doubt the adequacy of the administrative structure or the financial situation of a credit institution that communicates information to the Bank, taking into account the services that the institution intends to provide, within 3 months after receiving the information, communicate to the competent authority of the host Member State the information referred to in paragraph (2) and inform the credit institution of that communication.

(8) In the event that the Bank decides not to communicate the information referred to in paragraph (7)(b), it shall give the reasons for that decision to the credit institution within 3 months after receiving all the information referred to in paragraph (1).

*Access to regulated markets*

45. Member State investment firms authorised to execute client orders or to deal on own account have the right of membership of, or of access to, a regulated market established in the State by means of any of the following arrangements—

- (a) directly, by setting up branches in the State, or
- (b) by becoming a remote member of, or having remote access to, the regulated market without having to be established in the State, where the trading procedures and systems of the regulated market do not require a physical presence for conclusion of transactions on the market.

*Access to central counterparty, clearing and settlement facilities and right to designate settlement system*

46. (1) Without prejudice to Titles III, IV or V of Regulation (EU) No 648/2012, a Member State investment firm has the right of direct and indirect access to central counterparty, clearing and settlement systems in the State for the purposes of finalising or arranging the finalisation of transactions in financial instruments.

(2) The right of direct and indirect access under paragraph (1) to central counterparty, clearing and settlement systems—

- (a) is subject to the same non-discriminatory, transparent and objective criteria as apply to local members or participants, and
- (b) is not and must not be restricted to the clearing and settlement of transactions in financial instruments undertaken on a trading venue in the State.

(3) The market operator of a regulated market shall offer to all of the members of, or participants in, the regulated market, the right to designate the system for the settlement of transactions in financial instruments undertaken on that regulated market, subject to—

- (a) the links and arrangements between the designated settlement system and any other system or facility that are necessary to ensure the efficient and economic settlement of the transactions, and
- (b) agreement by the Bank that technical conditions for settlement of transactions concluded on the regulated market through a settlement system other than that designated by the regulated market are sufficient to allow the smooth and orderly functioning of financial markets.

*Provisions regarding central counterparty, clearing and settlement arrangements in respect of MTFs*

47. (1) An investment firm or market operator operating an MTF in the State may enter into appropriate arrangements with a central counterparty or clearing house and a settlement system of another Member State with a view to providing for the clearing or settlement of some or all trades concluded by the members or participants under the systems of the MTF.

(2) The Bank may prohibit the use of central counterparty, clearing houses or settlement systems in another Member State by investment firms and market operators operating an MTF in the State where it is demonstrably necessary in order to maintain the orderly functioning of the MTF, taking into account the conditions for settlement systems established under Regulation 46(3).

(3) In order to avoid undue duplication of control, the Bank shall take into account the oversight and supervision of the clearing and settlement system already exercised by relevant supervisory authorities of other Member States as overseers of clearing and settlement systems or by other supervisory authorities with competence in relation to such systems.

## PART 6

### PROVISION OF INVESTMENT SERVICES AND INVESTMENT ACTIVITIES TO CERTAIN CLIENTS BY THIRD COUNTRY FIRMS

*Provision of services or performance of activities to certain clients through establishment of branch*

48. (1) A third-country firm intending to provide investment services or perform investment activities, with or without any ancillary services, in the State to retail clients or to professional clients within the meaning of paragraph 4 of Schedule 2 shall establish a branch in the State.

(2) A branch of a third-country firm intending to provide the services referred to in paragraph (1) in the State is required by this Regulation to obtain a prior authorisation from the Bank in accordance with the following conditions—

- (a) the services for which the third-country firm has sought authorisation is subject to authorisation and supervision in the third country where the third-country firm is established and the third-country firm is authorised so that the competent authority of the third country pays due regard to any recommendations of FATF in the context of anti-money laundering and countering the financing of terrorism,
- (b) co-operation arrangements that include provisions regulating the exchange of information for the purpose of preserving the integrity of the market and protecting investors are in place between the Bank and the competent authorities where the third-country firm is established,
- (c) there is sufficient initial capital at free disposal of the branch,

- (d) one or more persons are appointed to be responsible for the management of the branch and they all comply with Regulations 76 and 79 of the European Union (Capital Requirements) Regulations 2014,
- (e) the third country where the third-country firm is established has entered into an agreement with the State, which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including, if any, multilateral tax agreements; and
- (f) the firm belongs to an investor-compensation scheme authorised or recognised in accordance with Directive 97/9/EC.

*Obligation to provide information to Bank etc.*

49. A third-country firm intending to obtain authorisation for the provision of any investment services or the performance of investment activities, with or without any ancillary services, in the State through a branch shall provide the Bank with the following—

- (a) the name of the authority responsible for its supervision in the third country concerned and, if more than one authority is responsible for supervision, the details of the respective areas of competence,
- (b) all relevant details of the firm (including its name, legal form and registered office and address, the members of the management body, and the shareholders who hold a qualifying holding in the firm) and a programme of operations setting out the investment services and activities, as well as the ancillary services, to be provided and the organisational structure of the branch, including a description of any outsourcing to third parties of essential operating functions,
- (c) the name of the persons responsible for the management of the branch and the relevant documents to demonstrate compliance with the requirements of Regulations 76 and 79 of the European Union (Capital Requirements) Regulations 2014, and
- (d) information about the initial capital at free disposal of the branch.

*Granting of authorisation*

50. (1) The Bank shall only grant authorisation to a branch of a third-country firm that has established or intends to establish a branch in the State if it is satisfied that—

- (a) the conditions specified in Regulation 48 are fulfilled, and
- (b) the branch of the third country firm will be able to comply with the provisions referred to in paragraph (2).

(2) The branch of the third-country firm authorised in accordance with paragraph (1) shall comply with the requirements of Regulations 23 to 27, 30 to 33,



35 and 36(1) and 38 to 40 and of Articles 3 to 26 of Regulation (EU) No 600/2014, and the measures adopted pursuant thereto, and shall be subject to the supervision of the Bank.

(3) The Bank shall not impose any additional requirements on the organisation and operation of the branch in respect of the matters covered by these Regulations (but the foregoing expression “organisation and operation of the branch” is distinct from matters pertaining generally in respect of a branch) and, furthermore, the Bank shall not treat any branch of third-country firms more favourably than firms established in the European Union.

(4) The applicant for an authorisation to establish as a branch of a third-country firm shall be informed within 6 months after the receipt by the Bank of the complete application whether or not the authorisation has been granted.

*Provision of service at exclusive use of the client*

51. (1) Where a retail client or a professional client within the meaning of paragraph 4 of Schedule 2 established or situated in the European Union initiates, at its own exclusive initiative, the provision of an investment service or the performance of an investment activity by a third-country firm, the requirement for authorisation under Regulation 48 shall not apply to the provision of that service or the performance of that activity by the third-country firm to that person including a relationship specifically relating to the provision of that service or the performance of an activity.

(2) An initiative by a retail client or a professional client within the meaning of paragraph 4 of Schedule 2 shall not entitle the third-country firm to market otherwise than through the branch new categories of investment products or investment services to that client.

*Withdrawal of authorisation*

52. The Bank may withdraw the authorisation issued under Regulation 50 to a branch of a third country firm where such a firm—

- (a) does not make use of the authorisation within 12 months,
- (b) expressly renounces the authorisation,
- (c) has provided no investment services or performed no investment activity for the preceding 6 months unless the Bank has provided for the authorisation to lapse in such a case,
- (d) has obtained the authorisation by making false statements or by any other irregular means,
- (e) no longer meets the conditions under which the authorisation was granted, or
- (f) has contravened any provision of these Regulations that governs the operating conditions for investment firms and which are applicable to

third-country firms and the contravention or contraventions is or are, in the opinion of the Bank, of a serious and systematic nature.

## PART 7

### REGULATED MARKETS

#### *Prerequisites for authorisation to operate regulated market*

53. (1) An authorisation under this Part to operate a regulated market shall—
- (a) be reserved to a legal person using, for the operation of the regulated market, a system which complies with this Part, and
  - (b) be granted only if the person satisfies the Bank that both the person and the system comply at least with this Part.
- (2) In the case of a regulated market that—
- (a) is a legal person, and
  - (b) is operated or managed by a market operator other than the regulated market itself,

the Bank shall establish how the obligations imposed on the market operator under these Regulations are to be allocated between the regulated market and the market operator.

#### *Applicable law to trading conducted on domestic regulated market*

54. Without prejudice to any relevant provisions of the European Union (Market Abuse) Regulations 2016 (S.I. No. 349 of 2016), the trading conducted under the systems of a regulated market established in the State is governed by the law of the State.

#### *Application to Bank for authorisation to operate regulated market*

55. An application for authorisation under this Part shall be in such form, and contain or be accompanied by such records and information, as the Bank may specify in order to enable the Bank to satisfy itself that the regulated market has established, at the time of authorisation, all the necessary arrangements to meet its obligations under this Part, including but not limited to all or any of the following:

- (a) a programme of operations setting out particulars of the type of business to be carried on or likely to be carried on by the market operator of the proposed regulated market, or by the proposed regulated market if it is a legal person and will itself operate its own business as a regulated market;
- (b) information about the organisational structure, any person or persons having a qualifying shareholding or having control or ownership of the market operator of the proposed regulated market, including but

not limited to any natural or legal person whose shareholding in or other commercial relationship with the person who will be the market operator might influence the latter's conduct to a material degree;

- (c) where relevant, a certified copy of the memorandum of association and articles of association or other constituting documents of the market operator of the proposed regulated market.

*Grant of authorisation by Bank*

56. (1) The Bank—

- (a) may grant or refuse to grant to any person applying to it under these Regulations an authorisation to operate a regulated market, and
- (b) shall not grant an authorisation under subparagraph (a) unless satisfied that the applicant complies with these Regulations.

(2) The grant of an authorisation under paragraph (1) may be given—

- (a) unconditionally, or
- (b) as the Bank considers fit, subject to conditions or requirements,

and the Bank may from time to time vary conditions or requirements subsequent to granting an application for authorisation.

(3) If the Bank decides under paragraph (1) to refuse to grant an authorisation for an applicant to operate a regulated market, the Bank shall promptly serve notice on the applicant of the Bank's decision, stating the reasons for the refusal.

(4) For the purposes of these Regulations:

- (a) the Main Securities Market of the Irish Stock Exchange PLC is deemed to be a regulated market,
- (b) the Irish Stock Exchange PLC is deemed to be the market operator of that regulated market, and
- (c) the MTFs of the Irish Stock Exchange PLC that are in existence before 3 January 2018 are deemed to be MTFs.

*Refusal of authorisation by Bank*

57. (1) The Bank shall not grant an authorisation to operate a regulated market unless satisfied—

- (a) that the proposed market operator is a company incorporated by statute or under the Companies Act 2014,
- (b) where relevant, that the memorandum of association and articles of association or other constituting documents of the proposed market

operator contain sufficient provision so as to enable the market operator to operate in accordance with—

- (i) these Regulations, and
  - (ii) any condition or requirement which the Bank may impose,
- (c) that the proposed market operator has the minimum level of capital specified by the Bank,
- (d) as to the probity and competence of each of the proposed market operator's directors and managers,
- (e) as to the suitability of each shareholder of the proposed market operator who would have a qualifying holding,
- (f) as to the organisational structure and management skills of the proposed market operator and that adequate levels of staff and expertise will be employed to carry out the market operator's proposed activities,
- (g) that the proposed market operator has followed and will follow established procedures to enable—
- (i) the Bank to be supplied with all information necessary for the Bank's supervisory functions, and
  - (ii) the public to be supplied with any information which the Bank may specify,
- (h) that the organisation of the proposed market operator's business structure is such that the proposed market operator and any associated or related undertakings of it are capable of being supervised adequately by the Bank, and
- (i) as to the conduct of—
- (i) the proposed market operator's business and financial resources, and
  - (ii) any other matters which the Bank considers necessary in the interests of the proper and orderly regulation and supervision of market operators and regulated markets or in the interests of the protection of investors.
- (2) The Bank shall refuse authorisation if—
- (a) it is not satisfied that the members of the management body of the market operator are of good repute and possess sufficient knowledge, skills and experience, and commit sufficient time, to perform their functions, or

- (b) there are objective and demonstrable grounds for believing that the management body of the market operator may pose a threat to its effective, sound and prudent management and to the adequate consideration of the integrity of the market.

(3) In the process of the authorisation of a regulated market, the person or persons who effectively direct the business and operations of an already authorised regulated market in accordance with these Regulations shall be deemed to comply with the requirements set out in paragraph (2)(a).

*Power of Bank to obtain further information*

58. At any time before the grant or refusal of an authorisation to operate a regulated market, the Bank may—

- (a) request such further information and records relating to the proposed regulated market or its proposed market operator, or
- (b) instruct an authorised officer to—
  - (i) make such inquiries, or
  - (ii) carry out such investigations,

as may be necessary for the purpose of properly evaluating the application.

*Prohibition against false or misleading application to operate regulated market*

59. A person shall not, knowingly or recklessly—

- (a) apply for an authorisation to operate a regulated market using false or misleading information, or
- (b) make false or misleading statements to the Bank in relation to an application for—
  - (i) an authorisation to operate a regulated market, or
  - (ii) an approval or permission from the Bank concerning the operation of a regulated market.

*Compliance by market operators of regulated market*

60. (1) The market operator of a regulated market shall perform tasks relating to the organisation and operation of the regulated market under the supervision of the Bank.

- (2) The market operator of a regulated market—
  - (a) is responsible for ensuring that the regulated market operated by the market operator is in compliance with this Part, and
  - (b) is entitled to exercise the rights conferred by these Regulations in respect of the regulated market.

*Review and monitoring by Bank*

61. (1) The Bank shall keep under regular review the compliance of regulated markets with this Part.

(2) The Bank shall, at all times, monitor the compliance of regulated markets with the conditions and requirements for authorisation under this Part.

*Withdrawal of authorisation*

62. (1) The Bank may withdraw an authorisation to operate a regulated market if the market operator of the regulated market—

- (a) does not make use of the authorisation within 12 months after the date the authorisation was granted,
- (b) expressly renounces the authorisation,
- (c) obtained the authorisation by making false statements or by any other irregular means,
- (d) no longer meets the conditions under which the authorisation was granted or the requirements for authorisation specified in Regulation 57,
- (e) is being wound up, or
- (f) has contravened any provision of these Regulations that governs the operation of regulated markets or Regulation (EU) No 600/2014 and the contravention or contraventions is or are, in the opinion of the Bank, of a serious and systematic nature.

(2) The Bank may withdraw an authorisation to operate a regulated market if the regulated market has not been in operation for the immediately preceding 6 months.

(3) Where the Bank has withdrawn an authorisation in accordance with paragraph (1) or (2) the Bank shall notify ESMA of the withdrawal.

*Revocation of authorisation by Court*

63. (1) Without prejudice to the power of the Bank under Regulation 62 to withdraw an authorisation, the Bank may apply to the Court in a summary manner for an order revoking an authorisation to operate a regulated market if the revocation is expedient—

- (a) in the interests of the proper and orderly regulation and supervision of the market operator and the regulated market,
- (b) in order to protect investors, or
- (c) in one or more of the circumstances described in paragraph (2),

and on the making of such an application the Court may grant such an order accordingly.

- (2) The circumstances referred to in paragraph (1) are as follows:
- (a) the market operator has been convicted on indictment of any offence—
    - (i) under these Regulations,
    - (ii) under any enactment under which the Bank performs functions, or
    - (iii) involving fraud, dishonesty or breach of trust;
  - (b) circumstances have materially changed since the granting of the authorisation such that, if an application for the authorisation were made at the time of the application to the Court, a different decision would be taken in relation to the application for authorisation;
  - (c) the authorisation was obtained by knowingly or recklessly—
    - (i) making false or misleading statements, or
    - (ii) using false or misleading information;
  - (d) the market operator has systematically failed to comply, or failed to comply to a material degree, with a condition provided in, or a requirement of, these Regulations or Regulation (EU) No 600/2014;
  - (e) the market operator no longer fulfils one or more of the conditions or requirements which were—
    - (i) imposed when the authorisation was granted, or
    - (ii) were subsequently imposed;
  - (f) the market operator—
    - (i) no longer complies with capital or any other financial requirements specified by the Bank, or
    - (ii) is not maintaining, or is unlikely to be able to maintain, having regard to the nature and volume of the market operator's business adequate capital resources or adequate other financial resources;
  - (g) the market operator becomes unable or, in the opinion of the Bank, is likely to become unable, to meet the market operator's obligations to its creditors or suspends payments lawfully due;
  - (h) the market operator has infringed to a material degree a code of conduct or rules of conduct issued under the Central Bank Acts 1942 to 2015;

- (i) a director, manager or qualifying shareholder of the market operator no longer satisfies the Bank as to the matters specified in Regulation 57(1)(d) or (e);
- (j) the market operator—
  - (i) has failed to comply with a condition, requirement or direction imposed under these Regulations or Regulation (EU) No 600/2014, and
  - (ii) the circumstances are such that the Bank is of the opinion that the stability and soundness of the market operator or the regulated market is or has been materially affected by the non-compliance;
- (k) the market operator has so organised its business or corporate structure or the business or corporate structure of the regulated market that—
  - (i) the market operator or the regulated market, and
  - (ii) where appropriate, any related undertaking or associated undertaking,
 

either collectively or individually, is no longer capable of being supervised to the satisfaction of the Bank under these Regulations or Regulation (EU) No 600/2014.

(3) On an application to the Court under this Regulation, the Court may make such interim or interlocutory orders as it thinks fit in the circumstances.

(4) The Bank shall not apply to the Court to revoke an authorisation on the grounds set out in paragraph (2)(i) unless the Bank has given the regulated market an opportunity to—

- (a) remove the director, manager or qualifying shareholder, or
- (b) otherwise deal with the concerns of the Bank in relation to the probity or competence of the person concerned,

within such period as the Bank may specify.

(5) An application by the Bank to the Court under this Regulation may be heard otherwise than in public.

*Bank to give notice of proposed withdrawal of authorisation*

64. When the Bank proposes to withdraw the authorisation to operate a regulated market or to apply to the Court for an order to revoke the authorisation to operate a regulated market, the Bank shall—

- (a) serve notice on the operator of the regulated market of its intention, and



(b) state its reasons in the notice.

*Publication of withdrawal of authorisation*

65. Within 28 days after the withdrawal or revocation of an authorisation to operate a regulated market, the Bank may publish notice of the withdrawal or revocation in the *Iris Oifigiúil* or in one or more newspapers circulating in the State.

*Requirements for management body of market operator*

66. (1) A market operator shall satisfy the Bank that—

(a) all members of its management body are at all times of good repute and possess sufficient knowledge, skills and experience to perform their duties, and

(b) the overall composition of its management body reflects an adequately broad range of experience.

(2) A market operator shall ensure that the members of its management body shall, in particular, fulfil the requirements set out in paragraphs (3) to (7).

(3) All members of the management body shall commit sufficient time to perform their functions in the market operator.

(4) Subject to paragraph (7), the number of directorships which may be held by a member of the management body at the same time shall take into account individual circumstances and the nature, scale and complexity of the market operator's activities.

(5) The members of the management body shall possess adequate collective knowledge, skills and experience to be able to understand the market operator's activities, including the main risks.

(6) Each member of its management body shall act with honesty, integrity and independence of mind to effectively assess and challenge the decisions of the senior management where necessary and to effectively oversee and monitor decision-making.

(7) Unless representing the State, members of the management body of a market operator that is significant in terms of its size, internal organisation and the nature, scale and the complexity of its activities shall, subject to paragraphs (8) and (9), not hold more than one of the following combinations of directorships at the same time:

(a) one executive directorship with two non-executive directorships;

(b) 4 non-executive directorships.

(8) For the purposes of paragraph (7) the following shall count as a single directorship:

- (a) executive or non-executive directorships held within the same group;
  - (b) executive or non-executive directorships held within undertakings in which the market operator holds a qualifying holding.
- (9) Directorships in organisations which do not pursue predominantly commercial objectives shall be exempt from the limitation on the number of directorships in paragraphs (4) and (7).
- (10) The Bank may authorise members of the management body of a market operator to hold one additional non-executive directorship.
- (11) The Bank shall regularly inform ESMA of authorisations under paragraph (10).
- (12) A market operator shall devote adequate human and financial resources to the induction and training of members of the management body.

*Nomination committee*

67. (1) A market operator, which is significant in terms of its size, internal organisation and the nature, scope and complexity of its activities, shall establish a nomination committee composed of members of the management body who do not perform any executive function in the market operator.

- (2) The nomination committee shall—
- (a) identify and recommend, for the approval of the management body or for approval of a general meeting, candidates to fill vacancies in the management body and, in doing so—
    - (i) evaluate the balance of knowledge, skills, diversity and experience of the management body,
    - (ii) prepare a description of the roles and capabilities for a particular appointment, and assess the time commitment expected, and
    - (iii) if such underrepresentation exists, decide on a target for the representation of the underrepresented gender in the management body and prepare a policy on how to increase the number of the underrepresented gender in the management body in order to meet that target,
  - (b) at least annually, assess the structure, size, composition and performance of the management body and make recommendations to the management body with regard to any changes,
  - (c) at least annually, assess the knowledge, skills and experience of individual members of the management body and of the management body collectively, and report to the management body accordingly, and

- (d) periodically review the policy of the management body for selection and appointment of senior management and make recommendations to the management body.
- (3) The nomination committee shall in performing its duties—
- (a) to the extent possible and on an ongoing basis, take account of the need to ensure that the management body’s decision-making is not dominated by any one individual or small group of individuals in a manner that is detrimental to the interests of the market operator as a whole, and
  - (b) use any forms of resources that it considers to be appropriate, including external advice.

*Further requirements*

68. (1) A market operator shall ensure that it, and its nomination committee, engage a broad set of qualities and competences when recruiting members to the management body and for that purpose put in place a policy promoting diversity on the management body.

- (2) A market operator shall ensure that its management body—
- (a) defines and oversees the implementation of the governance arrangements that ensure effective and prudent management of the organisation, including the segregation of duties in the organisation and the prevention of conflicts of interest, and in a manner that promotes the integrity of the market,
  - (b) monitors, and periodically assesses, the effectiveness of the market operator’s governance arrangements and takes appropriate steps to address any deficiencies,
  - (c) has adequate access to information and documents which are needed to oversee and to monitor management decision-making.

(3) The market operator shall notify the Bank of the identity of all members of its management body and of any changes to its membership, together with all information needed to assess compliance with Regulations 66 and 67 and this Regulation.

*Requirements relating to persons exercising significant influence over management of regulated market*

69. (1) The market operator of a regulated market shall satisfy the Bank that the persons who are in a position to exercise, directly or indirectly, significant influence over the management of the regulated market are suitable.

- (2) The market operator of a regulated market shall—
- (a) provide the Bank with all information that the Bank may request regarding—

- (i) the ownership of the regulated market,
  - (ii) the ownership of the market operator, and
  - (iii) the identity and scale of interests of any parties in a position to exercise significant influence over the management of the regulated market,
- (b) inform the Bank of any transfer of ownership which gives rise to a change in the identity of the persons exercising significant influence over the operation of the regulated market, and
- (c) make public the information referred to in subparagraphs (a) and (b) in the manner and at the times that the Bank may direct.

(3) The Bank shall refuse to approve proposed changes to the controlling interests of the regulated market or the market operator of a regulated market if there are objective and demonstrable grounds for believing the proposed changes would pose a threat to the sound and prudent management of the regulated market.

*Organisational requirements*

70. A regulated market shall—

- (a) have arrangements to identify clearly and manage the potential adverse consequences, for the operation of the regulated market or for its members or participants, of any conflict of interest between—
- (i) the interest of the regulated market, its owners or its market operator, and
  - (ii) the sound functioning of the regulated market,

in particular where such conflicts of interest might prove prejudicial to the accomplishment of any functions delegated to the regulated market by the Bank,

- (b) be adequately equipped to—
- (i) manage the risks to which it is exposed,
  - (ii) implement appropriate arrangements and systems to identify all significant risks to its operation, and
  - (iii) put in place effective measures to mitigate those risks,
- (c) have arrangements for the sound management of the technical operations of the system, including the establishment of effective contingency arrangements to cope with risks of systems disruptions,
- (d) have transparent and non-discretionary rules and procedures that provide for fair and orderly trading and establish objective criteria for the efficient execution of orders,

- (e) have effective arrangements to facilitate the efficient and timely finalisation of transactions executed under its systems;
- (f) have available, at the time of authorisation and on an ongoing basis, sufficient financial resources to facilitate its orderly functioning, having regard to the nature and extent of the transactions concluded on the market and the range and degree of the risks to which it is exposed.

*Execution of client orders, etc. in certain circumstances: prohibition*

71. A market operator shall not execute client orders against proprietary capital or to engage in matched principal trading on any of the regulated markets it operates.

*Systems resilience, circuit breakers and electronic trading*

72. (1) A regulated market shall have in place effective systems, procedures and arrangements to ensure that its trading systems—

- (a) are resilient,
- (b) have sufficient capacity to deal with peak order and message volumes,
- (c) are able to ensure orderly trading under conditions of severe market stress,
- (d) are able to reject orders that exceed predetermined volume and price thresholds or are clearly erroneous, and
- (e) ensure that algorithmic trading systems cannot create or contribute to disorderly trading conditions on the market and manage any disorderly trading conditions which do arise from such algorithmic trading systems, including—
  - (i) by requiring members or participants to carry out appropriate testing of algorithms and providing environments to facilitate such testing, and
  - (ii) by limiting the ratio of unexecuted orders to transactions that may be entered into the system by a member or participant, by being able to slow down the flow of orders if there is a risk of its system capacity being reached and by limiting and enforcing the minimum tick size that may be executed on the market,

and that are fully tested to ensure the conditions in subparagraphs (a), (b) and (c) are met and are subject to effective business continuity arrangements to ensure continuity of its services if there is any failure of its trading systems.

(2) A regulated market shall have binding written agreements with all investment firms pursuing a market making strategy on the regulated market specifying—

- (a) the obligations of the investment firm in relation to the provision of liquidity, and
- (b) any incentives in terms of rebates or otherwise offered by the regulated market to an investment firm so as to provide liquidity to the market on a regular and predictable basis.

(3) A regulated market must, where it is appropriate to the nature and scale of the trading on the regulated market, have in place schemes to ensure that a sufficient number of investment firms participate in agreements such as are mentioned in paragraph (2) which require them to post firm quotes at competitive prices with the result of providing liquidity to the market on a regular and predictable basis.

(4) Agreements such as are mentioned in paragraph (2) shall specify any obligation arising from participation in a scheme such as is mentioned in paragraph (2) and any other rights accruing to an investment firm as a result of participation in such a scheme.

(5) A regulated market shall—

- (a) monitor and enforce compliance by investment firms with the requirements of agreements such as are mentioned in paragraph (2),
- (b) inform the Bank about the content of such agreements, and
- (c) provide, on request, all further information to the Bank necessary to enable the Bank to satisfy itself of compliance by the regulated market with paragraphs (2) and (4).

(6) A regulated market shall be able to temporarily halt or constrain trading if there is a significant price movement in a financial instrument on that market or a related market during a short period and, in exceptional cases, to be able to cancel, vary or correct any transaction.

(7) A regulated market shall ensure that the parameters for halting trading are appropriately calibrated in a way which—

- (a) takes into account the liquidity of different asset classes and sub-classes, the nature of the market model and types of users, and
- (b) is sufficient to avoid significant disruptions to the orderliness of trading.

(8) A regulated market shall report such parameters and any material changes to those parameters to the Bank in a consistent and comparable manner and the Bank shall in turn report them to ESMA.

(9) Where a regulated market which is material in terms of liquidity in a financial instrument halts trading it shall have the necessary systems and procedures in place to ensure that it notifies the Bank in order for the Bank—

- (a) to coordinate a market wide response, and
  - (b) determine whether it is appropriate to halt trading on other venues on which the financial instrument is traded until trading resumes on the original market.
- (10) A regulated market that permits direct electronic access shall have in place effective systems procedures and arrangements to ensure—
- (a) that members and participants are only permitted to provide such services if they are investment firms authorised under these Regulations or credit institutions authorised in accordance with Directive 2013/36/EU,
  - (b) that appropriate criteria are set and applied regarding the suitability of persons to whom such access may be provided, and
  - (c) that a member or participant retains responsibility for orders and trades executed using that service in relation to the requirements of these Regulations.
- (11) A regulated market shall—
- (a) set appropriate standards regarding risk controls and thresholds on trading through direct electronic access,
  - (b) be able to distinguish and, if necessary, to stop orders or trading by a person using direct electronic access separately from other orders or trading by the member or participant, and
  - (c) have arrangements in place to suspend or terminate the provision of direct electronic access by a member or participant to a client in the case of non-compliance with this paragraph.
- (12) A regulated market shall ensure that its rules on co-location services are transparent, fair and non-discriminatory.
- (13) A regulated market shall ensure that its fee structures including execution fees, ancillary fees and rebates—
- (a) are transparent, fair and non-discriminatory,
  - (b) do not create incentives to place, modify or cancel orders or to execute transactions in a way which contributes to disorderly trading conditions or market abuse, and
  - (c) in particular, do not impose market making obligations in individual shares or a suitable basket of shares in exchange for any rebates that are granted.

(14) A regulated market may adjust its fees for cancelled orders according to the length of time for which the order was maintained and to calibrate the fees to each financial instrument to which they apply.

(15) A regulated market may impose a higher fee for placing an order that is subsequently cancelled than an order which is executed and to impose a higher fee on participants placing a high ratio of cancelled orders to executed orders and on those operating a high-frequency algorithmic trading technique in order to reflect the additional burden on system capacity.

(16) A regulated market shall be able to identify, by means of flagging from members or participants, orders generated by algorithmic trading, the different algorithms used for the creation of orders and the relevant persons initiating those orders and to provide, on request, such information to the Bank.

(17) A regulated market shall, on request, make available to the Bank data relating to the order book or give the Bank access to the order book so that it is able to monitor trading.

*Tick sizes*

73. (1) A regulated market shall adopt tick size regimes for shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments in accordance with the provisions of Commission Delegated Regulation (EU) 2017/588.

(2) A tick size regime shall—

(a) be calibrated to reflect the liquidity profile of the financial instrument in different markets and the average bid-ask spread, taking into account the desirability of enabling reasonably stable prices without unduly constraining further narrowing of spreads, and

(b) adapt the tick size for each financial instrument appropriately.

*Synchronisation of business clocks*

74. All investment firms and market operators operating trading venues and their members or participants shall synchronise the business clocks they use to record the date and time of any reportable event.

*Admission of financial instruments to trading*

75. (1) A regulated market shall establish and maintain clear and transparent rules regarding the admission of financial instruments to trading.

(2) The rules shall ensure that any financial instruments admitted to trading in a regulated market—

(a) are capable of being traded in a fair, orderly and efficient manner, and

(b) in the case of transferable securities, are freely negotiable.



(3) In the case of derivatives, the rules shall ensure in particular that the design of the derivative contract allows for its orderly pricing as well as for the existence of effective settlement conditions.

(4) In addition to the obligations under paragraphs (1) to (3), the regulated market shall establish and maintain effective arrangements—

- (a) to verify that issuers of transferable securities that are admitted to trading on the regulated market comply with their obligations under European Union law in respect of initial, ongoing and ad hoc disclosure obligations, and
- (b) which facilitate the regulated market's members or participants in obtaining access to information which has been made public under European Union law.

(5) The regulated market shall establish the necessary arrangements to review regularly the compliance with the admission requirements of the financial instruments which the regulated market admits to trading.

(6) A transferable security that has been admitted to trading on a regulated market may subsequently be admitted to trading on other regulated markets—

- (a) without the consent of the issuer, and
- (b) in compliance with the relevant provisions of the Prospectus (Directive 2003/71/EC) Regulations 2005.

(7) The regulated market shall inform the issuer of the fact that the issuer's securities are traded on the regulated market.

(8) The issuer is not subject to any obligation to provide information required under paragraph (4) directly to any regulated market which has admitted the issuer's securities to trading without the issuer's consent.

*Suspension and removal of instruments from trading on regulated market*

76. (1) A market operator may suspend or remove from trading a financial instrument which no longer complies with the rules of the regulated market unless such suspension or removal would be likely to cause significant damage to—

- (a) the investors' interests, or
- (b) the orderly functioning of the market.

(2) Without prejudice to paragraph (1), the Bank may require—

- (a) the suspension of trading in a financial instrument,
- (b) the removal of a financial instrument from trading, whether on a regulated market or under other trading arrangements,

- (c) the suspension of the marketing or sale of financial instruments or structured deposits where the conditions of Article 40, 41 or 42 of Regulation (EU) No 600/2014 are met, or
- (d) the suspension of the marketing or sale of financial instruments or structured deposits where the investment firm has not developed or applied an effective product approval process or otherwise failed to comply with paragraphs (1)(b) to (m), (2) and (3) of Regulation 23.

(3) A market operator that suspends or removes from trading a financial instrument shall also suspend or remove the derivatives referred to in paragraphs 4 to 10 of Part 3 of Schedule 1 that relate or are referenced to that financial instrument where necessary to support the objectives of the suspension or removal of the underlying financial instrument.

(4) The market operator shall—

- (a) make public the suspension or removal, and
- (b) communicate all relevant information to the Bank,

and the Bank shall inform the competent authorities of the other Member States.

(5) The Bank shall require that other regulated markets, MTFs, OTFs and systematic internalisers for which it is the competent authority and trade the same financial instrument or derivatives as referred to in paragraphs 4 to 10 of Part 3 of Schedule 1 that relate or are referenced to a financial instrument that has been suspended also suspend or remove that financial instrument or those derivatives from trading, where the suspension or removal is due to—

- (a) suspected market abuse,
- (b) a takeover bid, or
- (c) the non-disclosure of inside information about the issuer or financial instrument infringing Articles 7 and 17 of Regulation (EU) No 596/2014,

except where such suspension or removal could cause significant damage to the investors' interests or the orderly functioning of the market.

- (6) (a) Where the Bank requires the suspension or removal of a financial instrument from trading on one or more regulated markets the Bank shall without delay make public its decision and communicate this decision to ESMA and the competent authorities of the other Member States.
- (b) Where the Bank makes a decision not to suspend or remove from trading the financial instrument or derivatives referred to in paragraphs 4 to 10 of Part 3 of Schedule 1 that relate or are referenced

to that financial instrument it shall communicate its decision to the competent authorities of the other Member States and ESMA and provide an explanation for this decision.

(7) Where the Bank is informed by the competent authority of another Member State of the suspension or removal of a financial instrument or derivative referred to in paragraphs 4 to 10 of Part 3 of Schedule 1 that relate or are referenced to that financial instrument from trading on one or more of its regulated markets, MTFs, OTFs or systematic internalisers, the Bank shall direct the suspension or removal of that financial instrument or derivative from trading, where the suspension or removal is due to—

- (a) suspected market abuse,
- (b) a takeover bid, or
- (c) the non-disclosure of inside information about the issuer or financial instrument infringing Articles 7 and 17 of Regulation (EU) No 596/2014,

except where such suspension or removal could cause significant damage to the investors' interests or to the orderly functioning of the market.

(8) The notification procedure referred to in paragraph (6) shall also apply—

- (a) when the suspension from trading of a financial instrument or derivative as referred to in paragraphs 4 to 10 of Part 3 of Schedule 1 that relate or are referenced to that financial instrument is lifted, or
- (b) where the decision to suspend or remove from trading a financial instrument or derivative as referred to in paragraphs 4 to 10 of Part 3 of Schedule 1 that relates or is referenced to that financial instrument is taken by the Bank pursuant to Regulation 92(4)(m) and (n).

*Access to regulated market*

77. (1) A regulated market shall establish, implement and maintain transparent and non-discriminatory rules, based on objective criteria, governing access to or membership of the regulated market.

(2) The regulated market shall ensure that its rules specify any obligations for the members or participants arising from—

- (a) the constitution and administration of the regulated market,
- (b) rules relating to transactions on the regulated market,
- (c) professional standards imposed on the staff of the investment firms or credit institutions that are operating on the market,
- (d) the conditions established, for members or participants other than investment firms and credit institutions, under paragraph (3), and

- (e) the rules and procedures for the clearing and settlement of transactions concluded on the regulated market.
- (3) The regulated market may only admit as members or participants investment firms, credit institutions authorised in accordance with Directive 2013/36/EU and other persons who—
- (a) are of good repute,
  - (b) have a sufficient level of trading ability, competence and experience,
  - (c) have, where applicable, adequate organisational arrangements, and
  - (d) have sufficient resources for the role they are to perform, taking into account the different financial arrangements that the regulated market may have established in order to guarantee the adequate settlement of transactions.
- (4) For transactions concluded on a regulated market, members and participants are not obliged to apply to each other the obligations provided for in Regulations 31 to 33, 35 and 36 but the members or participants of the regulated market shall apply the obligations provided for in those Regulations with respect to their clients when they, acting on behalf of their clients, execute their orders on a regulated market.
- (5) Regulated markets shall ensure that their rules on access to or membership of or participation in their regulated market shall provide for the direct or remote participation of investment firms and credit institutions.
- (6) A regulated market in another Member State may provide appropriate arrangements in the State to facilitate access to and trading on that market by remote members or participants established in the State, without further legal or administrative requirements.
- (7) Where a regulated market is authorised in the State and wishes to conduct business in another Member State—
- (a) the regulated market shall communicate to the Bank—
    - (i) the name of the other Member State, and
    - (ii) the regulated market's intention to conduct business in the other Member State and to make arrangements in that regard,and
  - (b) within one month after the communication under subparagraph (a), the Bank shall in turn communicate to the competent authority of the other Member State the information referred to in subparagraph (a).
- (8) The Bank, at the request of the competent authority referred to in paragraph (7)(b) and without undue delay, shall communicate to the competent

authority the identity of the members and participants of the regulated market authorised in the State.

(9) The regulated market shall communicate to the Bank, on a regular basis, a list of the members or participants of the regulated market.

*Monitoring of compliance with rules of regulated market and with other legal obligations*

78. (1) A regulated market shall—

- (a) establish and maintain effective arrangements and procedures, including the necessary resources, for the regular monitoring of the compliance by its members and participants with the rules of the regulated market, and
- (b) monitor orders sent, including cancellations, and transactions undertaken by the regulated market's members and participants, under its systems, in order to identify, in relation to those transactions, any—
  - (i) infringements of the rules of the regulated market,
  - (ii) disorderly trading conditions,
  - (iii) conduct that may indicate behavior that is prohibited under Regulation (EU) No 596/2014, or
  - (iv) system disruptions in relation to a financial instrument.

(2) The market operator of a regulated market shall—

- (a) immediately report to the Bank, in relation to any transactions referred to in paragraph (1)(b), any—
  - (i) significant infringements of the rules of the regulated market,
  - (ii) disorderly trading conditions,
  - (iii) conduct that may indicate behavior that is prohibited under Regulation (EU) No 596/2014, or
  - (iv) system disruptions in relation to a financial instrument,
- (b) supply to the Bank without undue delay the relevant information about any matter referred to in subparagraph (a), and
- (c) provide full assistance to the Bank in investigating and prosecuting market abuse occurring on or through the systems of the regulated market.

(3) The Bank shall notify the competent authorities of the other Member States and ESMA of information received pursuant to paragraph (2), but in the instance of conduct that may indicate behaviour that is prohibited under

Regulation (EU) No 596/2014, the Bank must be convinced that such behaviour is being or has been carried out before it notifies the competent authorities of the other Member States and ESMA.

*Provisions regarding central counterparty and clearing and settlement arrangements*

79. (1) Without prejudice to Titles III, IV or V of Regulation (EU) No 648/2012, the market operator of a regulated market in the State shall not be prevented from entering into appropriate arrangements with—

- (a) a central counterparty, or
- (b) a clearing house and a settlement system,

of another Member State, with a view to providing for the clearing, settlement or both of some or all trades concluded by market participants under the other Member State's settlement system.

(2) Without prejudice to Titles III, IV or V of Regulation (EU) No 648/2012, the Bank may not oppose the use by a regulated market of central counterparty, clearing houses or settlement systems in another Member State except as demonstrably necessary in order to maintain the orderly functioning of that regulated market and taking into account the conditions for settlement systems established under Regulation 46(3).

*List of regulated markets*

80. The Bank shall—

- (a) prepare and keep a list of the regulated markets for which the State is the home Member State,
- (b) amend the list as necessary to keep it current,
- (c) forward the list and any amendments to it to the other Member States and ESMA, and
- (d) include in the list the unique code given to the regulated market by ESMA.

## PART 8

### POSITION LIMITS AND POSITION MANAGEMENT CONTROLS IN COMMODITY DERIVATIVES AND REPORTING

*Position limits and position management in commodity derivatives positions*

81. (1) The Bank shall, in line with the methodology for calculation determined by ESMA in accordance with Article 57(3) of the Directive, establish and apply position limits that specify clear quantitative thresholds for the maximum size of a net position which a person can hold at all times in commodity derivatives traded on trading venues and economically equivalent OTC contracts.

(2) Position limits do not apply to positions which are held by or on behalf of a non-financial entity and which are objectively measurable as reducing risks directly relating to the commercial activity of the non-financial entity.

(3) Position limits shall be set on the basis of all positions held either by a person or on the person's behalf at aggregate group level in order to—

(a) prevent market abuse, or

(b) support orderly pricing and settlement conditions, including preventing market distorting positions and ensuring, in particular, convergence between prices of derivatives in the delivery month and spot prices for the underlying commodity, without prejudice to price discovery on the market for the underlying commodity.

(4) Position limits shall specify clear quantitative thresholds for the maximum size of a position in a commodity derivative that persons can hold.

(5) The Bank shall set limits for each contract in commodity derivatives traded on trading venues, including economically equivalent OTC contracts, based on the methodology for calculation determined by ESMA in accordance with Article 57(3) of the Directive.

(6) The Bank shall review position limits where there is a significant change in deliverable supply or open interest or any other significant change on the market, based on its determination of deliverable supply and open interest, and reset the position limit in accordance with the methodology for calculation determined by ESMA under Article 57(3) of the Directive.

(7) The Bank shall notify ESMA of the exact position limits it intends to set in accordance with the methodology for calculation determined by ESMA under Article 57(3) of the Directive.

(8) The Bank shall modify the position limits in accordance with any opinion issued by ESMA or provide ESMA with justification why the change is considered unnecessary.

(9) Where the Bank imposes limits contrary to an ESMA opinion, it shall immediately publish on its website a notice fully explaining its reasons for so doing.

(10) The Bank, in the exercise of its supervisory powers under these Regulations, may—

(a) require or demand the provision of information including all relevant documentation from any person regarding the size and purpose of a position or exposure entered into via a commodity derivative and any assets or liabilities in the underlying market,

(b) request any person to take steps to reduce the size of the position or exposure, or

- (c) limit the ability of any person from entering into a commodity derivative, to include the introduction of limits on the size of a position any person can hold at all times in accordance with Regulation 92(4)(p).

(11) Where the same commodity derivative is traded in significant volumes on trading venues in more than one jurisdiction, the competent authority of the trading venue where the largest volume of trading takes place shall be known as the central competent authority and where the Bank becomes the central competent authority in accordance with Article 57(6) of the Directive it shall set the single position limit to be applied on all trading in that contract.

(12) Where the Bank becomes the central competent authority it shall consult the competent authorities of other trading venues on which that derivative is traded in significant volumes on the single position limit to be applied and any revisions to that single position limit.

(13) Where the Bank does not agree with the opinion of any competent authorities it consults with or is consulted by under paragraph (12), it shall state in writing the full and detailed reasons why it considers that the requirements laid down in paragraph (3) are not met.

(14) Where the same commodity derivative is traded in the State and in another Member State or Member States, the Bank shall put in place cooperation arrangements including the exchange of relevant data with the relevant competent authorities in order to enable the monitoring and enforcement of the single position limit.

(15) An investment firm or a market operator operating a trading venue which trades commodity derivatives shall apply position management controls.

(16) Position management controls shall permit the trading venue to—

- (a) monitor the open interest positions of persons,
- (b) access information, including all relevant documentation, from persons about the size and purpose of a position or exposure entered into, information about beneficial or underlying owners, any concert arrangements, and any related assets or liabilities in the underlying market,
- (c) require a person to terminate or reduce a position, on a temporary or permanent basis as the specific case may require and to unilaterally take appropriate action to ensure the termination or reduction if the person does not comply, and
- (d) where appropriate, require a person to provide liquidity back into the market at an agreed price and volume on a temporary basis with the express intent of mitigating the effects of a large or dominant position.

(17) The position limits and position management controls shall be transparent and non-discriminatory, specifying how they apply to persons and taking



account of the nature and composition of market participants and of the use they make of the contracts submitted to trading.

(18) The investment firm or market operator operating the trading venue shall inform the Bank of the details of position management controls.

(19) The Bank shall communicate the same information as well as the details of the position limits it has established to ESMA.

(20) The Bank shall not impose limits which are more restrictive than those adopted pursuant to paragraph (1) except in exceptional cases where they are—

(a) objectively justified, and

(b) proportionate,

taking into account the liquidity of the specific market and the orderly functioning of that market.

(21) Where the Bank has decided to impose more restrictive position limits, it shall publish on its website the details of the more restrictive position limits it has decided to impose, which—

(a) shall be valid for an initial period not exceeding six months from the date of their publication on the website, and

(b) may be renewed for further periods not exceeding six months at a time if the grounds for the restriction continue to be applicable,

but if they are not renewed after that six-month period, they shall automatically expire.

(22) Where the Bank decides to impose more restrictive position limits in accordance with paragraph (20), it shall notify ESMA and the notification shall include a justification for the more restrictive position limits.

(23) Where the Bank imposes limits contrary to an ESMA opinion given in response to a notification under paragraph (22), it shall immediately publish on its website a notice fully explaining its reasons for doing so.

(24) The Bank may impose position limits in respect of—

(a) positions held by persons situated or operating in the State or abroad which exceed the limits on commodity derivative contracts which the Bank has set in relation to contracts on trading venues situated or operating in the State or economically equivalent OTC contracts, and

(b) positions held by persons situated or operating in the State which exceed the limits on commodity derivative contracts set by competent authorities in other Member States.

*Position reporting by categories of position holders*

82. (1) An investment firm or a market operator operating a trading venue which trades commodity derivatives or emission allowances or derivatives of emission allowances shall—

- (a) make public a weekly report with the aggregate positions held by the different categories of persons for the different commodity derivatives or emission allowances or derivatives of emission allowances traded on its trading venue, specifying—
  - (i) the number of long and short positions by such categories,
  - (ii) changes to them since the previous report,
  - (iii) the percentage of the total open interest represented by each category, and
  - (iv) the number of persons holding a position in each category in accordance with paragraph (5),

and communicate that report to the Bank and to ESMA, and

- (b) provide the Bank with a complete breakdown of the positions held by all persons, including the members or participants and their clients, on that trading venue, on a daily basis.

(2) The obligation under paragraph (1)(a) only applies where the number of persons and their open positions exceed minimum thresholds.

(3) Where an investment firm trades in commodity derivatives or emission allowances or derivatives of emission allowances outside a trading venue, it shall at least daily provide to—

- (a) the Bank, and
- (b) where the commodity derivatives or emission allowances (or derivatives of emission allowances) are traded in significant volumes on trading venues in more than one jurisdiction at least on a daily basis, the central competent authority,

a complete breakdown of their positions taken in commodity derivatives or emission allowances (or derivatives of emission allowances) traded on a trading venue and economically equivalent OTC contracts, as well as of those of other clients and the clients of those clients until the end client is reached, in accordance with Article 26 of Regulation (EU) No 600/2014 and, where applicable, Article 8 of Regulation (EU) No 1227/2011.

(4) In order to enable the monitoring of compliance with Regulation 81(1), the Bank shall require members or participants of regulated markets, MTFs and clients of OTFs to report on a daily basis to the investment firm or market operator operating the trading venue the details of their own positions held

through contracts traded on the trading venue, as well as those of their clients and the clients of those clients until the end client is reached.

(5) Persons holding positions in a commodity derivative or emission allowance (or derivative of an emission allowance) shall be classified by the investment firm or market operator operating that trading venue according to the nature of their main business, taking account of any applicable authorisation, as either—

- (a) investment firms or credit institutions,
- (b) investment funds, (whether an undertaking for collective investments in transferable securities as defined in Directive 2009/65/EC or an alternative investment fund manager as defined in Directive 2011/61/EC),
- (c) other financial institutions, including insurance undertakings and reinsurance undertakings as defined in Directive 2009/138/EC and institutions for occupational retirement provision as defined in Directive 2003/41/EC,
- (d) commercial undertakings, or
- (e) in the case of emission allowances (or derivatives of emission allowances), operators with compliance obligations under Directive 2003/87/EC.

(6) The report referred to in paragraph (1)(a) and the breakdown referred to in paragraph (3) shall differentiate between—

- (a) positions identified as positions which in an objectively measurable way reduce risks directly relating to commercial activities, and
- (b) other positions.

## PART 9

### DATA REPORTING SERVICES

#### *Requirement for authorisation*

83. (1) Subject to paragraph (2), a person shall not provide data reporting services described in Part 4 of Schedule 1 as a regular occupation or business unless the person is authorised by the Bank in accordance with this Part or by a competent authority in another Member State.

(2) The Bank shall allow an investment firm or a market operator operating a trading venue to operate the data reporting services of an APA, a CTP and an ARM in the State, subject to the prior verification of their compliance with this Part and the service being included in their authorisation.

(3) The Bank shall—

- (a) establish and maintain a register of all authorised data reporting services providers,
  - (b) ensure that the register is publicly accessible and contains information on the services for which the data reporting services providers are authorised, and
  - (c) notify ESMA of all authorised data reporting services providers.
- (4) Data reporting services providers shall provide their services under the supervision of the Bank and the Bank shall regularly review their compliance with this Part.
- (5) The Bank shall monitor that data reporting services providers comply at all times with the conditions for authorisation.
- (6) An application for authorisation may be granted—
- (a) unconditionally, or
  - (b) subject to such conditions or requirements as the Bank sees fit.
- (7) The Bank may from time to time vary conditions or requirements subsequent to granting an application for authorisation.

*Scope of authorisation*

84. (1) An authorisation granted to a data reporting services provider shall specify the data reporting services which the data reporting services provider is authorised to provide.

(2) A data reporting services provider seeking to extend its business to additional data reporting services shall submit a request to the Bank for extension of its authorisation.

- (3) An authorisation granted to a data reporting services provider—
- (a) is valid for the entire European Union, and
  - (b) allows a data reporting services provider to provide the services, for which the data reporting services provider has been authorised, throughout the European Union.

*Procedures for granting and refusing requests for authorisation*

85. (1) The Bank—
- (a) may grant or refuse to grant to any person applying to it under this Regulation an authorisation to operate as a data reporting services provider, and
  - (b) shall not grant an authorisation unless satisfied that the applicant complies with all requirements under these Regulations.

(2) The Bank shall refuse authorisation if—

- (a) it is not satisfied that the person or persons who shall effectively direct the business of the data reporting services provider are of good repute, or
- (b) there are objective and demonstrable grounds for believing that the management body of the data reporting services provider may pose a threat to its sound and prudent management and to the adequate consideration of its clients and the integrity of the market.

(3) A data reporting services provider shall provide all information, including a programme of operations setting out—

- (a) the types of services envisaged, and
- (b) the organisational structure,

necessary to enable the Bank to satisfy itself that the data reporting services provider has established, at the time of initial authorisation, all the necessary arrangements to meet its obligations under the provisions of this Part.

(4) The Bank shall inform the applicant, within six months of the submission of a complete application, whether or not authorisation has been granted.

*Withdrawal of authorisation of data reporting services provider*

86. (1) The Bank may withdraw an authorisation granted under Regulation 85 to operate as a data reporting services provider if the provider—

- (a) fails to provide data reporting services during the 12 month period after the date of the authorisation,
- (b) expressly renounces the authorisation,
- (c) obtained the authorisation by making false statements or by any other irregular means,
- (d) no longer meets the conditions under which the authorisation was granted, or
- (e) has seriously and systematically contravened the provisions of these Regulations or of Regulation No. 600/2014.

(2) Other than in the circumstances outlined in paragraph (1)(a), the Bank may withdraw an authorisation granted under Regulation 85 to operate as a data reporting services provider to an investment firm if the investment firm has not provided data reporting services for the immediately preceding 6 months.

*Requirements for management body of data reporting services provider*

87. (1) The members of the management body of a data reporting services provider shall satisfy the Bank that they—

- (a) are of good repute,
  - (b) possess sufficient knowledge, skills and experience, and
  - (c) commit sufficient time to perform their duties.
- (2) A data reporting services provider shall ensure that the members of its management body possess adequate collective knowledge, skills and experience to be able to understand the activities of the data reporting services provider.
- (3) A data reporting services provider shall ensure that each member of its management body acts with honesty, integrity and independence of mind to effectively challenge the decisions of the senior management where necessary and to effectively oversee and monitor decision-making where necessary.
- (4) Where a market operator seeks authorisation to operate an APA, a CTP or an ARM and the members of the management body of the APA, the CTP or the ARM are the same as the members of the management body of the regulated market, those persons are deemed to comply with the requirement set out in paragraph (1).
- (5) A data reporting services provider shall notify the Bank of all members of its management body and of any changes to its membership, together with all information needed to assess whether the firm complies with paragraphs (1) to (4).
- (6) A data reporting services provider shall ensure that its management body defines and oversees the implementation of the governance arrangements that ensure effective and prudent management of the organisation, including the segregation of duties in the organisation and the prevention of conflicts of interest, in a manner that promotes the integrity of the market and the interest of its clients.
- (7) The Bank shall, as soon as may be after the withdrawal, notify ESMA of each authorisation it has withdrawn in accordance with Regulation 86.

## PART 10

### CONDITIONS FOR APAs, CTPs and ARMs

#### *Organisational requirements for APAs*

88. (1) An APA shall have adequate policies and arrangements in place to make public the information required under Articles 20 and 21 of Regulation (EU) No 600/2014 as close to real time as is technically possible, on a reasonable commercial basis.
- (2) The information required under paragraph (1) shall be—
- (a) made available free of charge 15 minutes after the APA has published it, and

- (b) disseminated efficiently and consistently in a way that ensures fast access to the information—
  - (i) on a non-discriminatory basis, and
  - (ii) in a format that facilitates the consolidation of the information with similar data from other sources.
- (3) The information made public by an APA in accordance with paragraphs (1) and (2) shall include at least—
  - (a) the identifier of the financial instrument,
  - (b) the price at which the transaction was concluded,
  - (c) the volume of the transaction,
  - (d) the time of the transaction,
  - (e) the time the transaction was reported,
  - (f) the price notation of the transaction,
  - (g) the code for the trading venue the transaction was executed on or, where the transaction was executed via a systematic internaliser, the code “SI”, or otherwise the code “OTC”, and
  - (h) if applicable, an indicator that the transaction was subject to specific conditions.
- (4) An APA shall operate and maintain effective administrative arrangements designed to prevent conflicts of interest with its clients and, in particular, an APA who is also a market operator or investment firm shall treat all information collected in a non-discriminatory fashion and shall operate and maintain appropriate arrangements to separate different business functions.
- (5) An APA shall have sound security mechanisms in place designed to—
  - (a) guarantee the security of the means of transfer of information,
  - (b) minimise the risk of data corruption and unauthorised access, and
  - (c) prevent information leakage before publication.
- (6) An APA shall maintain adequate resources and have back-up facilities in place in order to offer and maintain its services at all times.
- (7) An APA shall have systems in place that can—
  - (a) effectively check trade reports for completeness,
  - (b) identify omissions and obvious errors, and

- (c) request re-transmission of any such erroneous reports.

*Organisational requirements for CTPs*

89. (1) A CTP shall have adequate policies and arrangements in place to—

- (a) collect the information made public in accordance with Articles 6 and 20 of Regulation (EU) No 600/2014,
- (b) consolidate it into a continuous electronic data stream, and
- (c) make the information available to the public as close to real time as is technically possible, on a reasonable commercial basis.

(2) The information required under paragraph (1) shall be—

- (a) made available free of charge 15 minutes after the CTP has published it, and
- (b) disseminated efficiently and consistently in a way that ensures fast access to the information—
  - (i) on a non-discriminatory basis, and
  - (ii) in formats that are easily accessible and utilisable for market participants.

(3) The information required under paragraph (1) shall include—

- (a) the identifier of the financial instrument,
- (b) the price at which the transaction was concluded,
- (c) the volume of the transaction,
- (d) the time of the transaction,
- (e) the time the transaction was reported,
- (f) the price notation of the transaction,
- (g) the code for the trading venue the transaction was executed on, or where the transaction was executed via a systematic internaliser the code “SI” or otherwise the code “OTC”,
- (h) the fact that a computer algorithm within the investment firm was responsible for the investment decision and the execution of the transaction, where applicable,
- (i) an indicator that the transaction was subject to specific conditions, if applicable, and



- (j) if the obligation to make public the information referred to in Article 3(1) of Regulation (EU) No 600/2014 was waived in accordance with point (a) or (b) of Article 4(1) of that Regulation, a flag to indicate which of those waivers the transaction was subject to.
- (4) A CTP shall have adequate policies and arrangements in place to—
  - (a) collect the information made public in accordance with Articles 10 and 21 of Regulation (EU) No 600/2014,
  - (b) consolidate it into a continuous electronic data stream, and
  - (c) make the information available to the public as close to real time as is technically possible, on a reasonable commercial basis.
- (5) The information required under paragraph (4) shall be—
  - (a) made available free of charge 15 minutes after the CTP has published it, and
  - (b) disseminated efficiently and consistently in a way that ensures fast access to the information—
    - (i) on a non-discriminatory basis, and
    - (ii) in generally accepted formats that are interoperable, easily accessible and utilisable for market participants.
- (6) The information required under paragraph (4) shall include—
  - (a) the identifier or identifying features of the financial instrument,
  - (b) the price at which the transaction was concluded,
  - (c) the volume of the transaction,
  - (d) the time of the transaction,
  - (e) the time the transaction was reported,
  - (f) the price notation of the transaction,
  - (g) the code for the trading venue the transaction was executed on or, where the transaction was executed via a systematic internaliser, the code “SI” or otherwise the code “OTC”, and
  - (h) an indicator that the transaction was subject to specific conditions, if applicable.
- (7) The CTP shall ensure that the data provided is consolidated from all the regulated markets, MTFs, OTFs and APAs and for the financial instruments

specified by regulatory technical standards under Article 65(8)(c) of the Directive.

(8) A CTP shall operate and maintain effective administrative arrangements designed to prevent conflicts of interest and, in particular, a market operator or an APA who also operates a consolidated tape shall treat all information collected in a non-discriminatory fashion and shall operate and maintain appropriate arrangements to separate different business functions.

(9) A CTP shall have sound security mechanisms in place designed to—

- (a) guarantee the security of the means of transfer of information, and
- (b) minimise the risk of data corruption and unauthorised access.

(10) A CTP shall maintain adequate resources and have back-up facilities in place in order to offer and maintain its services at all times.

*Organisational requirements of ARMs*

90. (1) An ARM shall have adequate policies and arrangements in place to report the information required under Article 26 of Regulation (EU) No 600/2014 immediately, and no later than the close of the working day following the day on which the transaction took place.

(2) The information required under paragraph (1) shall be reported in accordance with the requirements laid down in Article 26 of Regulation (EU) No 600/2014.

(3) An ARM shall operate and maintain effective administrative arrangements designed to prevent conflicts of interest with its clients and, in particular, an ARM which is also a market operator or investment firm shall treat all information collected in a non-discriminatory fashion and shall operate and maintain appropriate arrangements to separate different business functions.

(4) An ARM shall have sound security mechanisms in place designed to—

- (a) guarantee the security and authentication of the means of transfer of information,
- (b) minimise the risk of data corruption and unauthorised access,
- (c) prevent information leakage, and
- (d) maintain the confidentiality of the data at all times.

(5) An ARM shall maintain adequate resources and have back-up facilities in place in order to offer and maintain its services at all times.

(6) An ARM shall have systems in place to—

- (a) effectively check transaction reports for completeness,

- (b) identify and communicate details of omissions and obvious errors caused by the investment firm,
- (c) request re-transmission of any such erroneous reports,
- (d) detect and correct, errors or omissions caused by the ARM itself, and
- (e) enable the ARM to transmit or retransmit correct and complete transaction report to the Bank.

## PART 11

### THE BANK AS COMPETENT AUTHORITY

#### Chapter 1

##### *Designation, powers and redress procedures*

##### *Bank to be competent authority*

91. (1) The Bank is the competent authority in the State for the purposes of the Directive and Regulation (EU) No 600/2014.

(2) The Bank shall inform ESMA and the competent authorities of other Member States of that fact.

##### *Supervisory powers of Bank as competent authority*

92. (1) In order to fulfil its duties under these Regulations and under Regulation (EU) No 600/2014, the Bank shall have all supervisory powers that are necessary for the performance of its functions.

(2) The powers provided for in this Part in respect of the Bank shall not be exercised in a manner or for a purpose inconsistent with the Bank's obligations under Regulation (EU) No 600/2014 or these Regulations.

(3) The powers of the Bank shall include the power to require the following persons to provide all information that is necessary in order to enable the Bank to carry out its tasks under these Regulations and Regulation (EU) No 600/2014 including information to be provided at recurring intervals and in specified formats for supervisory and related statistical purposes:

- (a) investment firms and credit institutions established in the State;
- (b) market operators established in the State;
- (c) data reporting service providers established in the State;
- (d) entities performing investment services or activities through the establishment of a branch within the State;
- (e) staff of the entities referred to in subparagraphs (a) to (d);

(f) third parties to whom the entities referred to in subparagraphs (a) to (d) have outsourced operational functions or activities.

(4) In addition to the foregoing powers of the Bank, the Bank may—

(a) request any person to permit the Bank to inspect or have access to any document or other data, in any form, in the possession, or under the power or control, of the person, being any document or other data which the Bank considers could be relevant for the performance of its duties and may receive or take a copy of any such document or other data accordingly,

(b) require any person to provide information to it, being any document or other data which the Bank considers could be relevant for the performance of its duties, and if necessary to summon and question a person with a view to obtaining information,

(c) carry out on-site inspections or investigations,

(d) require an investment firm, a credit institution, or any other entity regulated by these Regulations or by Regulation (EU) No 600/2014 to furnish to it existing recordings of telephone conversations or electronic communications or other data traffic records held by the investment firm, a credit institution, or any other entity,

(e) require, in accordance with the Central Bank Acts 1942 to 2015, the freezing or the sequestration of assets, or both,

(f) require any person carrying on a professional activity and to whom these Regulations apply to cease, for a specified period, the carrying on of an activity,

(g) require the auditors of an investment firm, a regulated market or data reporting services provider to provide information to it,

(h) as provided for under Regulation 119, bring and prosecute summary proceedings for an offence under these Regulations,

(i) engage auditors or experts to carry out verifications or investigations,

(j) require any person to provide to it information including all relevant documentation regarding the size and purpose of a position or exposure entered into by the person via a commodity derivative, and any assets or liabilities in the underlying market,

(k) require, in accordance with the Central Bank Acts 1942 to 2015, the temporary or permanent cessation of any practice or conduct that the Bank considers to be in contravention of a provision of these Regulations or Regulation (EU) No 600/2014 and prevent, in accordance with those Acts, the repetition of that practice or conduct,

- (l) adopt any type of measure so as to ensure that investment firms, regulated markets and other persons to whom these Regulations or Regulation (EU) No 600/2014 applies continue to comply with the requirements of these Regulations or Regulation (EU) No 600/2014 (or both as the case may be),
  - (m) require a regulated market to suspend the trading in a financial instrument on the market,
  - (n) require the removal, by the regulated market concerned or, as the case may be, the person providing the trading arrangements concerned, of a financial instrument from trading, whether on a regulated market or under other trading arrangements,
  - (o) require any person to take steps to reduce the size of the position or exposure held by the person,
  - (p) impose restrictions on the ability of any person to enter into a commodity derivative, including by imposing limits on the size of a position any person can hold at all times in accordance with Regulation 81,
  - (q) issue public notices,
  - (r) suspend, by issuing any necessary directions in that behalf, the marketing or sale of financial instruments or structured deposits where the conditions of Article 40, 41 or 42 of Regulation (EU) No 600/2014 are met,
  - (s) suspend, by issuing any necessary directions in that behalf, the marketing or sale of financial instruments or structured deposits where the investment firm has not developed or applied an effective product approval process or otherwise failed to comply with Regulation 23(1)(b) to (e), and
  - (t) require an investment firm or market operator to remove from the management board of the investment firm or market operator a particular person.
- (5) Where not specifically provided for in paragraph (4), an obligation to produce a relevant record or report, or to provide information or assistance, under that paragraph extends to—
- (a) an examiner, liquidator or receiver of, or any person who is or has been an officer or employee or agent of, a person to whom these Regulations apply, or

- (b) any other person who appears to the Bank to have the relevant record or report in his or her possession or under his or her control or the ability to provide information or assistance, as the case may be.

(6) A person who, without reasonable excuse, fails to comply with a request made by a member of the Garda Síochána under section 6(1) of the Communications (Retention of Data) Act 2011 (No.3 of 2011) for the purposes of the prevention, detection, investigation or prosecution of an offence under these Regulations shall be guilty of an offence and shall be liable on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both.

(7) Where a person from whom production of a relevant record is required under this Regulation claims a lien over it, its production does not affect the lien.

*Delegations, etc*

93. (1) The Bank may perform any of its functions under these Regulations or Regulation (EU) No 600/2014—

- (a) directly,
- (b) by delegation in accordance with paragraph (2), or
- (c) by delegation in accordance with Regulation 37(9).

(2) The Bank may delegate in writing to such other authorities any one or more of its functions under these Regulations or Regulation (EU) No 600/2014 as it considers appropriate having taken all reasonable steps to ensure that the authority to which tasks are to be delegated has—

- (a) the capacity and resources to effectively execute all tasks, and
- (b) that the delegation takes place only if a clearly defined and documented framework for the exercise of any delegated tasks has been established stating the tasks to be undertaken and the conditions under which they are to be carried out, which shall include a clause obliging the entity in question to act and be organised in such a manner as to avoid conflict of interest and so that information obtained from carrying out the delegated tasks is not used unfairly or to prevent competition.

(3) A delegation under this Regulation shall not prevent the performance by the Bank of the function delegated.

(4) Notwithstanding any delegation under this Regulation, the final responsibility for supervising compliance with these Regulations or Regulation (EU) No 600/2014 shall be with the Bank.

## Chapter 2

*Appointment of Authorised Officers, Appointment of Inspectors, their powers and related matters**Power to appoint authorised officers*

94. (1) The Bank may, in writing, appoint persons to be authorised officers for the purposes of monitoring compliance with these Regulations and Regulation (EU) No 600/2014.

(2) The Bank may, at any time in writing, revoke the appointment of a person to be an authorised officer under this Regulation.

(3) Subject to paragraph (2), the appointment of an authorised officer under this Regulation may be for a specified, or an unspecified, period or for a specified purpose.

(4) The Bank shall provide every authorised officer with a certificate of his or her appointment as an authorised officer.

(5) When exercising a power conferred on an authorised officer under this Part, an authorised officer shall produce his or her certificate of appointment, together with some form of personal identification, if requested to do so by a person affected by the exercise of the power.

(6) The appointment of an authorised officer made under this Regulation ceases—

- (a) if the Bank revokes the appointment, at the time of revocation,
- (b) if the person appointed dies, at the time of death,
- (c) if the person resigns, at the time of resignation,
- (d) if the appointment is for a specified period, at the end of that period,
- (e) if the appointment is for a specified purpose, on the completion of that purpose, or
- (f) if the person appointed is, when appointed, an officer of the Bank, when the person ceases to be such an officer.

*Function of authorised officers and their powers in that regard*

95. (1) It shall be the function of an authorised officer to monitor compliance with these Regulations and Regulation (EU) No600/2014 and, for that purpose, where appropriate, to carry out in accordance with these Regulations investigations in relation thereto.

(2) For the purpose of paragraph (1), an authorised officer shall, subject to paragraph (3), have each of the powers that are conferred on the Bank by Regulation 92(4).

(3) So far as a provision of Regulation 92(4) provides that a power thereunder is exercisable in accordance with the Central Bank Acts 1942 to 2015, then paragraph (2) shall be construed and have effect, in relation to the particular power concerned, as only enabling an authorised officer to advise the Bank that particular circumstances have arisen that warrant, in the officer's opinion, the exercise of the power by the Bank and not as enabling the authorised officer to exercise the power himself or herself.

(4) Regulation 92(5) and (7) shall apply for the purpose of this Regulation as they apply for the purpose of Regulation 92.

(5) When exercising a power under this Part, an authorised officer may, where the officer considers it necessary, be accompanied by one or more—

- (a) members of the Garda Síochána, or
- (b) other authorised officers.

#### *Search warrant*

96. (1) An authorised officer shall not, except with the consent of the occupier, enter a private dwelling (other than a part of a private dwelling used as a place of work) unless the officer has obtained a warrant from a judge of the District Court.

(2) Where an authorised officer in the exercise of the authorised officer's powers under Regulation 95 is prevented from entering any place, whether or not a private dwelling, where he or she believes that there are relevant records, the authorised officer may apply to a judge of the District Court for a warrant under this Regulation authorising the entry by the authorised officer into the place.

(3) Without prejudice to the powers conferred on an authorised officer by or under any provision of these Regulations, an authorised officer may, for the purposes of an investigation into an offence under these Regulations, apply to a judge of the District Court for a warrant in relation to any place.

(4) Where, on the hearing of an application under paragraph (2) or (3), a judge of the District Court is satisfied on sworn information of the authorised officer that he or she—

- (a) has been prevented from entering any place that is not a private dwelling,
- (b) has reasonable grounds for believing that relevant records are kept at a place that comprises, or forms part of, a private dwelling, or
- (c) has reasonable grounds for suspecting that evidence of, or relating to, the commission of an offence under these Regulations or Regulation (EU) No 600/2014 is to be found in any place,



that judge may issue a warrant under his or her hand authorising one or more authorised officers accompanied, if the judge considers it appropriate to so provide, by such number of members of the Garda Síochána as may be specified in the warrant, at any time within 4 weeks after the date of issue of the warrant, to enter, if necessary by force, the place or private dwelling and exercise any of the powers referred to in Regulation 95.

*Appointment of inspector by Court*

97. (1) Without prejudice to the powers of the Bank under these Regulations, where the Bank is of the opinion that it is in the interest of—

- (a) the proper and orderly regulation and supervision of investment firms or regulated markets or data reporting service providers, or
- (b) the protection of investors,

that an investigation should be held into the affairs of an investment firm, the market operator of a regulated market or a data reporting service provider, the Bank may apply to the Court for an order authorising such an investigation.

(2) On application by the Bank under paragraph (1), the Court, as it thinks proper may appoint one or more inspectors to—

- (a) investigate the affairs of—
  - (i) the investment firm, market operator or data reporting service provider that is the subject of the application, and
  - (ii) where necessary, any subsidiary or other associated or related undertaking of the investment firm, market operator or data reporting service provider, and
- (b) report the results of the investigation in such manner as the Court directs.

(3) Before applying to the Court to appoint an inspector under this Regulation, the Bank, if it is of the opinion that it would not be prejudicial to the interests of shareholders or creditors or investors, may notify the investment firm, the market operator or data reporting service provider concerned in writing of—

- (a) the application, and
- (b) reasons for the application,

and, in that case, the investment firm, the market operator or data reporting service provider, within such period as the Bank may set out in the notification, shall be entitled to give to the Bank a statement in writing explaining the relevant activities of the investment firm, market operator or data reporting service provider, as the case may be.

*Power of inspector to extend investigation*

98. Where an inspector appointed under Regulation 97 to investigate the affairs of an investment firm, market operator, data reporting service provider or any subsidiary or other associated or related undertaking thinks it necessary for the purposes of the investigation to investigate the affairs of—

- (a) any other investment firm, market operator, or data reporting service provider, or
- (b) any body corporate or any undertaking which body or undertaking is or was at any relevant time a subsidiary, an associated undertaking or a related undertaking of the investment firm, the market operator or data reporting service provider,

the inspector, with the approval of the Court, shall have power to do so, and shall report on the affairs of—

- (i) the other investment firm or regulated market, or
- (ii) the body corporate, undertaking, associated undertaking or related undertaking,

so far as the inspector thinks the results of the investigation are relevant to the investigation of the affairs of the first-mentioned investment firm, market operator or data reporting service provider.

*Direction to inspector by Court*

99. Where the Court appoints an inspector under Regulation 97, the Court may from time to time give such directions as it thinks fit, whether to the inspector or otherwise, with a view to ensuring that the investigation is carried out as efficiently and as effectively as is practicable in the circumstances.

*Powers of inspection*

100. (1) It is the duty—

- (a) of all officers, shareholders, employees and agents of an investment firm or regulated market or other body the affairs of which are being investigated as provided by Regulation 97 or 104, including officers, shareholders and agents outside the State, and
- (b) of any other person, including those being investigated under Regulation 98, and including any person outside the State, who the inspector considers is, or may be, in possession of any information concerning the affairs of an investment firm, regulated market or data reporting service provider,

to do each of the following:

- (i) produce to an inspector appointed under Regulation 97 or 104, all books, accounts, deeds, records or other documents of, or relating to the business of the investment firm, the market operator, or

the data reporting service provider or the person being investigated under Regulation 98, which are in their control, possession or procurement;

- (ii) attend before the inspector, when required to do so;
- (iii) give to the inspector all assistance in connection with the investigation which they are reasonably able to give.

(2) The inspector may examine on oath or by written interrogatories on oath the officers, employees, shareholders and agents of the investment firm, the market operator or the data reporting service provider being investigated or other person being investigated by the inspector and any such person as is mentioned in paragraph (1) in relation to its affairs and may—

- (a) administer an oath accordingly, and
- (b) take or cause to be taken the answers of such person in writing and require that person to sign them.

(3) If an inspector has reasonable grounds for believing that a director or past director or employee or past employee or agent or past agent or shareholder or past shareholder of the investment firm, or data reporting service provider or of any other person mentioned in paragraph (1) whose affairs the inspector is investigating, maintains or has maintained, either at that time or at any time in the past, an account of any description in a credit institution or an account with any other financial institution, including holdings of investment instruments, whether alone or jointly with another person and whether in the State or elsewhere, into or out of which there has been paid—

- (a) any money which has resulted from or been used in the financing of any transaction, arrangement or agreement relating to the business of the investment firm, market operator or data reporting service provider or relating to client funds or client financial instruments, or
- (b) any money which has been in any way connected with any act or omission, or series of acts or omissions, which on the part of that director or employee or agent constituted misconduct (whether fraudulent or not) towards the investment firm, market operator or data reporting service provider or the investment firm's or market operator's or data reporting service provider's shareholders or any client or creditor of the firm or market operator or data reporting service provider,

the inspector may require the director or past director or officer or past officer or employee or past employee or agent or past agent or shareholder or past shareholder or other person mentioned in paragraph (1) to produce to the inspector all documents in the director's employee's or agent's possession, or under the director's, employee's or agent's control, relating to that account and in this paragraph "credit institution account" includes an account with any person exempt by virtue of section 7(4) of the Central Bank Act 1971 (No.24 of

1971) from the requirement of holding a licence granted under section 9 of that Act.

(4) If any officer, shareholder or agent of the investment firm, market operator or data reporting service provider or any such person as is mentioned in paragraph (1) refuses—

- (a) to produce to the inspector any book or document which it is the director's, employee's, agent's or person's duty under this Regulation to produce,
- (b) to attend before the inspector when required to do so, or
- (c) to answer any question put to the person by the inspector with respect to the affairs of the investment firm, the market operator, the data reporting service provider or another person mentioned in paragraph (1), as the case may be,

the inspector may certify the refusal under his or her hand to the Court.

(5) When the inspector certifies a refusal referred to in paragraph (4) to the Court and the Court may inquire into the case may make such order or direction as the Court thinks fit, after hearing—

- (a) any witnesses who may be produced against or on behalf of the officer shareholder or agent of the investment firm, market operator or data reporting service provider, associated or related undertaking or another person mentioned in paragraph (1), as the case may be, and
- (b) any statement which may be offered in defence.

(6) Without limiting the generality of paragraph (5), an order or direction under that paragraph may include a direction or order to the person concerned—

- (a) to attend or re-attend before the inspector,
- (b) to produce particular books or documents,
- (c) to answer a particular question put to the person by the inspector, or
- (d) that the person need not produce a particular book or document or answer a particular question put to the person by the inspector.

(7) In this Regulation any reference to officers or agents includes past as well as present officers and agents, as the case may be, and “agents”, in relation to an investment firm or the market operator, data reporting service provider or other person mentioned in paragraph (1) includes the bankers, accountants, solicitors, auditors and the financial and other advisors of the investment firm, market operator, data reporting service provider or other person mentioned in

paragraph (1), whether those persons are or are not officers of the investment firm or market operator or other body or undertaking.

*Expenses of and fees relating to an investigation*

101. (1) The expenses of and incidental to an investigation and the fees incurred by an inspector appointed by the Court under Regulation 97 or by the Bank under Regulation 104 shall be defrayed by the Bank, but the Court may direct that any person dealt with in the report shall be liable, to such extent as the Court may direct, on the application of the Bank to repay the Bank any expenses or fees incurred.

(2) Without prejudice to paragraph (1), any person who is—

- (a) convicted on indictment of an offence on a prosecution instituted as a result of an investigation,
- (b) ordered to pay damages or restore any property in proceedings brought as a result of an investigation, or
- (c) awarded damages or to whom property is restored in proceedings brought as a result of an investigation,

may be ordered, in the same proceedings, to repay all or part of the expenses and fees referred to in paragraph (1) and interest as appropriate, to the Bank or to any person on whom liability has been imposed by the Court under that paragraph.

(3) However, in the case of a person to whom paragraph (2)(c) relates, the Court shall not order payment in excess of—

- (a) one-tenth of the amount of the damages awarded, or
- (b) one tenth of the value of the property restored,

and interest as appropriate and any such order shall not be executed until the person concerned has received the person's damages or the property has been restored.

(4) The report of an inspector may, if he or she thinks fit, and shall, if the Court so directs, include a recommendation as to the directions, if any, which the inspector thinks appropriate, in the light of the inspector's investigation, to be given under paragraph (1).

*Inspectors' reports and proceedings thereon*

102. (1) An inspector appointed under Regulation 97 may, and shall if the Court so requires, make an interim report to the Court and, on conclusion of the investigation, shall make a final report to the Court but may at any time in the course of the investigation without making an interim report, inform the Court of matters coming to the inspector's knowledge as a result of the investigation tending to show that an offence has been committed.

- (2) On a report being presented to it under this Regulation, the Court shall—
- (a) forward a copy of any such report to the Bank,
  - (b) if the Court thinks fit, furnish a copy thereof to the investment firm, market operator or data reporting service provider concerned and its auditors, and
  - (c) if the Court thinks fit—
    - (i) furnish a copy thereof, on request and on payment of such fee as it may fix, to any other person who is a shareholder of the investment firm, market operator or data reporting service provider concerned or a shareholder of any other body dealt with in the report by virtue of Regulation 97 or whose interests as a creditor or client of the investment firm or regulated market concerned or of any other such body appear to the Court to be affected, and
    - (ii) cause any such report to be printed and published.
- (3) Where the Court thinks it to be proper the Court may direct that a particular part of a report made by virtue of this Regulation be omitted from a copy forwarded or furnished under paragraph (2)(b) or (2)(c) (i) or from the report as printed and published under paragraph (2) (c) (ii).

*Powers of Court following consideration of reports*

103. (1) Having considered a report made under Regulation 102, the Court may make such order as it thinks fit in relation to matters arising from that report including—

- (a) an order of its own motion for the winding-up or dissolution or bankruptcy of an investment firm, a market operator or data reporting service provider,
  - (b) an order for the purpose of remedying any disability suffered by any person whose interests were adversely affected by the conduct of the affairs of the investment firm, market operator or data reporting service provider provided that, in making any such order, the Court shall have regard to the interests of any other person who may be adversely affected by the order.
- (2) If, in the case of any investment firm or market operator or data reporting service provider which is liable to be wound up or dissolved under these Regulations or is subject to an adjudication of bankruptcy, it appears to the Bank from—
- (a) any report made under Regulation 102 as a result of an application by the Bank under Regulation 97, or
  - (b) any report made by inspectors appointed by the Bank under Regulation 104, or

- (c) any information or document obtained by the Bank under these Regulations,

that a petition should be presented for the winding-up or dissolution or bankruptcy of an investment firm, market operator or data reporting service provider, the Bank, unless the investment firm, market operator or data reporting service provider is already being wound up or dissolved or is already subject to an adjudication of bankruptcy, may present a petition for it to be so wound up or dissolved or to be the subject of an adjudication of bankruptcy if the Court thinks it just and equitable for it to be so wound up or dissolved or subject to an adjudication of bankruptcy.

*Appointment of inspector by Bank*

104. (1) Without prejudice to its powers under these Regulations, the Bank may subject to paragraph (2), appoint one or more inspectors to investigate and report on any or all of the following:

- (a) the affairs and conduct of the business of an investment firm, market operator or data reporting service provider or other undertaking which is, or was at the relevant time, an associated or related undertaking of an investment firm or the market operator of a regulated market, or any particular aspect of such business;
- (b) compliance of the investment firm, market operator or data reporting service provider with all or any of the following:
  - (i) conditions or requirements or both imposed by the Bank under these Regulations;
  - (ii) rules or codes of conduct set out or approved by the Bank under these Regulations;
  - (iii) any condition provided in, or requirement of, these Regulations;
  - (iv) rules or requirements set out or approved by the Bank, with respect to clients' funds and client financial instruments;
  - (v) any other enactment;
- (c) any other matter as the Bank may consider appropriate.

(2) An appointment under paragraph (1) may be made by the Bank if it is of the opinion that there are circumstances suggesting that it is necessary—

- (a) for the effective administration of the law relating to investment firms, market operators or data reporting service providers, or
- (b) for the effective discharge by the Bank of its statutory functions under these Regulations.

(3) The terms of appointment of an inspector under this Regulation may define the scope of the inspector's investigation, whether as respects the matters or the period to which it is to extend or otherwise, and in particular may limit the investigation to matters connected with particular circumstances.

(4) Subject to the terms of appointment of an inspector, the powers conferred on the inspector by this Regulation shall extend to the investigation of any circumstances suggesting the existence of an arrangement or understanding which, though not legally binding, is or was observed or likely to be observed in practice and which is relevant to the purposes of the investigation.

(5) For the purposes of any investigation under this Regulation, Regulations 98 to 102, except Regulations 99, 100(3) and 101(3), shall apply with the necessary modifications or references to the affairs of the authorised investment firm, market operator or data reporting service provider or to the affairs of any other person or any associated or related undertaking, so, however, that—

(a) the Regulations shall apply in relation to all persons who are or have been officers or employees or agents of the investment firm, market operator, data reporting service provider or other persons who appear to the inspector to have the information, document, material or explanation in their possession or under their control, and

(b) for references to the Court, except in Regulations 98, 100(4) and 101(1) and (2), there shall be substituted references to the Bank.

*Search and seizure*

105. (1) If a judge of the District Court is satisfied on the sworn information of an authorised officer or an inspector appointed under Regulation 104 that there are reasonable grounds for suspecting that there are on any premises any books, records or other documents—

(a) of which production has been required under these Regulations, and

(b) which have not been produced in compliance with that requirement,

the judge may issue a warrant authorising any member of the Gardaí Síochána, together with any other persons named in the warrant and any other members of the Gardaí Síochána, at any time or times within one month after the date of the warrant, on production if so requested of the warrant, to enter the premises specified in the information (using such force as is reasonably necessary for the purpose) and to search the premises or other place specified in the warrant and—

(i) take possession of any books or documents appearing to be such books or documents as aforesaid, or

(ii) to take, in relation to any books or documents so appearing, any other steps which may appear necessary for preserving them and preventing interference with them.



(2) Any books or documents of which possession is taken under this Regulation may be retained for a period of 6 months or—

- (a) if within that period there are commenced any such criminal proceedings (being proceedings to which the books or documents are relevant), until the conclusion of those proceedings, or
- (b) if within that period there is commenced an investigation by the Garda Síochána into matters relating to Regulation 108(2)(a) (and the books or documents are relevant to the investigation), until the conclusion of the investigation.

(3) A person shall not—

- (a) obstruct or interfere with a member of the Garda Síochána acting under the authority of a warrant issued under this Regulation,
- (b) be present on the premises or at the place specified in the warrant by a member of the Garda Síochána acting under the authority of a warrant issued under this Regulation and—
  - (i) fail or refuse to give the member the person's name and address when required to do so, or
  - (ii) give a name and address that is false or misleading, or
- (c) obstruct the exercise of an authority conferred by a warrant under this Regulation to take possession of any books or documents.

(4) In this Regulation “premises” includes any building or other land and includes a vessel, aircraft or motor vehicle.

*Admissibility in evidence of reports of inspectors*

106. A document purporting to be a copy of a report of an inspector appointed under these Regulations shall be admissible in any civil proceedings as evidence—

- (a) of the facts set out in the document without further proof, unless the contrary is shown, and
- (b) of the opinion of the inspector in relation to any matter contained in the report.

*Privilege*

107. (1) Nothing in these Regulations—

- (a) compels the disclosure by any person of any information which the person would, in the opinion of the Court, be entitled to refuse to produce on the grounds of legal professional privilege, or
- (b) authorises the taking possession of any document containing such information which is in the person's possession.

(2) The publication, in pursuance of any provision of this Part, of any report information, book or document relating to inspectors appointed under this Part is privileged.

*Consent to publication of information*

108. (1) In this Regulation “appropriate authority” includes any or all of the following:

- (a) the Bank;
- (b) a person authorised by the Governor of the Bank;
- (c) an inspector appointed under these Regulations;
- (d) the Minister;
- (e) any court of competent jurisdiction;
- (f) any other competent authority for the purposes of the Directive, Regulation (EU) No 600/2014 or Article 163 of the Capital Requirements Directive.

(2) No information, book or document, relating to a person, which has been obtained under Regulation 105 shall, without the previous consent in writing of that person be published or disclosed, except to an appropriate authority, unless the publication or disclosure is required for all or any of the following:

- (a) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings pursuant to, or arising out of, any enactments under which the Bank performs functions or any criminal proceedings for an offence entailing misconduct in connection with the management of the affairs of a person or misapplication or wrongful retainer of its property;
- (b) for the purpose of complying with any requirement, or exercising any power, imposed or conferred by these Regulations with respect to reports made by inspectors appointed thereunder by the Court or the Bank;
- (c) with a view to the institution by the Bank of proceedings for the winding-up, dissolution or bankruptcy under these Regulations of the person or otherwise for the purposes of proceedings instituted by the Bank for that purpose;
- (d) for the purposes of proceedings under Regulation 105.

*Privilege*

109. (1) Where a person refuses to produce information or give access to it, pursuant to a requirement under these Regulations or Regulation (EU) No 600/2014, on the grounds that the information contains privileged legal material, the Bank may, at any time not later than 6 months (or such longer period as

the Court may allow) after the date of such refusal, apply to the Court for a determination as to whether the information, or any part of the information, is privileged legal material where—

- (a) the Bank has reasonable grounds for believing that the information concerned is not privileged legal material, or
- (b) due to the manner in which, or extent to which, the information concerned is presented together with any other information, it is impossible or impractical to extract only the information concerned.

(2) A person who refuses to produce information or give access to it, pursuant to a requirement under these Regulations, on the grounds that the information contains privileged legal material shall preserve the information and keep it in a safe and secure place and manner pending the determination of an application under paragraph (1) and shall, if the information is so determined not to be privileged legal material, produce it in accordance with such order as the Court considers appropriate.

(3) A person shall be considered to preserve information, where the person has complied with such requirements as may be imposed by the Bank under subparagraph (a), (b), (g) or (j) of Regulation 92(4).

(4) Where an application is made by the Bank under paragraph (1), the Court may give such interim or interlocutory directions as the Court considers appropriate including, without limiting the generality of the foregoing, directions as to the appointment of a person with suitable legal qualifications possessing the level of experience, and the independence from any interest falling to be determined between the parties concerned, that the Court considers to be appropriate for the purpose of—

- (a) examining the information, and
- (b) preparing a report for the Court with a view to assisting or facilitating the Court in the making by the Court of its determination as to whether the information is privileged legal material.

(5) An application under paragraph (1) shall be by motion.

(6) If the Court is satisfied that it is desirable that the whole or part of an application under paragraph (1) be heard otherwise than in public because of the nature or the circumstances of the case or having regard to the interests of justice then the Court may make an order that the application shall, in whole or part, be heard otherwise than in public.

(7) In this Regulation, “privileged legal material” means information which, in the opinion of the Court, a person is entitled to refuse to produce on the grounds of legal professional privilege.

*Obstruction, failure to cooperate etc. — offences*

110. A person who—

- (a) obstructs an authorised officer in the exercise of the powers of an authorised officer under this Chapter,
- (b) without reasonable excuse, fails to comply with a request or requirement made by such an officer under this Chapter,
- (c) without reasonable excuse, fails to cooperate with an investigation or an inspection by such an officer under this Chapter, or
- (d) gives such an officer information that the person knows or ought reasonably to know is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months or both.

*Power of Bank to issue directions to non-regulated financial service providers*

111. (1) Without prejudice to the power of the Bank to impose directions, conditions or other requirements under any enactment, where the Bank considers it necessary to do so in order to—

- (a) ensure the integrity of financial markets in—
  - (i) the State, or
  - (ii) where relevant, another Member State,
- (b) enhance investor protection in those markets, or
- (c) prevent any person from contravening or continuing to contravene a provision of these Regulations or Regulation (EU) No 600/2014,

the Bank may, subject to paragraphs (2) and (3), issue a direction in writing to any person.

(2) A direction under paragraph (1) shall—

- (a) subject to subparagraph (b), take effect on and after such date, or the occurrence of such event, as is specified in the direction for the purpose, and
- (b) shall cease to have effect—
  - (i) on such date, or the occurrence of such event, as is specified in the direction for the purpose, or
  - (ii) on the expiration of the period of 12 months immediately following the day on which the direction takes effect,

whichever is the earlier.

(3) A person may apply to the Court for, and the Court may, if it considers it appropriate to do so, grant an order setting aside or varying a direction under paragraph (1).

(4) The Bank may, as respects a direction under this Regulation which, in its opinion, has not been complied with or is unlikely to be complied with, apply to the Court in a summary manner for such order as may be appropriate by way of enforcement of the direction and the Court may, as it thinks fit, on the hearing of the application, make or refuse to make an order providing for such relief.

(5) An application for an order under paragraph (4) shall be by motion and the Court, when considering the motion, may make such interim or interlocutory order as it considers appropriate.

(6) An application under paragraph (3) may not be made if the direction concerned has been the subject of an order granted under paragraph (4) (but without prejudice to the right of a person, the subject of an order granted under paragraph (4), to apply subsequently to the Court to have the order varied or discharged).

(7) The Court may direct the hearing together of applications made under paragraphs (3) and (4) that relate to the same direction.

(8) The Court may, if it thinks fit, vary or discharge an order made under paragraph (4).

(9) If the Court is satisfied that it is desirable that the whole or part of proceedings relating to an application under paragraph (3) or (4) be heard otherwise than in public because of the nature or the circumstances of the case or having regard to the interests of justice then the Court may make an order that the proceedings shall, in whole or part, be heard otherwise than in public.

(10) Without prejudice to the powers of the Court to enforce an order made under paragraph (4), a person who fails to comply with such an order shall be guilty of an offence and shall be liable on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months or both.

(11) The Bank may give a direction amending or revoking a direction given by it under paragraph (1) but this power may not be exercised—

(a) if an order under paragraph (4) is for the time being in force in relation to the direction, or

(b) to extend the period specified in the direction for which it is to have effect.

(12) On the expiry of the period specified in a direction for which it is to have effect, the Bank may give another direction under paragraph (1) (if it considers it necessary to do so on the grounds specified in paragraph (1)), in like or different terms, to the person concerned.

(13) The powers of the Bank under this Regulation are in addition to those conferred on it by any other enactment to give directions or impose conditions or requirements.

### Chapter 3

#### *Enforcement in relation to non-regulated financial service providers*

##### *Interpretation (Part 11, Chapter 3)*

112. (1) In this Part—

“adverse assessment” means an assessment in which the assessor has decided that the assessee is committing or has committed a prescribed contravention;

“assessee” means the person the subject of an assessment;

“assessment” means an assessment referred to in Regulation 113;

“assessor” means an assessor appointed under Regulation 113;

“prescribed contravention” means a contravention by a non-regulated financial service provider of any of the provisions set out in Regulation 119(5), (6) and (7);

“qualifying holding” means—

- (a) a direct or indirect holding of shares or other interest in a regulated financial service provider which represents 10 per cent or more of the capital or the voting rights, or
- (b) a direct or indirect holding of shares or other interest in a regulated financial service provider which represents less than 10 per cent of the capital or voting rights but which, in the opinion of the Bank, makes it possible to control or exercise a significant influence over the management of the regulated financial service provider;

“sanction” means any sanction referred to in Regulation 119(3);

“specified sanctions”, in relation to an adverse assessment, means the sanction or sanctions referred to in Regulation 113(8) that may be imposed on the assessee.

##### *Bank may appoint assessor*

113. (1) Where the Bank has reason to suspect that a prescribed contravention is being committed or has been committed, the Bank may appoint an assessor (or, if the Bank thinks fit to do so, more than one assessor) to conduct an assessment as to—

- (a) whether or not the assessee is committing or has committed the contravention, and

- (b) if the assessor finds that the assessee is committing or has committed the contravention, the specified sanction or sanctions, if any, which the assessor considers is or are appropriate to be imposed on the assessee in respect of the contravention.

(2) The Bank may appoint an assessor who is not an officer, employee or official of the Bank and any such assessor so appointed is an agent of the Bank for the purpose of performing the functions of an assessor under this Part.

(3) The Bank shall provide the assessor with such administrative services (including technical and legal advice) as the Bank considers necessary to enable the assessor to perform the assessor's functions.

(4) The assessor shall, as soon as is practicable after the assessor's appointment as an assessor, give notice of the appointment to the assessee.

(5) The notice under paragraph (4) given to the assessee by the assessor shall contain—

- (a) a statement that the assessor is appointed by the Bank under this Regulation,
- (b) a statement in summary form of the grounds for conducting the assessment,
- (c) a statement that, within a reasonable time specified by the assessor in the notice, the assessee may—
  - (i) make submissions in writing to the assessor, and
  - (ii) request the assessor to be permitted to make oral submissions about the matters to which the notice relates, and
- (d) a statement that the assessor shall conduct the assessment even if no submissions referred to in subparagraph (c) are made.

(6) The assessor shall—

- (a) consider any submissions referred to in paragraph (5)(c) made by the assessee, and
- (b) conduct such investigations relating to the assessment as the assessor considers appropriate before issuing the assessment.

(7) The assessor shall issue the assessment to the Bank when the assessment is made.

(8) Where the assessor decides that a prescribed contravention is being committed or has been committed, the assessor shall ensure that the assessment includes—

- (a) a statement of the grounds upon which the assessor made the assessment that the assessee is committing or has committed the contravention,
- (b) a statement in summary form of the evidence upon which the assessment is based, and
- (c) a statement of the sanction or sanctions, if any, which the assessor considers is or are appropriate to be imposed on the assessee in respect of the contravention.

(9) The appointment of an assessor may be for a specified or unspecified period.

(10) Subject to Regulation 118 and 120(2), the assessment shall constitute the decision of the Bank, and references in this Part to an adverse assessment shall be construed accordingly.

*Revocation of appointment of assessor*

114. (1) Where the Bank is satisfied that the assessor has contravened paragraph (2) or is incapacitated, the Bank may revoke the appointment of the assessor at any time.

(2) The assessor (including a person proposed to be appointed as an assessor) shall—

- (a) disclose to the Bank any material interest that the assessor may have in any matter that may arise during the assessment,
- (b) disclose to the Bank any actual or potential conflict of interest that the assessor may have in conducting an assessment,
- (c) not use any inside information obtained during an assessment for any purpose other than the performance of the assessor's functions under this Part,
- (d) not engage in misconduct during the assessment,
- (e) perform the assessor's functions in accordance with the procedures and requirements set out in this Part, and
- (f) issue an assessment that is not contrary to law.

*Power to require witnesses to appear and give evidence*

115. (1) The assessor may, by notice given in or outside the State to a person, require the person to—

- (a) appear before the assessor to give evidence (including evidence on oath),
- (b) produce documents specified in the notice that are in the person's custody or control, or



(c) for the purposes of subparagraph (a) or (b), attend before the assessor from day to day unless excused from attendance or released from further attendance by the assessor.

(2) The assessor may administer oaths for the purposes of the evidence referred to in paragraph (1)(a).

(3) A witness at a hearing before the assessor has the same liabilities, privileges and immunities as a witness before the Court.

(4) Where a person (in this paragraph referred to as “person concerned”)—

(a) fails to comply with a notice under paragraph (1),

(b) threatens or insults the assessor or any witness or person required to attend before the assessor,

(c) interrupts the proceedings of, or does not behave in an appropriate manner before, the assessor,

(d) obstructs or attempts to obstruct the assessor,

(e) discloses, or authorises the disclosure of, evidence given before the assessor or any of the contents of a document produced to the assessor that the assessor has instructed not to be published, or

(f) does anything else that, if the assessor were a court of law having power to commit for contempt, would be contempt for that court,

then—

(i) the assessor may apply to the Court for an order requiring the person concerned to—

(I) comply with the notice under paragraph (1), or

(II) discontinue or not repeat the behaviour falling within any of the provisions of subparagraphs (b) to (f), or behaviour of any similar kind,

and

(ii) the Court, if satisfied that there is no reasonable excuse for the failure to comply with the notice under paragraph (1) or for the behaviour concerned, as the case may be, may grant the order and such other orders as it considers appropriate to ensure that the person concerned cooperates with the assessor.

*Referral to the Court on a question of law*

116. (1) The Bank or the assessor may (including at the request of the assessee) refer a question of law arising in the assessment to the Court for determination by the Court.

- (2) Where a question of law is referred under paragraph (1)—
- (a) the assessor shall send to the Court all documents before the assessor that are relevant to the matter in question, and
  - (b) at the end of the proceedings in the Court in relation to the reference, the Court shall cause the documents to be returned to the assessor.

*Assessee to be issued copy of any adverse assessment, etc*

117. (1) Where the assessment of the assessor is that the assessee is committing or has committed a prescribed contravention, the Bank shall—

- (a) issue the assessee with a copy of the adverse assessment (or, as the Bank thinks fit, so much of the adverse assessment as constitutes the statements referred to in Regulation 113(8)), and
- (b) advise the assessee that—
  - (i) the assessee may appeal against the adverse assessment to the Court under Regulation 118, and
  - (ii) the Bank may apply to the Court under Regulation 122 for an order confirming the adverse assessment (including the specified sanctions).

(2) Where the assessment of the assessor is that the assessee is neither committing nor has committed a prescribed contravention, the Bank shall issue the assessee with a statement to that effect.

*Right of appeal against adverse assessment (including specified sanctions)*

118. (1) The assessee may appeal against the adverse assessment (including the specified sanctions) to the Court not later than 28 days after the Bank has complied with Regulation 117(1) in relation to the assessee or within such further period as the Court allows.

(2) If the Court is satisfied that it is desirable that the whole or part of proceedings relating to an appeal under paragraph (1) be heard otherwise than in public because of the nature or the circumstances of the case or having regard to the interests of justice then the Court may make an order that the proceedings shall, in whole or part, be heard otherwise than in public.

(3) The Court may, pending the hearing and determination of an appeal under paragraph (1), make such interim or interlocutory orders as the Court considers necessary in the circumstances.

- (4) The Court shall determine an appeal under paragraph (1) by making—
- (a) subject to paragraph (6), an order confirming, varying or setting aside the adverse assessment (including the specified sanctions), whether in whole or in part, or

(b) an order remitting the case to be decided again by the Bank in accordance with the directions of the Court.

(5) The determination of the Court on the hearing of an appeal under paragraph (1) shall be final, except that a party to the appeal may apply to the Court of Appeal to review the determination on a question of law.

(6) No variation of an adverse assessment under paragraph (4)(a) may provide for the imposition of a sanction on the assessee which is not a sanction referred to in Regulation 119(3)(a) to (h).

## Chapter 4

### *Sanctions*

#### *Sanctions for contraventions*

119. (1) Notwithstanding Part IIIC of the Act of 1942 and the sanctions set out in section 33AQ of the Act of 1942, any of the sanctions referred to in paragraph (3) may be imposed by the Bank—

(a) where the provisions of the Act of 1942 are invoked—

(i) following an inquiry under section 33AO of the Act of 1942, or

(ii) in accordance with section 33AR or section 33AV of the Act of 1942, or

(b) where an assessor has been appointed under Regulation 113(1) and an adverse assessment has been made by the assessor (being an adverse assessment that contains a statement of the kind referred to in Regulation 113(8)(c)),

in respect of any contravention by a person falling within paragraph (5), (6) or (7), and, for the purposes of these Regulations, any reference in the Act of 1942 to the sanctions set out in section 33AQ of that Act is to be read as a reference to the sanctions set out in this Regulation.

(2) The Bank shall take all measures necessary to ensure that any such sanction is implemented.

(3) The sanctions mentioned in paragraph (1) are—

(a) a public statement, which indicates the person responsible for the contravention and the nature of the contravention in accordance with Regulation 126,

(b) an order requiring a person responsible for the contravention to cease, and desist from, the conduct concerned,

(c) in the case of an investment firm, a market operator authorised to operate an MTF or OTF, a regulated market, an APA, a CTP or an

ARM, withdrawal or suspension of its authorisation under these Regulations,

- (d) in the case of an investment firm, a temporary or, for repeated serious contraventions, permanent ban against any member of the investment firm's management body or any other natural person who is responsible for the infringement, exercising management functions in investment firms,
- (e) in the case of an investment firm, a temporary ban on the investment firm being a member of or participant in regulated markets or MTFs or any client of OTFs,
- (f) in the case of a legal person, a direction to pay to the Bank a monetary penalty not exceeding €10,000,000, or not exceeding 10% of the total annual turnover of the legal person according to the last available accounts approved by the management body and paragraph (4) supplements this subparagraph,
- (g) in the case of a natural person, a direction to pay to the Bank a monetary penalty not exceeding €5,000,000, and
- (h) a direction to pay to the Bank a monetary penalty not exceeding twice the amount of the benefit derived from the contravention where that benefit can be determined (even if that exceeds the maximum amount in subparagraph (f) or (g)).

(4) Where the legal person is a parent undertaking or a subsidiary of the parent undertaking which has to prepare consolidated financial accounts in accordance with Directive 2013/34/EU, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant accounting legislative acts according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking,

(5) Each of the following is a contravention, referred to in paragraph (1), which falls within this paragraph, namely:

- (a) a contravention of any of the following provisions of these Regulations:
  - (i) Regulation 13(1)(d);
  - (ii) Regulation 17;
  - (iii) Regulation 20(1) to (8);
  - (iv) Regulation 23;
  - (v) Regulation 24;

- (vi) Regulation 25(1) to (4);
- (vii) Regulations 26 and 27;
- (viii) Regulation 28(1);
- (ix) Regulation 30;
- (x) Regulations 31 and 32(1) to (11) and (13) to (20);
- (xi) Regulation 33(1) to (16);
- (xii) Regulation 34(2) to (5);
- (xiii) Regulation 35;
- (xiv) Regulation 36;
- (xv) Regulation 37(2), (4), (5), and (11) and so much of paragraph (8) as follows subparagraph (b) of it;
- (xvi) Regulation 38(2) and (7);
- (xvii) Regulation 39(1);
- (xviii) Regulation 40(1) to (4) and (6);
- (xix) Regulation 41(2);
- (xx) Regulation 43(4) and (5), (7) and (8);
- (xxi) Regulation 45;
- (xxii) Regulation 46(1) to (2)(a) and (3);
- (xxiii) Regulations 55, 60(1) to (2)(a) and 62(1)(c);
- (xxiv) Regulations 66 to 68;
- (xxv) Regulation 69(1) and (2);
- (xxvi) Regulation 70;
- (xxvii) Regulation 72;
- (xxviii) Regulation 73(1);
- (xxix) Regulation 74(1);
- (xxx) Regulation 75(1) to (5) and (7);
- (xxxi) Regulation 76(1) to (5) and (8)(a);

- (xxxii) Regulation 77(1) to (3), (6) and (9);
  - (xxxiii) Regulation 78(1) and (2);
  - (xxxiv) Regulation 81(1) to (4), (15) to (16) and (18);
  - (xxxv) Regulation 82;
  - (xxxvi) Regulation 87;
  - (xxxvii) Regulation 88;
  - (xxxviii) Regulation 89;
  - (xxxix) Regulation 90;
- (b) a contravention of any of the following provisions of Regulation (EU) No 600/2014:
- (i) Articles 3(1) and (3);
  - (ii) the first subparagraph of Article 4(3);
  - (iii) Article 6;
  - (iv) the first sentence of third subparagraph of Article 7(1);
  - (v) Article 8(1), (3) and (4);
  - (vi) Article 10;
  - (vii) the first sentence of third subparagraph of Article 11(1) and the third subparagraph of Article 11(3);
  - (viii) Article 12(1);
  - (ix) Article 13(1);
  - (x) Article 14(1), the first sentence of Article 14(2) and the second, third and fourth sentence of Article 14(3);
  - (xi) the first subparagraph and the first and third sentences of second subparagraph of Article 15(1), Article 15(2) and the second sentence of Article 15(4);
  - (xii) the second sentence of Article 17(1);
  - (xiii) Article 18(1) and (2), first sentence of Article 18(4), first sentence of Article 18(5), the first subparagraph of Article 18(6), Article 18(8) and (9);
  - (xiv) Article 20(1) and the first sentence of Article 20(2);

- (xv) Article 21(1), (2) and (3);
- (xvi) Article 22(2);
- (xvii) Article 23(1) and (2);
- (xviii) Article 25(1) and (2);
- (xix) the first subparagraph of Article 26(1), Article 26(2) to (5), the first subparagraph of Article 26(6), the first to fifth and eighth subparagraph of Article 26(7);
- (xx) Article 27(1);
- (xxi) Article 28(1) and the first subparagraph of Article 28(2);
- (xxii) Article 29(1) and (2);
- (xxiii) Article 30(1);
- (xxiv) Article 31(2) and (3);
- (xxv) Article 35(1), (2) and (3);
- (xxvi) Article 36(1), (2) and (3);
- (xxvii) Article 37(1) and (3);
- (xxviii) Articles 40, 41 and 42.

(6) Each of the following is a contravention, referred to in paragraph (1), which falls within this paragraph, namely providing an investment service or performing an investment activity without the required authorisation or approval in accordance with the following provisions of these Regulations or of Regulation (EU) No 600/2014:

- (a) Regulation 5, 6, 7, 12(2), 42, 43, 44(1) to (4), 48, 53, 54, 60, 61, 62 or 83;
- (b) the third sentence of Article 7(1) or Article 11(1) of Regulation (EU) No 600/2014.

(7) Each of the following shall be taken as a contravention and is a contravention, referred to in paragraph (1), which falls within this paragraph, namely—

- (a) a failure to cooperate with an inspector, appointed under Regulation 97 or 104, who is carrying out an investigation under Regulation 97 or 104, or
- (b) a failure to comply with a requirement made, pursuant to Regulation 95(2), by an authorised officer.

(8) A person who contravenes any provision referred to in paragraph (5) or (6) or fails to comply with a requirement made, pursuant to Regulation 95(2), by an authorised officer shall be guilty of an offence and shall be liable, on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both.

(9) Where an offence is committed under these Regulations by a body corporate and is proved to have been committed with the consent, connivance or approval of any person, being—

(a) a director, manager, secretary or other officer of the body corporate, or

(b) a person who was purporting to act in any such capacity,

that person as well as the body corporate shall be guilty of an offence and shall be liable to be proceeded against and punished as if that person were guilty of the first-mentioned offence.

(10) A person may be charged with having committed an offence under these Regulations even if the body corporate concerned is not charged with having committed an offence under these Regulations in relation to the same matter.

(11) Summary proceedings for an offence under these Regulations may be brought and prosecuted by the Bank.

(12) Without prejudice to the generality of section 27 of the Interpretation Act 2005 (No.23 of 2005), the repeal or revocation of any enactment, or part of enactment, by these Regulations—

(a) does not affect any direction given by the Bank, or any investigation undertaken, or disciplinary or enforcement action undertaken by the Bank or any other person, in respect of any matter in existence at, or before, the time of the repeal or revocation, and

(b) does not preclude the taking of any legal proceedings, or the undertaking of any investigation, or disciplinary or enforcement action by the Bank or any other person, in respect of any contravention of an enactment (including anything repealed or revoked by these Regulations) or any misconduct which may have been committed before the time of the repeal or revocation.

*Power to correct assessments*

120. (1) Where the assessor or the Bank is satisfied that there is an obvious error in the text of an assessment, the assessor or the Bank, as the case may be, may alter the text of the assessment to remove the error.

(2) Where the text of an assessment is altered under paragraph (1), the text as so altered shall be taken to be the decision of the Bank under Regulation 113(10).



(3) In paragraph (1), “obvious error”, in relation to the text of an assessment, includes—

- (a) a clerical or typographical error,
- (b) an error arising from an accidental slip or omission, or
- (c) a defect of form.

*When specified sanctions take effect*

121. (1) Where—

- (a) no appeal under Regulation 118 against the adverse assessment (including the specified sanctions) is lodged with the Court within the period for lodging the appeal, or
- (b) an appeal under Regulation 118 against the adverse assessment (including the specified sanctions) has been lodged with the Court within the period for lodging the appeal but is withdrawn or abandoned,

then the specified sanctions pursuant to Regulation 119(3)(a) to (h), as confirmed or varied in the order, if any, obtained under Regulation 122(2)(a), shall take effect on the date of that order or such other date as the Court may specify in that order.

(2) Where an appeal under Regulation 118 against the adverse assessment is lodged with the Court within the period for lodging the appeal, then the specified sanctions pursuant to Regulation 119(3)(a) to (h), as confirmed or varied in the order, if any, obtained under Regulation 118(4)(a), shall take effect on the date of that order or such other date as the Court may specify in that order.

*Enforcement of adverse assessment (including specified sanctions)*

122. (1) Where—

- (a) no appeal under Regulation 118 against the adverse assessment is lodged with the Court within the period for lodging the appeal, or
- (b) an appeal under Regulation 118 against the adverse assessment has been lodged with the Court within the period for lodging the appeal but is withdrawn or abandoned,

then the Bank may apply to the Court for an order confirming the adverse assessment (including the specified sanctions).

(2) The Court shall determine an application under paragraph (1) by making—

- (a) an order confirming, varying or setting aside the adverse assessment (including the specified sanctions), whether in whole or in part, or

- (b) an order remitting the case to be decided again by the Bank in accordance with the directions of the Court.
- (3) The Court shall not hear an application under paragraph (1) unless—
  - (a) the assessee appears at the hearing as respondent to the application, or
  - (b) if the assessee does not so appear, the Court is satisfied that a copy of the application has been served on the assessee.
- (4) If the Court is satisfied that it is desirable that the whole or part of proceedings relating to an application under paragraph (1) be heard otherwise than in public because of the nature or the circumstances of the case or having regard to the interests of justice then the Court may make an order that the proceedings shall, in whole or part, be heard otherwise than in public.
- (5) The Court may, on an application under paragraph (1), make such interim or interlocutory orders as the Court considers necessary in the circumstances.
- (6) The determination of the Court on the hearing of an application under paragraph (1) shall be final, except that the Bank or the respondent, if any, may apply to the Court of Appeal to review the determination on a question of law.
- (7) For the avoidance of doubt, it is declared that no variation of an adverse assessment under paragraph (2)(a) may provide for the imposition of a sanction on the assessee that is not a sanction referred to in Regulation 119(3)(a) to (h).

*Person not liable to be penalised twice for same contravention*

123. (1) Where—
- (a) a sanction referred to in Regulation 119(3)(f), (g) or (h) has been or is to be imposed on an assessee by virtue of an order obtained under Regulation 118(4)(a) or 122(2)(a), and
  - (b) the acts that constitute the prescribed contravention to which the sanction relates also constitute an offence under a law of the State,
- then the assessee shall not, in respect of those acts, be liable to be prosecuted or punished for that offence under that law.
- (2) A sanction referred to in Regulation 119(3)(f), (g) or (h) in respect of a prescribed contravention shall not be imposed on an assessee where—
    - (a) the assessee has been found guilty or not guilty of having committed—
      - (i) an offence under a provision of these Regulations, or
      - (ii) the acts which constitute the prescribed contravention to which the sanction relates also constitute an offence under a law of the State, and

- (b) all or some of the acts constituting that offence also constitute the prescribed contravention.

*Power of the Bank to resolve certain contraventions etc*

124. (1) Where the Bank has reason to suspect that a person (“relevant party”) is committing or has committed a prescribed contravention, it may enter into an agreement in writing with the relevant party to resolve the matter (including at any time before an assessment, if any, has been issued in respect of the relevant party).

- (2) An agreement entered into under paragraph (1)—
- (a) is binding on the Bank and the relevant party, and
  - (b) may include terms under which the relevant party accepts the imposition of sanctions.
- (3) An agreement entered into under paragraph (1) may be enforced by the Bank or the relevant party in a court of competent jurisdiction.

*False etc. information*

125. A person who—

- (a) gives the Bank a notification pursuant to a requirement under these Regulations or Regulation (EU) No 600/2014, or
- (b) gives the assessor information pursuant to a requirement made by the assessor under Chapter 3,

that the person knows is false or misleading in a material particular, or that the person does not believe to be true shall be guilty of an offence and shall be liable, upon summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both.

*Publication of decisions*

126. (1) The Bank shall publish any decision imposing an administrative sanction or measure for a contravention of these Regulations or Regulation (EU) No 600/2014 on its website without undue delay after the person on whom the sanction was imposed has been informed of that decision.

(2) The publication shall include at least information on the type and nature of the contravention and the identity of the persons responsible unless the decision is one imposing measures that are of an investigatory nature.

(3) Where the publication of the identity of the legal persons or of the personal data of the natural persons is considered by the Bank to be disproportionate following a case-by-case assessment conducted on the proportionality of the publication of such data, or where publication jeopardises the stability of financial markets or an on-going investigation, the Bank shall—

- (a) defer the publication of the decision to impose the sanction or measure until the reasons for non-publication cease to exist,
  - (b) publish the decision to impose the sanction or measure on an anonymous basis if such anonymous publication ensures an effective protection of the personal data concerned, or
  - (c) not publish the decision to impose a sanction or measure at all in the event that the options set out in subparagraphs (a) and (b) are considered to be insufficient to ensure—
    - (i) that the stability of financial markets would not be put in jeopardy, and
    - (ii) the proportionality of the publication of such decisions with regard to measures which are deemed to be of a minor nature.
- (4) In the case of a decision to publish a sanction or measure on an anonymous basis, the publication of the relevant data may be postponed for a reasonable period of time if it is envisaged that within that period the reasons for anonymous publication shall cease to exist.
- (5) Where the decision to impose a sanction or measure is the subject of an appeal, the Bank shall also publish, immediately, on its website such information and any subsequent information on the outcome of such appeal.
- (6) Where an adverse assessment is confirmed, varied or set aside by an order of the Court under Regulation 118(4)(a) or 122(2)(a), or the case is remitted to be decided by the Bank under Regulation 118(4)(b) or 122(2)(b), the Bank shall publish on its website information relating to such orders and any subsequent decision of the Bank relating to the case.
- (7) Any decision annulling a previous decision to impose a sanction or a measure shall also be published.
- (8) The Bank shall ensure that any publication in accordance with this Regulation remains on its website for a period of at least five years after its publication.
- (9) But personal data contained in the publication shall only be kept on the official website of the Bank for the period which is necessary in accordance with the Data Protection Acts 1998 and 2003.
- (10) The Bank shall inform ESMA of all sanctions imposed but not published in accordance with paragraph (3)(c) including any appeal in relation to them and the outcome of any such appeal.
- (11) The Bank shall inform itself of the final judgment in relation to any criminal penalty imposed for any contravention of these Regulations or Regulation (EU) No 600/2014, and it shall submit the information relating to the final judgment to ESMA.

(12) The Bank shall provide ESMA annually with aggregated information regarding all sanctions and measures imposed in accordance with these Regulations or Regulation (EU) No 600/2014 (not including measures of an investigatory nature).

(13) The Bank shall provide ESMA annually with anonymised and aggregated data regarding all criminal investigations undertaken and criminal penalties imposed in relation to contraventions of these Regulations or Regulation (EU) No 600/2014.

(14) Where the Bank has disclosed an administrative measure, sanction or criminal penalty to the public, it shall, at the same time, report that fact to ESMA.

*Exercise of supervisory powers and powers to impose sanctions*

127. The Bank shall, when determining the type and level of an administrative sanctions or other administrative measures to be imposed in exercise of the powers under Regulation 119 in respect of a contravention, take into account all relevant circumstances, including, where appropriate—

- (a) the gravity and the duration of the contravention,
- (b) the degree of responsibility of the person responsible for the contravention,
- (c) the financial strength of the responsible person, as indicated in particular by the total turnover of the person (in the case of a legal person) or the annual income and net assets of a natural person,
- (d) the importance of profits gained or losses avoided by the responsible person, in so far as they can be determined,
- (e) the losses for third parties caused by the contravention, in so far as they can be determined,
- (f) the level of cooperation of the responsible person with the Bank, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person, and
- (g) previous contraventions by the responsible person.

*Reporting of infringements*

128. (1) The Bank shall establish effective mechanisms to enable the reporting of potential or actual contraventions of the provisions of these Regulations and of Regulation (EU) No 600/2014.

(2) These mechanisms shall include at least—

- (a) specific procedures for the receipt of reports on potential or actual contraventions and their follow-up, including the establishment of secure communication channels for such reports,

- (b) appropriate protection for employees of a financial institution who report contraventions committed within the financial institution at least against retaliation, discrimination or other types of unfair treatment, and
- (c) protection of the identity and personal data of both the person who reports a contravention and the natural person who is allegedly responsible for a contravention, at all stages of the procedures unless such disclosure is required in the context of further investigation or subsequent administrative or judicial proceedings in accordance with the Data Protection Acts 1988 and 2003.

(3) All investment firms, market operators, data reporting services providers, credit institutions in relation to investment services or activities and ancillary services and branches of third-country firms shall have in place appropriate procedures for their employees to report potential or actual contraventions of these Regulations or Regulation (EU) No 600/2014 internally through a specific, independent and autonomous channel.

(4) The procedures referred to in paragraph (3) shall include the following:

- (a) appropriate protection for employees of institutions who report potential or actual contraventions committed within the institution against retaliation, discrimination or other types of unfair treatment, at a minimum;
- (b) protection of personal data concerning both the person who reports the potential or actual contravention (the “reporter”) and the natural person who is allegedly responsible for a contravention (the “alleged defaulter”) in accordance with the Data Protection Acts 1988 and 2003;
- (c) protection of the identity of both the reporter and the alleged defaulter at all stages of the procedures unless such disclosure is required by law in the context of further investigation or subsequent administrative or judicial proceedings.

(5) The Bank shall cooperate and, where permitted by law, exchange information with the Workplace Relations Commission and any other relevant authority for the purpose of protecting employees who are either—

- (a) reporting persons, or
- (b) reported persons,

against retaliation, discrimination or other unfair treatment, arising due to or in connection with reporting of contraventions of these Regulations or Regulation (EU) 600/2014.

(6) The Bank shall—

- (a) refer reporting persons who are employees to the Workplace Relations Commission with a view to ensuring such persons have access to comprehensive information and advice on the remedies and procedures available to protect them against unfair treatment, including on the procedures for claiming pecuniary compensation, and
- (b) assist a reporting person who is an employee in any appearance before the Workplace Relations Commission, the Labour Court or any other relevant authority, including by certifying that the person is a reporting person under these Regulations.

*Right of appeal*

129. (1) Any decision taken under these Regulations or Regulation (EU) No 600/2014 shall be properly reasoned.

(2) A decision imposing a measure, condition, requirement or sanction on a person, or to give a direction to a person, or to refuse to grant an application for authorisation to a person, under these Regulations or Regulation (EU) No 600/2014 is an appealable decision for the purpose of Part VIIA of the Act of 1942.

(3) The failure to make a decision in respect of an application for an authorisation under any provision of these Regulations within 6 months after the submission of the application in a case where the application contains all the information required under these Regulations or Regulation (EU) No 600/2014 is an appealable decision for the purpose of Part VIIA of the Act of 1942.

*Relations with auditors*

130. (1) The auditor of an investment firm, a regulated market or a data reporting services provider, authorised within the meaning of Directive 2006/43/EC and performing the task described in Article 34 of Directive 2013/34/EU or Article 73 of Directive 2009/65/EC or any other task prescribed by the law of the State, shall report promptly to the Bank any fact or decision concerning the investment firm, regulated market or data reporting services provider of which the auditor has become aware while carrying out an audit of it or an undertaking having close links with it and which is liable to—

- (a) constitute a material contravention of these Regulations or of any condition, requirement, code, guideline, notice or direction under these Regulations governing authorisation or which specifically govern the pursuit of the activities of investment firms,
- (b) affect the continuous functioning of the investment firm, or
- (c) lead to the auditor's refusal to certify the accounts or to the expression of reservations.

(2) A disclosure of any fact or decision in good faith pursuant to paragraph (1) does not constitute a contravention of any contractual or legal restriction on disclosure of information and the person or persons making the disclosure are not, because of the disclosure in good faith, liable in any way or to any person.

*Amendment of Act of 1942*

131. The Act of 1942 is amended—

(a) in section 2(2A), by—

(i) substituting, in paragraph (ak), “29 June 2016;” for “29 June 2016; and”,

(ii) substituting, in paragraph (al), “23 July 2014; and” for “23 July 2014.”, and

(iii) inserting, after paragraph (al), the following:

“(am) each of the acts adopted by an institution of the European Union specified in Schedule 9 (inserted by the European Union (Markets in Financial Instruments) Regulations 2017).”,

(b) in section 33AK(10), in the definition of “supervisory EU legal acts”, by—

(i) substituting, in paragraph (x), “Regulation (EU) No 236/2012,” for “Regulation (EU) No 236/2012, and”,

(ii) substituting, in paragraph (y), “features, and” for “features.”, and

(iii) inserting, after paragraph (y), the following paragraphs:

“(z) Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014, and

(aa) Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.”,

(c) in section 33BC, by inserting after subsection (8) the following:

“(9) This section does not apply where Regulation 126 of the European Union (Markets in Financial Instruments) Regulations 2017 applies.”,

(d) in section 33AN—

(i) in the definition of “designated enactment”, by substituting “, Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 or Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 but (in relation to the last-mentioned Regulation) wherever and only in so far as it imposes a requirement on a person who is not a regulated financial service provider;” for “or Regulation (EU)



No 596/2014 of the European Parliament and of the Council of 16 April 2014;”, and

- (ii) in the definition of “designated statutory instrument”, by substituting “, the European Union (European Markets Infrastructure) Regulations 2014 (S.I. No. 443 of 2014) or the European Union (Markets in Financial Instruments) Regulations 2017 but (in relation to the last-mentioned Regulation) wherever and only in so far as they impose a requirement on a person who is not a regulated financial service provider;” for “or the European Union (European Markets Infrastructure) Regulations 2014 (S.I. No. 443 of 2014);”,

(e) in Part 2 of Schedule 2, by inserting the following item at the end—

“67	S.I. No. — of 2017	European Union (Markets in Financial Instruments) Regulations 2017	The whole instrument”.
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, and

(f) by inserting after Schedule 8 the following:

“Schedule 9

Acts adopted by an Institution of the European Union Referred to in Section 2(2A)(am)

- (1) Regulation (EU) 600/2014 of the European Parliament and of the Council of 15 May 2014;
- (2) Commission Delegated Directive (EU) 2017/593;
- (3) Commission Delegated Regulation (EU) 2017/565;
- (4) Commission Delegated Regulation (EU) 2017/567;
- (5) Commission Delegated Regulation (EU) 2017/587;
- (6) Commission Delegated Regulation (EU) 2017/583;
- (7) Commission Delegated Regulation (EU) 2017/577;
- (8) Commission Delegated Regulation (EU) 2017/579;
- (9) Commission Delegated Regulation (EU) 2017/589;

- (10) Commission Delegated Regulation (EU) 2017/584;
- (11) Commission Delegated Regulation (EU) 2017/578;
- (12) Commission Delegated Regulation (EU) 2017/566;
- (13) Commission Delegated Regulation (EU) 2017/573;
- (14) Commission Delegated Regulation (EU) 2017/588;
- (15) Commission Delegated Regulation (EU) 2017/571;
- (16) Commission Delegated Regulation (EU) 2017/572;
- (17) Commission Delegated Regulation (EU) 2017/581;
- (18) Commission Delegated Regulation (EU) 2016/2021;
- (19) Commission Delegated Regulation (EU) 2017/568;
- (20) Commission Delegated Regulation (EU) 2017/569;
- (21) Commission Delegated Regulation (EU) 2017/592;
- (22) Commission Delegated Regulation (EU) 2017/591;
- (23) Commission Delegated Regulation (EU) 2017/590;
- (24) Commission Delegated Regulation (EU) 2017/585;
- (25) Commission Delegated Regulation (EU) 2017/580;
- (26) Commission Delegated Regulation (EU) 2017/574;
- (27) Commission Delegated Regulation (EU) 2017/582;
- (28) Commission Delegated Regulation (EU) 2017/575;
- (29) Commission Delegated Regulation (EU) 2017/576;
- (30) Commission Delegated Regulation (EU) 2016/2022;
- (31) Commission Implementing Regulation (EU) 2016/824;
- (32) Commission Implementing Regulation (EU) 2017/1005;
- (33) Commission Implementing Regulation (EU) 2017/1110;
- (34) Commission Implementing Regulation (EU) 2017/1093;
- (35) Commission Implementing Regulation (EU) 2017/953;
- (36) Commission Implementing Regulation (EU) 2017/1111;

(37) Commission Implementing Regulation (EU) 2017/981;

(38) Commission Implementing Regulation (EU) 2017/980.”.

## PART 12

### COOPERATION BETWEEN COMPETENT AUTHORITIES AND WITH ESMA

#### *Obligation to cooperate*

132. (1) The Bank shall cooperate with the competent authorities of other Member States whenever necessary for the purpose of—

(a) carrying out its duties under these Regulations or under Regulation (EU) No 600/2014 (as well as for the purpose of each other such competent authority carrying out its duties under the law of the Member State concerned that gives effect to the Directive or its duties under Regulation (EU) No 600/2014), or

(b) making use of their powers, whether contained in these Regulations or Regulation (EU) No 600/2014 or the Central Bank Acts 1942 to 2015.

(2) The Bank shall render assistance to competent authorities of the other Member States, in particular by exchanging information and cooperating in any investigation or in any supervisory activities.

(3) The Bank shall cooperate with the competent authorities of other Member States with respect to facilitating the recovery of fines or penalties.

(4) Where the operations of a trading venue authorised in the State has established arrangements in another Member State which have become of substantial importance for the functioning of the securities markets and the protection of the investors in the other Member State, the Bank shall establish proportionate cooperation arrangements with the national competent authority of the other Member State.

(5) The Bank shall ensure that it has the necessary administrative and organisational measures in place to facilitate cooperation and assistance under this Regulation.

(6) The Bank may use its powers for the purpose of cooperation with the competent authorities of other Member States even if the matters in which the competent authorities seek the Bank’s cooperation do not involve a contravention of any law in force in the State.

(7) If the Bank has good reason to suspect that acts contrary to the Directive or to Regulation (EU) No 600/2014 are being or have been carried out by an entity not subject to the Bank’s supervision in the territory of another Member State, the Bank shall notify the competent authority of the other Member State and ESMA, in as specific a manner as possible.

(8) Where the Bank receives information pursuant to Article 79(4) of the Directive from the competent authority of another Member State (referred to in this paragraph and paragraph (9) as “the notifying competent authority”) the Bank shall—

- (a) take appropriate action, and
- (b) inform the notifying competent authority and ESMA of—
  - (i) the outcome of the action, and
  - (ii) to the extent possible, significant interim developments.

(9) Paragraph (8) is without prejudice to the competence of the notifying competent authority.

(10) Without prejudice to the preceding provisions of this Regulation, the Bank shall notify ESMA and other competent authorities of the details of—

- (a) any requests made by the Bank to any person to take steps to reduce the size of a position or exposure pursuant to Regulation 92(4)(o), or
- (b) any limits imposed by the Bank on the ability of any person from entering into a commodity derivative pursuant to Regulation 92(4)(p), including the introduction of limits on the size of a position any person can hold at all times.

(11) Such a notification shall, where relevant, include—

- (a) details of the request or demand made by the Bank pursuant to Regulation 92(4)(j), including the identity of the person or persons to whom it was addressed and the reasons for it, and
- (b) the scope of the limits introduced by the Bank pursuant to Regulation 92(4)(p), including the person concerned, the applicable financial instruments, any limits on the size of positions the person can hold at all times or any exemptions thereto granted in accordance with Regulation 81 and the reasons for it.

(12) The notification shall be made by the Bank not less than 24 hours before the actions or measures are intended to take effect, except in exceptional circumstances where it is not possible to give 24 hours’ notice.

(13) Where the Bank receives notification under the national law of a Member State implementing Article 79(5) of the Directive the Bank may take measures in accordance with Regulation 92(4)(o) or (p) where it is satisfied that the measures are necessary to achieve the objective of the other competent authority and the Bank shall also give notice of such action in accordance with this Regulation.

(14) Where the Bank's actions pursuant to paragraph (10)(a) or (b) relate to wholesale energy products, the Bank shall also notify the Agency for the Cooperation of Energy Regulators (ACER) established under Regulation (EC) No. 713/2009.

(15) In relation to emission allowances, the Bank shall cooperate with the Environmental Protection Agency in order to ensure that they can acquire a consolidated overview of emission allowances markets.

(16) In relation to agricultural commodity derivatives, the Bank shall report to and cooperate with the Minister for Agriculture, Food and the Marine.

*Cooperation in supervisory activities, for on-site verifications or in investigations*

133. (1) A competent authority of another Member State may request the cooperation of the Bank in a supervisory activity or for an on-the-spot verification or in an investigation.

(2) If the supervisory activity, verification or investigation relates to investment firms that are remote members or participants of a regulated market authorised by the Bank, the Bank—

(a) may choose to address the members or participants directly, and

(b) if it so chooses, shall inform the competent authority of the home Member State of the investment firm accordingly.

(3) Where the Bank receives a request with respect to an on-the-spot verification or an investigation, the Bank shall—

(a) carry out the verification or investigation itself,

(b) allow the requesting authority to carry out the verification or investigation, or

(c) allow auditors or experts to carry out the verification or investigation.

(4) The Bank may request the cooperation of the competent authority of another Member State in a supervisory activity or for an on-the-spot verification or in an investigation.

*Exchange of information*

134. (1) The Bank shall immediately supply the competent authorities of other Member States for the purposes of the Directive or of Regulation (EU) No 600/2014 with information required for the purposes of carrying out the duties of the competent authorities set out in the provisions adopted pursuant to this Directive or the provisions of the Regulation.

(2) The Bank, in exchanging information with other competent authorities under these Regulations may indicate that the information supplied must not be disclosed without the express agreement of the Bank, in which case such

information may be exchanged solely for the purposes for which the Bank gave its agreement.

- (3) The Bank shall not transmit any such information to other persons—
  - (a) without the express agreement of the competent authority which disclosed the information, and
  - (b) solely for the purposes for which the competent authority gave its agreement,

except in duly justified circumstances.

(4) When the Bank, in duly justified circumstances as permitted under paragraph (3), transmits information to any person, the Bank immediately afterwards shall inform the competent authority that sent the information in question.

(5) Any person receiving confidential information under paragraph (1) or under Regulation 130 or 141 may use it only in the course of their duties, in particular—

- (a) to check that the conditions governing the taking-up of the business of investment firms are met and to facilitate the monitoring, on a non-consolidated or consolidated basis, of the conduct of that business, especially with regard to the capital adequacy requirements imposed by Directive 2013/36/EU, administrative and accounting procedures and internal control mechanisms,
- (b) to monitor the proper functioning of trading venues,
- (c) to impose sanctions,
- (d) in administrative appeals against decisions by the Bank,
- (e) in court proceedings initiated under Regulation 129, and
- (f) in the extra-judicial mechanism for investor complaints provided for in Article 75 of the Directive.

(6) Neither this Regulation nor Regulation 141 shall prevent the Bank from transmitting to ESMA, the European Systemic Risk Board, central banks, the European System of Central Banks and the European Central Bank, in their capacity as monetary authorities, and, where appropriate, to other public authorities responsible for overseeing payment and settlement systems, confidential information intended for the performance of their tasks.

(7) In addition such authorities or bodies shall not be prevented from communicating to the competent authorities such information as they may need for the purposes of performing their functions provided for in this Directive or in Regulation (EU) No 600/2014.

*Binding mediation*

135. The Bank may refer to ESMA a situation where a request by the Bank to the competent authority of another Member State—

- (a) to carry out a supervisory activity, an on-the-spot verification or an investigation, as provided for in Regulation 133, or
- (b) to exchange information as provided for in Regulation 134.

has been rejected or has not been acted upon within a reasonable time.

*Refusal to cooperate*

136. (1) The Bank may refuse to act on a request for cooperation in carrying out an investigation, on-the-spot verification or supervisory activity as provided for in Regulation 137 or to exchange information as provided for in Regulation 134 only where—

- (a) proceedings have already been initiated in respect of the same actions and the same persons before a court in the State, or
- (b) final judgment has already been given by a court in the State in respect of the same actions and the same persons.

(2) In the case of such a refusal, the Bank shall notify the requesting competent authority and ESMA accordingly, providing as detailed information as possible.

*Consultation before authorisation*

137. (1) The Bank shall consult the relevant competent authority of any other Member State before granting an authorisation to an investment firm which is—

- (a) a subsidiary of any entity authorised in that Member State that is an investment firm, credit institution or market operator,
- (b) a subsidiary of the parent undertaking of an investment firm or credit institution authorised in that Member State, or
- (c) controlled by the same persons who control an investment firm or credit institution authorised in that Member State.

(2) The Bank shall consult the competent authority of any other relevant Member State responsible for the supervision of credit institutions or insurance undertakings, before granting an authorisation to an investment firm or market operator which is—

- (a) a subsidiary of a credit institution or insurance undertaking authorised in the European Union,
- (b) a subsidiary of the parent undertaking of a credit institution or insurance undertaking authorised in the European Union, or

(c) controlled by a person who controls a credit institution or insurance undertaking authorised in the European Union.

(3) Without limiting the generality of paragraphs (1) and (2), the Bank shall consult, without undue delay, the responsible competent authority when assessing—

(a) the suitability of the shareholders or members of another member of the same group as that to which the investment firm belongs, or

(b) the reputation and experience of persons who—

(i) effectively direct the business, or

(ii) are involved in the management,

of another such member.

(4) The Bank shall exchange information regarding the matters referred to in paragraph (3)(a) or (b) with the relevant competent authority for the purposes of—

(a) deciding whether to grant an authorisation under these Regulations to an investment firm, and

(b) the ongoing assessment of compliance by an authorised investment firm with operating conditions imposed under these Regulations.

*Powers for host Member States*

138. (1) For statistical purposes, the Bank may require investment firms with branches in the State to report to the Bank periodically on the activities of those branches.

(2) The Bank may require investment firms that have branches in the State to provide the Bank with all information necessary for the monitoring by the Bank of their compliance with the standards set by these Regulations.

(3) The requirements imposed by the Bank under paragraph (2) for the provision of information shall not be more stringent than those imposed on authorised investment firms for the monitoring of their compliance with the same standards.

*Precautionary measures to be taken by host Member States*

139. (1) Where the Bank has clear and demonstrable grounds for believing that an investment firm that—

(a) acts within the State under the freedom to provide services, or

(b) has a branch within the State,

has contravened any of the obligations arising from these Regulations for which the Bank does not have enforcement powers, the Bank shall refer its findings



in support of that opinion to the competent authority of the investment firm's home Member State.

(2) If, despite the measures taken by the competent authority of the home Member State or because such measures prove inadequate following a referral of the Bank's findings under paragraph (1) about an investment firm, the investment firm persists in acting in a manner that, in the opinion of the Bank, is prejudicial to—

(a) the interests of investors in the State, or

(b) the orderly functioning of markets,

the Bank, after informing the competent authority of the home Member State, shall take all the appropriate measures under these Regulations or other provisions of the law of the State that are needed in order to protect investors and the proper functioning of markets.

(3) Those measures include, but are not limited to, preventing the investment firm concerned from initiating any further transactions in the State.

(4) The Bank shall inform the European Commission and ESMA without undue delay of any measures taken by the Bank under this Regulation.

(5) Where the Bank is of the opinion that an investment firm that has a branch within the State has failed to fulfil any of its obligations under these Regulations, the Bank shall require the investment firm concerned to fulfil the obligation or obligations concerned as soon as possible.

(6) If the investment firm does not comply with a requirement made of it under paragraph (5), the Bank shall take all appropriate measures under these Regulations to ensure that the investment firm concerned rectifies the situation as soon as possible.

(7) The Bank may refer matters under this Regulation to ESMA, who may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.

(8) The Bank shall communicate the nature of the measures taken to the competent authorities of the investment firm's home Member State.

(9) If, despite the measures taken by the Bank, the investment firm continues to fail to fulfil the obligations referred to in paragraph (5), the Bank, after informing the competent authorities of the investment firm's home Member State, shall take appropriate measures under these Regulations needed in order to protect investors and the proper functioning of the markets.

(10) Where the Bank has clear and demonstrable grounds and is of the opinion that—

(a) the market operator of a regulated market,

(b) a MTF, or

(c) an OTF,

established in another Member State and operating in the State has failed to fulfil any of its obligations under these Regulations, the Bank shall refer those findings to the competent authority of the home Member State of the regulated market, MTF or OTF.

(11) If, following a referral of the Bank's findings under paragraph (10), the operator of the regulated market, MTF or OTF persists in acting in a manner that, in the opinion of the Bank, is prejudicial to—

(a) the interests of investors in the State, or

(b) the orderly functioning of markets,

the Bank, after informing the competent authority of the home Member State, shall take all the appropriate measures under these Regulations that are needed in order to protect investors and the proper functioning of the markets.

(12) In addition to its powers under this Regulation the Bank may refer the matter to ESMA.

(13) Any measure adopted pursuant to this Regulation involving sanctions or restrictions on the activities of an investment firm or of a regulated market shall be properly justified and communicated to the investment firm or to the regulated market.

*Cooperation and exchange of information with ESMA*

140. (1) The Bank shall cooperate with ESMA for the purposes of these Regulations, in accordance with Regulation (EU) No 1095/2010.

(2) The Bank shall, without undue delay, provide ESMA with all information necessary to carry out its duties under this Directive and under Regulation (EU) No 600/2014 and in accordance with Articles 35 and 36 of Regulation (EU) No 1095/2010.

## PART 13

### COOPERATION WITH THIRD COUNTRIES

*Exchange of information with third countries*

141. (1) In this Regulation “exchange of information” means an exchange of information that is—

(a) subject to guarantees of professional secrecy at least equivalent to those required under Article 76 of the Directive, and

(b) intended for the performance of the tasks of those authorities, bodies and persons.

(2) The Bank may enter into cooperation agreements providing for the exchange of information between the competent authorities of third countries only if the exchange of information is—

- (a) subject to guarantees of professional secrecy at least equivalent to those required under Article 76 of the Directive, and
- (b) intended for the performance of the tasks of those competent authorities.

(3) The Bank may enter into cooperation agreements providing for the exchange of information with third country authorities, bodies and other persons responsible for one or more of—

- (a) the supervision of credit institutions, other financial institutions, insurance undertakings and financial markets,
- (b) the liquidation and bankruptcy of investment firms and other similar procedures,
- (c) carrying out statutory audits of the accounts of investment firms and other financial institutions, credit institutions and insurance undertakings, in—
  - (i) the performance of their supervisory functions, or
  - (ii) the administration of compensation schemes,
- (d) overseeing the bodies involved in the liquidation and bankruptcy of investment firms and other similar procedures,
- (e) overseeing persons charged with carrying out statutory audits of the accounts of insurance undertakings, credit institutions, investment firms and other financial institutions,
- (f) oversight of persons active on emission allowance markets for the purpose of ensuring a consolidated overview of financial and spot markets, and
- (g) oversight of persons active on agricultural commodity derivatives markets for the purpose of ensuring a consolidated overview of financial and spot markets.

(4) Where an agreement referred to in paragraph (2) or (3) involves the transfer of personal data, it shall comply with Chapter IV of Directive 95/46/EC if the information is to be transferred to a third country by the Bank.

(5) The cooperation agreements referred to in paragraph (4) may be concluded only where the information disclosed is subject to guarantees of professional secrecy at least equivalent to those required under Article 76 of the Directive.

(6) Such exchange of information shall be intended for the performance of the tasks of those authorities or bodies or other persons.

(7) Where a cooperation agreement involves the transfer of personal data by a Member State, it shall comply with Chapter IV of Directive 95/46/EC and with Regulation (EC) No. 45/2001 if ESMA is involved in the transfer.

(8) Information that originates in another Member State—

(a) may not be disclosed by the Bank under agreements referred to in paragraph (2), without the express agreement of the competent authority from which the Bank received the information and, where appropriate, may only be disclosed for the purposes for which that competent authority gave its agreement, and

(b) may not be disclosed by the Bank under agreements referred to in paragraph (3), without the express agreement of the competent authorities from which the Bank received the information and, where appropriate, may only be disclosed for the purposes for which those authorities, bodies or persons gave their agreement.

## PART 14

### FINAL PROVISIONS

#### *Amendments to the Investment Intermediaries Act 1995*

142. (1) In this Regulation, “Act of 1995” means the Investment Intermediaries Act 1995.

(2) Section 2(1) of the Act of 1995 is amended—

(a) by inserting the following after the definition of “deposit broker”;

“ ‘Directive 2014/65/EU’ means Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU;”,

(b) by inserting the following after the definition of “life assurance intermediary”:

“ ‘management body’ means the body or bodies of an investment business firm which are appointed in accordance with the law of the State or the law of another Member State, which are empowered to set the firm’s strategy, objectives and overall direction, and which oversee and monitor management decision-making and includes persons who effectively direct the business of the entity;”, and

(c) by inserting the following after the definition of “supervisory authority”:

“ ‘tied agent’ means a person appointed under section 25I as a tied agent by an investment business firm that meets the criteria of Article 3(1)(a), (b) and (c) of Directive 2014/65/EU;”.

(3) Section 10(5) of the Act of 1995 is amended—

(a) in paragraph (j), by substituting “investors,” for “investors.”, and

(b) by inserting the following after paragraph (j):

“(k) in the case of a proposed investment firm that meets the criteria of Article 3(1)(a), (b) and (c) of Directive 2014/65/EU, in addition to the preceding paragraphs, it provides—

(i) information on the minimum time that will be devoted by a member of the management body to the performance of the person’s functions within the firm (annual and monthly indications),

(ii) information on human and financial resources devoted to the induction and training of the members (annual indications), and

(iii) forecast information at an individual and, where applicable, at consolidated group and sub-consolidated levels, including:

(I) forecast accounting plans for the first three business years including forecast balance sheets and forecast profit and loss accounts or income statements;

(II) planning assumptions for the above forecasts as well as explanations of the figures, including expected number and type of customers and expected volume of transactions and orders and expected assets under management.”.

(4) The Act of 1995 is amended by inserting the following sections after section 25G:

*“Register of tied agents*

25H. (1) The Bank shall establish, update on a regular basis, and in such manner as it sees fit make available, a public register of tied agents of investment business firms and include on the public register all tied agents established within the State under this Act.

(2) The Bank may include a tied agent on the public register only if satisfied that the tied agent—

(a) is of good repute, and

- (b) possesses the appropriate general, commercial and professional knowledge and competence to enable the tied agent to deliver—
  - (i) the investment business services or ancillary services which the tied agent is to deliver, and
  - (ii) the accurate communication of all relevant information about those services,

to the client or potential client of the investment business firm for whom the tied agent acts or will act,

in accordance with applicable requirements.

(3) For the purposes of subsections (1) and (2), the Bank may rely on the information supplied under section 25I to the Bank by the investment business firm concerned that meets the criteria of Article 3(1)(a), (b) and (c) of Directive 2014/65/EU.

*Appointment of tied agents — provisions governing such appointments and consequential matters*

25I. (1) An investment business firm that meets the criteria of Article 3(1)(a), (b) and (c) of Directive 2014/65/EU (in this section referred to as a ‘relevant investment business firm’) may appoint persons as tied agents for the purposes of—

- (a) promoting the services of the firm,
- (b) soliciting business or receiving orders from clients or potential clients and transmitting them, and
- (c) providing advice to clients in respect of—
  - (i) financial instruments which they are authorised to advise on, and
  - (ii) investment business services offered by the investment business firm which the tied agent is authorised to advise on.

(2) A relevant investment business firm that appoints a tied agent—

- (a) remains fully and unconditionally responsible for any act or omission on the part of the tied agent when acting on behalf of the firm, and
- (b) shall ensure that the tied agent when contacting or before dealing with any client or potential client discloses at the outset—
  - (i) the capacity in which the tied agent is acting, and

(ii) the firm which the tied agent is representing.

(3) A relevant investment business firm shall monitor the activities of the firm's tied agents, established or operating in the State, to ensure the firm's compliance with this Act when the tied agents are acting on behalf of the firm.

(4) A relevant investment business firm proposing to appoint a tied agent established in the State—

(a) shall report the proposed tied agency arrangements to the Bank at least 6 months before entering into the arrangements, and

(b) shall confirm to the Bank that the requirements of subsection (2) have been satisfied.

(5) If a relevant investment business firm appoints a tied agent which provides—

(a) services and activities not covered under this Act, and

(b) services and activities to which this Act applies,

the firm shall take adequate measures to avoid any negative impact the services and activities described in paragraph (a) could have on the services that are described in paragraph (b) and that are provided by the tied agent on behalf of the firm.

(6) A relevant investment business firm shall only appoint tied agents once they have been entered in the public register established and maintained under section 25H.

(7) A tied agent may act on behalf of one relevant investment business firm only.

(8) The Bank may impose requirements additional to those contained in this section on tied agents operating in the State.

(9) Tied agents operating in the State may not handle clients' money or clients' financial instruments.”.

*Transitional provisions*

143. Regulations 29 to 37 apply to an investment firm or a credit institution when it is providing investment services, or carrying on investment activities, in the State under the freedom to provide services, unless and until the home Member State of the investment firm or credit institution has fully transposed—

(a) the Directive, and

(b) Commission Delegated Directive (EU) 2017/593,

into the law of that home Member State.

*Further transitional provisions*

144. (1) Until 3 July 2020—

- (a) the clearing obligation set out in Article 4 of Regulation (EU) No 648/2012 and the risk mitigation techniques set out in Article 11(3) thereof shall not apply to C6 energy derivative contracts entered into by non-financial counterparties that meet the conditions in Article 10(1) of Regulation (EU) No 648/2012 or by non-financial counterparties that shall be authorised for the first time as investment firms as from 3 January 2018, and
- (b) such C6 energy derivative contracts shall not be considered to be OTC derivative contracts for the purposes of the clearing threshold set out in Article 10 of Regulation (EU) No 648/2012.

(2) C6 energy derivative contracts benefiting from the transitional regime set out in paragraph (1) shall be subject to all other requirements laid down in Regulation (EU) No 648/2012.

(3) The exemption referred to in paragraph (1) shall be granted by the relevant competent authorities.

(4) The Bank shall notify ESMA of the C6 energy derivative contracts which have been granted an exemption in accordance with paragraph (1) and ESMA shall publish on its website a list of those C6 energy derivative contracts.

*Revocation of existing Regulations*

145. (1) The European Communities (Markets in Financial Instruments) Regulations 2007 are revoked on 3 January 2018.

(2) References to, or to any provision of, those Regulations in any enactment have effect on and after that date as references to the corresponding provision of, or to, these Regulations or Regulation (EU) No 600/2014.

(3) References to terms as defined in those Regulations in any enactment have effect on and after that date as references to the equivalent terms defined in these Regulations or Regulation (EU) No 600/2014.

*Liquidators, receivers, administrators, examiners, official assignees or creditors*

146. (1) No liquidator, receiver, administrator, examiner, official assignee or creditor of an investment firm shall have or obtain any recourse or right against client funds or client financial instruments or documents of title relating to such financial instruments received, held or paid on behalf of a client by an investment firm, until all proper claims of clients or of their heirs, successors or assigns against client funds and client financial instruments or documents of title relating to such financial instruments have been satisfied in full.

(2) Notwithstanding paragraph (1), a liquidator, receiver, administrator, examiner or official assignee may have recourse or right against client funds



or client financial instruments or documents of title relating to such financial instruments received, held or paid on behalf of a client by an investment firm in respect of such reasonable expenses as are incurred—

- (a) in the carrying out of their functions under these Regulations or under the Investor Compensation Act 1998, or
- (b) in the distribution of client funds and financial instruments to clients of the investment firm where the general assets of the investment firm are insufficient or are shown by the liquidator, receiver, administrator, examiner or official assignee to be likely to be insufficient.

*Application to the Court*

147. (1) A liquidator, receiver, administrator, examiner or official assignee shall apply to the Court before seeking recourse or right against client funds or client financial instruments or documents of title relating to such financial instruments received, held or paid on behalf of a client by an investment firm under Regulation 146(2) and the Court shall determine the matter and make such order as the Court sees fit.

(2) For the purposes of Regulation 146 and this Regulation, an investment firm is deemed to hold client funds where—

- (a) the funds have been lodged on behalf of a client of the investment firm to an account in accordance with paragraph 3 of Schedule 3 in the name of the investment firm or of any nominee of the firm, and
- (b) the investment firm has the capacity to effect transactions on that account.

(3) For the purposes of Regulation 146 and this Regulation, an investment firm is deemed to “hold” client financial instruments where the investment firm—

- (a) has been entrusted by or on account of a client with those instruments, and
- (b) either—
  - (i) holds those financial instruments, including by way of holding documents of title to them, or
  - (ii) entrusts those financial instruments to any nominee,

and the investment firm has the capacity to effect transactions in respect of those financial instruments.

(4) In this Regulation—

“nominee” means a person acting on behalf of an investment firm as nominee, custodian, or otherwise, and includes an eligible custodian and a nominee company;

“relevant party” means an exchange, clearing house, intermediate broker, OTC counterparty or investment firm.

*Winding up of investment firm or market operator by the Court*

148. (1) In this Regulation:

“committee of inspection” means a committee of inspection appointed under section 666 of the Companies Act 2014;

“investment firm” includes a former investment firm;

“market operator” includes a former market operator.

(2) Notwithstanding section 569 of the Companies Act 2014, the Bank, by presenting a petition, may apply to the Court to have an investment firm, data reporting service provider or the market operator of a regulated market wound up, under Chapter 2 of Part 11 of that Act, on any of the following grounds:

- (a) the investment firm or market operator is unable or, in the opinion of the Bank, may be unable to meet its obligations to its clients or creditors;
- (b) the authorisation of the investment firm or market operator has been withdrawn or revoked and the firm or operator has ceased to carry on business as an investment firm or to operate a regulated market;
- (c) the Bank considers that it is in the interest of the proper and orderly regulation and supervision of investment firms or regulated markets or is necessary for the protection of investors that the investment firm or the market operator of the regulated market be wound up;
- (d) the investment firm or market operator has failed to comply with any direction given by the Bank under these Regulations.

(3) Where the petition for the winding up of an investment firm or the operator of a regulated market is presented by a person other than the Bank, a copy of the petition shall be served on the Bank and the Bank is entitled to be heard on the petition; this paragraph is in addition to the provisions of sections 571 and 572 of the Companies Act 2014 and the relevant rules of court.

(4) Where an investment firm or the operator of a regulated market is being wound up voluntarily and the Bank has reason to believe that any of the grounds set out in paragraph (2) are applicable, then, the Bank may, notwithstanding section 569 of the Companies Act 2014 or any other provision of that Act, apply to the Court to have an order made that an investment firm or market operator

be wound up under Chapter 2 of Part 11 of that Act and the Court may make such an order accordingly.

(5) Where—

- (a) an investment firm or the market operator of a regulated market or a former investment firm or the former market operator of a regulated market is being wound up, and
- (b) the Bank is not a creditor,

any notice or document, by whatever name called, which is required to be sent to a creditor of the firm or operator shall be sent also to the Bank.

(6) The Bank, in writing, may authorise an officer or employee of the Bank or some other suitably qualified person to attend a meeting of creditors of an investment firm, the market operator of a regulated market or a former investment firm or former market operator of a regulated market.

(7) The Bank, in writing, may appoint an officer or employee of the Bank or some other suitably qualified person to be a member of a committee of inspection appointed in relation to an authorised investment firm, the market operator of a regulated market or a former authorised investment firm or market operator of a regulated market.

(8) A person appointed under paragraph (6)—

- (a) is not to be counted in computing the maximum or minimum number of members of a committee of inspection specified by the Companies Act 2014, and
- (b) may not be removed from membership of the committee without the consent of the Bank.

(9) The rules of court relating to the winding up of companies shall, pending the making of rules of court for the purposes of this Regulation, apply for such purposes with such adaptations as may be necessary.

(10) In the case of an unincorporated body of persons that is an authorised investment firm or is the market operator of a regulated market, the Bank may apply by petition to the Court for a decree of dissolution and, for that purpose, section 35 of the Partnership Act 1890 (53 and 54 Vict., c39) shall extend to the Bank and shall apply as if the grounds specified in paragraph (2) (a) to (d) were incorporated in that section.

(11) In the case of an individual that is an authorised investment firm or is the market operator of a regulated market, the Bank may apply by petition to the Court for an adjudication of bankruptcy within the meaning of the Bankruptcy Act 1988 (No.27 of 1988) and the Bankruptcy Act 1988 shall apply as if the grounds specified in paragraph (2) (a) to (d) were acts of bankruptcy (within the meaning of the Bankruptcy Act 1988).

## SCHEDULE 1

### INVESTMENT SERVICES AND ACTIVITIES AND FINANCIAL INSTRUMENTS

#### *PART 1*

##### Investment services and activities

1. Reception and transmission of orders in relation to one or more financial instruments.
2. Execution of orders on behalf of clients.
3. Dealing on own account.
4. Portfolio management.
5. Investment advice.
6. Underwriting of financial instruments or placing of financial instruments on a firm commitment basis (or both).
7. Placing of financial instruments without a firm commitment basis.
8. Operation of a MTF.
9. Operation of an OTF.

#### *PART 2*

##### Ancillary services

1. Safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management and excluding maintaining securities accounts at the top tier level.
2. Granting credits or loans to an investor to allow him or her to carry out a transaction in one or more financial instruments, where the firm granting the credit or loan is involved in the transaction.
3. Advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings.
4. Foreign exchange services where these are connected to the provision of investment services.
5. Investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments.
6. Services related to underwriting.

7. Investment services and activities as well as ancillary services of the type included under Part 1 or this Part related to the underlying of the derivatives included under paragraph 5, 6, 7 or 10 of Part 3 where these are connected to the provision of investment or ancillary services.

### *PART 3*

#### Financial instruments

1. Transferable securities.
2. Money-market instruments.
3. Units in collective investment undertakings.
4. Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, emission allowances or other derivatives instruments, financial indices or financial measures which may be settled physically or in cash.
5. Options, futures, swaps, forwards and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event.
6. Options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided that they are traded on a regulated market, a MTF, or an OTF, except for wholesale energy products traded on an OTF that must be physically settled.
7. Options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in paragraph 6 of this Part and not being for commercial purposes, which have the characteristics of other derivative financial instruments.
8. Derivative instruments for the transfer of credit risk.
9. Financial contracts for differences.
10. Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event, as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this Part, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market, an OTF or an MTF.

11. Emission allowances consisting of any units recognised for compliance with the requirements of Directive 2003/87/EC.

*PART 4*

Data reporting services

1. Operating an APA.
2. Operating a CTP.
3. Operating an ARM.

**SCHEDULE 2****PROFESSIONAL CLIENTS***Definition of “professional client”*

1. A professional client is a client who possesses the experience, knowledge and expertise to make its own investment decisions and properly assess the risks that it incurs. In order to be considered to be a professional client, the client must comply with the following criteria:

*Clients which are professional clients*

2. The following are regarded as professionals in all investment services and activities and financial instruments:

- (a) the following entities which are required to be authorised or regulated to operate in the financial markets, including all authorised entities carrying out the characteristic activities of the entities mentioned (whether entities authorised by a Member State under a Directive, entities authorised or regulated by a Member State without reference to a Directive or entities authorised or regulated by a third country):
  - (i) credit institutions;
  - (ii) investment firms;
  - (iii) other authorised or regulated financial institutions;
  - (iv) insurance companies;
  - (v) collective investment schemes and management companies of such schemes;
  - (vi) pension funds and management companies of such funds;
  - (vii) commodity and commodity derivatives dealers;
  - (viii) local firms;
  - (ix) other institutional investors;
- (b) large undertakings meeting two of the following size requirements on a company basis:
  - (i) a balance sheet total of €20,000,000;
  - (ii) net turnover of €40,000,000;
  - (iii) own funds of €2,000,000;
- (c) national and regional governments, including public bodies that manage public debt at national or regional level, central banks, international and supranational institutions such as the World Bank, the IMF, the ECB, the EIB and other similar international organisations;

- (d) other institutional investors whose main activity is to invest in financial instruments, including entities dedicated to the securitisation of assets or other financing transactions.

*Request for higher level of protection by professional clients*

3. (1) The entities referred to in paragraph 2 shall, however, be allowed to request non-professional treatment and investment firms may agree to provide a higher level of protection.

(2) Where the client of an investment firm is an undertaking referred to in paragraph 2, the investment firm shall inform it prior to any provision of services that, on the basis of the information available to the investment firm, the client is deemed to be a professional client, and will be treated as such unless the investment firm and the client agree otherwise.

(3) The investment firm shall also inform the customer that he or she can request a variation of the terms of the agreement in order to secure a higher degree of protection.

(4) It is the responsibility of the client, considered to be a professional client, to ask for a higher level of protection when it deems it is unable to properly assess or manage the risks involved.

(5) The foregoing higher level of protection is to be provided when a client who is considered to be a professional enters into a written agreement with the investment firm to the effect that it shall not be treated as a professional for the purposes of the applicable conduct of business regime.

(6) Such an agreement shall specify whether the treatment of the client (as not being a professional) applies to one or more particular services or transactions, or to one or more types of product or transaction.

*Clients who may be treated as professionals on request*

4. (1) Clients other than those mentioned in paragraph 2, including public sector bodies, local public authorities, municipalities and private individual investors, may also waive some of the protections afforded by the conduct of business rules.

(2) Investment firms may therefore treat any of those clients as professionals if the relevant criteria and procedure mentioned in the following provisions of this paragraph are fulfilled but those clients shall not, however, be presumed to possess market knowledge and experience comparable to that of the categories listed in paragraph 2.

(3) Any such waiver of the protection afforded by the standard conduct of business regime shall be considered to be valid only if an adequate assessment of the expertise, experience and knowledge of the client, undertaken by the investment firm, gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the client is capable of making investment decisions and understanding the risks involved.



(4) The fitness test applied to managers and directors of entities licensed under Directives in the financial field may be regarded as an example of the assessment of expertise and knowledge.

(5) In the case of small entities, the person subject to that assessment shall be the person authorised to carry out transactions on behalf of the entity.

(6) In the course of that assessment, as a minimum, two of the following criteria shall be satisfied:

- (a) that the client has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters;
- (b) that the size of the client's financial instrument portfolio, defined as including cash deposits and financial instruments exceeds €500,000;
- (c) that the client works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged.

*Procedure for clients who may be treated as professionals on request*

5. (1) Those clients may waive the benefit of the detailed rules of conduct only where the following procedure is followed:

- (a) they shall state in writing to the investment firm that they wish to be treated as a professional client, either generally or in respect of a particular investment service or transaction, or type of transaction or product;
- (b) the investment firm shall give them a clear written warning of the protections and investor compensation rights they may lose;
- (c) they shall state in writing, in a separate document from the contract, that they are aware of the consequences of losing such protections.

(2) Before deciding to accept any request for waiver, investment firms shall take all reasonable steps to ensure that the client requesting to be treated as a professional client meets the criteria in paragraph 4(6).

(3) However, if before 3 January 2018 clients have already been categorised as professionals under similar parameters and procedures similar to those referred to above, the foregoing provisions are not to be construed as meaning that their relationships with investment firms are to be affected by any new rules adopted pursuant to this Schedule.

(4) Investment firms shall implement appropriate written internal policies and procedures to categorise clients.

(5) Professional clients shall be responsible for keeping the investment firm informed about any change which could affect their current categorisation.

(6) If the investment firm becomes aware however that the client no longer fulfils the initial conditions, which made the client eligible for a professional treatment, the investment firm shall take appropriate action.

*Definition*

6. In this Schedule “local firm” means a firm dealing for its own account on markets in financial futures or options or other derivatives and on cash markets for the sole purpose of hedging positions on derivatives markets, or dealing for the accounts of other members of those markets and being guaranteed by clearing members of the same markets, where responsibility for ensuring the performance of contracts entered into by such a firm is assumed by clearing members of the same markets.

**SCHEDULE 3****SAFEGUARDING CLIENT FINANCIAL INSTRUMENTS AND FUNDS***Regulation 23**Safeguarding client financial instruments and funds*

1. (1) Investment firms shall—

- (a) keep records and accounts enabling them at any time and without delay to distinguish assets held for one client from assets held for any other client and from their own assets,
- (b) maintain their records and accounts in a way that ensures their accuracy, and in particular their correspondence to the financial instruments and funds held for clients and that they may be used as an audit trail,
- (c) conduct, on a regular basis, reconciliations between their internal accounts and records and those of any third parties by whom those assets are held,
- (d) take the necessary steps to ensure that any client financial instruments deposited with a third party, in accordance with paragraph 2, are identifiable separately from the financial instruments belonging to the investment firm and from financial instruments belonging to that third party, by means of differently titled accounts on the books of the third party or other equivalent measures that achieve the same level of protection,
- (e) take the necessary steps to ensure that client funds deposited, in accordance with paragraph 3, in a central bank, a credit institution or a bank authorised in a third country or a qualifying money market fund are held in an account or accounts identified separately from any accounts used to hold funds belonging to the investment firm, and
- (f) introduce adequate organisational arrangements to minimise the risk of the loss or diminution of client assets, or of rights in connection with those assets, as a result of misuse of the assets, fraud, poor administration, inadequate record-keeping or negligence.

(2) If, because of any enactment, investment firms cannot comply with paragraph 1 to safeguard clients' rights to satisfy the requirements of Regulation 23(1)(k) and (l), investment firms are required to put in place arrangements to ensure that client assets are safeguarded to meet the objectives of paragraph 1.

(3) If the applicable law of the jurisdiction in which the client funds or financial instruments are held prevents investment firms from complying with subparagraphs (d) or (e) of paragraph 1, the Bank may prescribe requirements which have an equivalent effect in terms of safeguarding clients' rights.

(4) When relying on such equivalent requirements under Schedule 3 paragraph (1) subparagraphs (d) or (e), investment firms shall inform clients that in such instances they do not benefit from the provisions envisaged under these Regulations and this Schedule.

(5) Security interests, liens or rights of set-off over client financial instruments or funds enabling a third party to dispose of client's financial instruments or funds in order to recover debts that do not relate to the client or provision of services to the client are not permitted except where this is required by applicable law in a third country jurisdiction in which the client funds or financial instruments are held.

(6) Investment firms are required, where the firm is obliged to enter into agreements that create such security interests, liens or rights of set-off, to disclose that information to clients indicating to them the risks associated with those arrangements.

(7) Investment firms shall record in client contracts and the firm's own accounts where security interests, liens or rights of set-off are granted by the firm over client financial instruments or funds, or where the firm has been informed that they are granted to make the ownership status of client assets clear, such as in the event of insolvency.

(8) Investment firms are required to make information pertaining to clients' financial instruments and funds readily available to the following entities:

- (a) The Bank;
- (b) appointed insolvency practitioners;
- (c) those responsible for the resolution of failed institutions.

(9) The information shall include the following:

- (a) related internal accounts and records that readily identify the balances of funds and financial instruments held for each client;
- (b) where client funds are held by the investment firm in accordance with paragraph 3, as well as details of the accounts where client funds are held and the relevant agreements with those entities;
- (c) where financial instruments held by the investment firm in accordance with paragraph 2, as well as details of accounts opened with third parties and the relevant agreements with those entities;
- (d) details of third parties carrying out any related (outsourced) tasks and details of any outsourced tasks;
- (e) key individuals of the firm involved in related processes, including those responsible for oversight of the firm's requirements in relation to the safeguarding of client assets;

(f) agreements to establish client ownership over assets.

*Depositing client financial instruments*

2. (1) Investment firms may deposit financial instruments held by them on behalf of their clients into an account or accounts opened with a third party provided that the firms exercise all due skill, care, and diligence in the selection, appointment and periodic review of the third party and of the arrangements for the holding and safekeeping of those financial instruments.

(2) Investment firms shall take into account the expertise, and market reputation of the third party as well as any legal requirements related to the holding of those financial instruments that could adversely affect clients' rights.

(3) Where an investment firm proposes to deposit client financial instruments with a third party, the investment firm shall only deposit financial instruments with a third party in a jurisdiction where the safekeeping of financial instruments for the account of another person is subject to specific regulation and supervision and that third party is subject to this specific regulation and supervision.

(4) Investment firms shall not deposit financial instruments held on behalf of clients with a third party in a third country that does not regulate the holding and safekeeping of financial instruments for the account of another person unless one of the following conditions is met:

- (a) the nature of the financial instruments or of the investment services connected with those instruments requires them to be deposited with a third party in that third country;
- (b) where the financial instruments are held on behalf of a professional client, that client requests the firm in writing to deposit them with a third party in that third country.

(5) The requirements under subparagraphs (3) and (4) shall also apply when the third party has delegated any of its functions concerning the holding and safekeeping of financial instruments to another third-party.

*Depositing client funds*

3. (1) Investment firms are required, on receiving any client funds, promptly to place those funds into one or more accounts opened with any of the following:

- (a) a Central Bank;
- (b) a credit institution authorised in accordance with Directive 2013/36/EU;
- (c) a bank authorised in a third country;
- (d) a qualifying money market fund.

(2) Subparagraph (1) shall not apply to a credit institution authorised in accordance with Directive 2013/36/EU in relation to deposits within the meaning of those Regulations held by that institution.

(3) Where investment firms do not deposit client funds with a central bank, they shall exercise all due skill, care and diligence in the selection, appointment and periodic review of the credit institution, bank or money market fund where the funds are placed and the arrangements for the holding of those funds and they consider the need for diversification of these funds as part of their due diligence.

(4) In particular, investment firms shall take into account the expertise and market reputation of such institutions or money market funds with a view to ensuring the protection of clients' rights as well as any legal or regulatory requirements or market practices related to the holding of client funds that could adversely affect clients' rights.

(5) Investment firms shall ensure that clients give their explicit consent to the placement of their funds in a qualifying money market fund. In order to ensure that this right to consent is effective, investment firms shall inform clients that funds placed with a qualifying money market fund will not be held in accordance with the requirements for safeguarding client funds set out in this Schedule.

(6) Where investment firms deposit client funds with a credit institution, bank or money market fund of the same group as the investment firm, they shall limit the funds that they deposit with any such group entity or combination of any such group entities so that funds do not exceed 20% of all such funds.

(7) An investment firm is not required to comply with the foregoing limit where it is able to demonstrate to the Bank that, in view of the nature, scale and complexity of its business, and also the safety offered by the third parties considered in the preceding subparagraph, and including in any case the small balance of client funds the investment firm holds the requirement under the preceding subparagraph is not proportionate. Investment firms shall periodically review the assessment made in accordance with this subparagraph and shall notify their initial and reviewed assessments to the Bank.

#### *Use of client financial instruments*

4. (1) In respect of financial instruments held by investment firms on behalf of a client, investment firms shall not be allowed to enter into arrangements for securities financing transactions, or otherwise use such financial instruments for their own account or the account of any other person or client of the firm, unless the following conditions are met:

- (a) the client has given their prior express consent to the use of the instruments on specified terms, as clearly evidenced in writing and affirmatively executed by signature or equivalent;
- (b) the use of that client's financial instruments is restricted to the specified terms to which the client consents.

(2) In respect of financial instruments which are held on behalf of a client in an omnibus account maintained by a third party, investment firms shall not enter into arrangements for the securities financing transactions, or otherwise use financial instruments held in such an account for their own account or for the account of any other person, unless, in addition to the conditions set out in subparagraph (1), at least one of the following conditions are met:

- (a) prior express consent must be given by each client whose financial instruments are held together in an omnibus account in accordance with subparagraph (1)(a);
- (b) the investment firm must have in place systems and controls which ensure that only financial instruments belonging to clients who have given prior express consent in accordance with subparagraph (1)(a) are so used.

(3) The records of the investment firm shall include details of the client on whose instructions the use of the financial instruments has been effected, as well as the number of financial instruments used belonging to each client who has given his consent, so as to enable the correct allocation of any loss.

(4) Investment firms shall take appropriate measures to prevent the unauthorised use of client financial instruments for their own account or the account of any other person such as:

- (a) the conclusion of agreements with clients on measures to be taken by the investment firms in case the client does not have enough provision on its account on the settlement date, such as borrowing of the corresponding securities on behalf of the client or unwinding the position;
- (b) the close monitoring by the investment firm of its projected ability to deliver on the settlement date and the putting in place of remedial measures if this cannot be done;
- (c) the close monitoring and prompt requesting of undelivered securities outstanding on the settlement day and beyond.

(5) Investment firms shall adopt specific arrangements for all clients to ensure that the borrower of client financial instruments provides the appropriate collateral and that the firm monitors the continued appropriateness of such collateral and takes the necessary steps to maintain the balance with the value of client instruments.

(6) Investment firms shall not enter into arrangements which are prohibited under Regulation 23(1)(m).

*Inappropriate use of title transfer collateral arrangements*

5. (1) Investment firms shall properly consider, and be able to demonstrate that they have done so, the use of title transfer collateral arrangements in the context of the relationship between the client's obligation to the firm and the client assets subjected to title transfer collateral arrangements by the firm.

(2) When considering, and documenting, the appropriateness of the use of title transfer collateral arrangements, investment firms shall take into account all of the following factors:

- (a) whether there is only a very weak connection between the client's obligation to the firm and the use of title transfer collateral arrangements, including whether the likelihood of a clients' liability to the firm is low or negligible;
- (b) whether the amount of client funds or financial instruments subject to title transfer collateral arrangements far exceeds the client's obligation, or is even unlimited if the client has any obligation at all to the firm;
- (c) whether all clients' financial instruments or funds are made subject to title transfer collateral arrangements, without consideration of what obligation each client has to the firm.

(3) Where using title transfer collateral arrangements, investment firms shall emphasise to professional clients and eligible counterparties the risks involved and the effect of any title transfer collateral arrangement on the client's financial instruments and funds.

*Governance arrangements concerning the safeguarding of client assets*

6. (1) Investment firms shall appoint a single officer of sufficient skill and authority with specific responsibility for matters relating to the compliance by firms with their obligations regarding the safeguarding of client financial instruments and funds.

(2) Investment firms shall decide, ensuring full compliance with this Schedule, whether the appointed officer is to be dedicated solely to this task or whether the officer can discharge responsibilities effectively whilst having additional responsibilities.

*Reports by external auditors*

7. Investment firms shall ensure that their external auditors report at least annually to the Bank on the adequacy of the firm's arrangements under Regulation 23(1)(k), (l) and (m) and this Schedule.



**SCHEDULE 4****PRODUCT GOVERNANCE REQUIREMENTS***Regulation 32**Product governance requirements for investment firms manufacturing financial instruments*

1. (1) Investment firms shall comply with this Schedule when devising or otherwise creating financial instruments, which encompasses the creation, development, issuance or design of financial instruments (or more than one of those things).

(2) Investment firms devising or otherwise creating financial instruments shall comply, in a way that is appropriate and proportionate with the relevant requirements in paragraphs 3 to 18, taking into account the nature of the financial instrument, the investment service and the target market for the product.

(3) Investment firms are required to establish, implement and maintain procedures and measures to ensure the devising, or the creation otherwise, of financial instruments complies with the requirements on proper management of conflicts of interest, including remuneration. In particular, investment firms devising or otherwise creating financial instruments shall ensure that the design of the financial instrument, including its features, does not adversely affect end clients or does not lead to problems with market integrity by enabling the firm to mitigate or dispose of (or both) its own risks or exposure to the underlying assets of the product, where the investment firm already holds the underlying assets on own account.

(4) Investment firms are required to analyse potential conflicts of interest each time a financial instrument is devised or otherwise created. In particular, firms shall assess whether the financial instrument creates a situation where end clients may be adversely affected if they take:

(a) an exposure opposite to the one previously held by the firm itself; or

(b) an exposure opposite to the one that the firm wants to hold after the sale of the product.

(5) Investment firms shall consider whether the financial instrument may represent a threat to the orderly functioning or to the stability of financial markets before deciding to proceed with the launch of the product.

(6) Investment firms are required to ensure that relevant staff involved in the devising, or the creation otherwise, of financial instruments possess the necessary expertise to understand the characteristics and risks of the financial instruments they intend to devise or otherwise create.

(7) Investment firms are required to ensure that the management body has effective control over the firm's product governance process. Investment firms shall ensure that the compliance reports to the management body systematically

include information about the financial instruments devised or otherwise created by the firm, including information on the distribution strategy. Investment firms shall make the reports available to their competent authority on request.

(8) Investment firms shall ensure the compliance function monitors the development and periodic review of product governance arrangements in order to detect any risk of failure by the firm to comply with the obligations set out in this Schedule.

(9) Investment firms shall, where they collaborate, including with entities which are not authorised and supervised in accordance with these Regulations or third-country firms, to create, develop, issue or design a product (or do more than one of those things), outline their mutual responsibilities in a written agreement.

(10) Investment firms shall identify at a sufficiently in-depth level the potential target market for each financial instrument and specify the type or types of client for whose needs, characteristics and objectives the financial instrument is compatible. As part of this process, the firm shall identify any group or groups of clients for whose needs, characteristics and objectives the financial instrument is not compatible. Where investment firms collaborate to devise or otherwise create a financial instrument, only one target market needs to be identified.

(11) Investment firms devising or otherwise creating financial instruments that are distributed through other investment firms shall determine the needs and characteristics of clients for whom the product is compatible based on their theoretical knowledge of and past experience with the financial instrument or similar financial instruments, the financial markets and the needs, characteristics and objectives of potential end clients.

(12) Investment firms are required to undertake a scenario analysis of their financial instruments which shall assess the risks of poor outcomes for end clients posed by the product and in which circumstances these outcomes may occur. Investment firms shall assess the financial instrument under negative conditions covering what would happen if, for example:

- (a) the market environment deteriorated;
- (b) the person devising or otherwise creating or a third party involved in devising or otherwise creating or functioning of the financial instrument (or both) experiences financial difficulties or other counterparty risk materialises;
- (c) the financial instrument fails to become commercially viable; or
- (d) demand for the financial instrument is much higher than anticipated, putting a strain on the firm's resources or on the market of the underlying instrument (or both).

(13) Investment firms shall determine whether a financial instrument meets the identified needs, characteristics and objectives of the target market, including by examining the following elements:

- (a) the financial instrument's risk/reward profile is consistent with the target market;
- (b) financial instrument design is driven by features that benefit the client and not by a business model that relies on poor client outcomes to be profitable.

(14) Investment firms shall consider the charging structure proposed for the financial instrument, including by examining the following:

- (a) financial instrument's costs and charges are compatible with the needs, objectives and characteristics of the target market;
- (b) charges do not undermine the financial instrument's return expectations, such as where the costs or charges equal, exceed or remove almost all the expected tax advantages linked to a financial instrument;
- (c) the charging structure of the financial instrument is appropriately transparent for the target market, such as that it does not disguise charges or is too complex to understand.

(15) Investment firms shall ensure that the provision of information about a financial instrument to distributors includes information about the appropriate channels for distribution of the financial instrument, the product approval process and the target market assessment and is of an adequate standard to enable distributors to understand and recommend or sell the financial instrument properly.

(16) Investment firms shall review the financial instruments they devise or otherwise create on a regular basis, taking into account any event that could materially affect the potential risk to the identified target market. Investment firms shall consider if the financial instrument remains consistent with the needs, characteristics and objectives of the target market and if it is being distributed to the target market, or is reaching clients for whose needs, characteristics and objectives the financial instrument is not compatible.

(17) Investment firms shall review financial instruments prior to any further issue or re-launch, if they are aware of any event that could materially affect the potential risk to investors and at regular intervals to assess whether the financial instruments function as intended. Investment firms shall determine how regularly to review their financial instruments based on relevant factors, including factors linked to the complexity or the innovative nature of the investment strategies pursued. Firms shall also identify crucial events that would affect the potential risk or return expectations of the financial instrument, such as:

- (a) the crossing of a threshold that will affect the return profile of the financial instrument; or
  - (b) the solvency of certain issuers whose securities or guarantees may impact the performance of the financial instrument.
- (18) When such events occur, investment firms shall take appropriate action which may consist of:
- (a) the provision of any relevant information on the event and its consequences on the financial instrument to the clients or the distributors of the financial instrument if the investment firm does not offer or sell the financial instrument directly to the clients;
  - (b) changing the product approval process;
  - (c) stopping further issuance of the financial instrument;
  - (d) changing the financial instrument to avoid unfair contract terms;
  - (e) considering whether the sales channels through which the financial instruments are sold are appropriate where firms become aware that the financial instrument is not being sold as envisaged;
  - (f) contacting the distributor to discuss a modification of the distribution process;
  - (g) terminating the relationship with the distributor; or
  - (h) informing the relevant competent authority.

*Product governance obligations for distributors*

2. (1) Investment firms shall, when deciding the range of financial instruments issued by themselves or other firms and services they intend to offer or recommend to clients to comply, in a way that is appropriate and proportionate, with the relevant requirements specified in paragraphs 4 to 15, taking into account the nature of the financial instrument, the investment service and the target market for the product.

(2) Investment firms shall also comply with the requirements of these Regulations when offering or recommending financial instruments devised or otherwise created by entities that are not subject to these Regulations. As part of that process, such investment firms shall have in place effective arrangements to ensure that they obtain sufficient information about these financial instruments from these entities.

(3) Investment firms shall determine the target market for the respective financial instrument, even if the target market was not defined by the person who devised or otherwise created the instrument.

(4) Investment firms shall have in place adequate product governance arrangements to ensure that products and services they intend to offer or recommend are compatible with the needs, characteristics, and objectives of an identified target market and that the intended distribution strategy is consistent with the identified target market. Investment firms shall appropriately identify and assess the circumstances and needs of the clients they intend to focus on, so as to ensure that clients' interests are not compromised as a result of commercial or funding pressures. As part of that process, firms shall identify any groups of clients for whose needs, characteristics and objectives the product or service is not compatible.

(5) Investment firms shall obtain from persons who devise or otherwise create financial instruments and who are subject to these Regulations information to gain the necessary understanding and knowledge of the products they intend to recommend or sell in order to ensure that these products will be distributed in accordance with the needs, characteristics and objectives of the identified target market.

(6) Investment firms shall take all reasonable steps to ensure they also obtain adequate and reliable information from persons who devise or otherwise create financial instruments and who are not subject to these Regulations so as to ensure that products will be distributed in accordance with the characteristics, objectives and needs of the target market. Where relevant information is not publicly available, the distributor shall take all reasonable steps to obtain such relevant information from the foregoing person or its agent. For that purpose, acceptable publicly available information is information which is clear, reliable and produced to meet regulatory requirements, such as disclosure requirements under Statutory Instrument No. 324 of 2005 or Statutory Instrument No. 277 of 2007. That obligation is relevant for products sold on primary and secondary markets and shall apply in a proportionate manner, depending on the degree to which publicly available information is obtainable and the complexity of the product.

(7) Investment firms shall use the information obtained from persons who devise or otherwise create financial instruments and information on their own clients to identify the target market and distribution strategy. When an investment firm acts both as a person who devises or otherwise creates a financial instrument and as a distributor, only one target market assessment shall be required.

(8) Investment firms shall, when deciding the range of financial instruments and services that they offer or recommend and the respective target markets, maintain procedures and measures to ensure compliance with all applicable requirements under these Regulations including those relating to disclosure, assessment of suitability or appropriateness, inducements and proper management of conflicts of interest. In that context, particular care shall be taken when distributors intend to offer or recommend new products or there are variations to the services they provide.

(9) Investment firms shall periodically review and update their product governance arrangements in order to ensure that they remain robust and fit for their purpose, and take appropriate actions where necessary.

(10) Investment firms shall review the investment products they offer or recommend and the services they provide on a regular basis, taking into account any event that could materially affect the potential risk to the identified target market. Firms shall assess at least whether the product or service remains consistent with the needs, characteristics and objectives of the identified target market and whether the intended distribution strategy remains appropriate. Firms shall reconsider the target market or update the product governance arrangements (or do both) if they become aware that they have wrongly identified the target market for a specific product or service or that the product or service no longer meets the circumstances of the identified target market, such as where the product becomes illiquid or very volatile due to market changes.

(11) Investment firms shall ensure their compliance function oversees the development and periodic review of product governance arrangements in order to detect any risk of failure to comply with the obligations of this paragraph.

(12) Investment firms shall ensure that relevant staff possess the necessary expertise to understand the characteristics and risks of the products that the firm intends to offer or recommend and the services provided as well as the needs, characteristics and objectives of the identified target market.

(13) Investment firms shall ensure that the management body has effective control over the firm's product governance process to determine the range of investment products that they offer or recommend and the services provided to the respective target markets. Investment firms shall ensure that the compliance reports to the management body systematically include information about the products they offer or recommend and the services provided. The compliance reports shall be made available to the competent authorities on request.

(14) Distributors shall provide persons who devise or otherwise create financial instruments with information on sales and, where appropriate, information on the reviews referred to in the preceding subparagraphs to support product reviews carried out by such persons.

(15) Where different firms work together in the distribution of a product or service, the investment firm with the direct client relationship has ultimate responsibility to meet the product governance obligations of this Schedule. However, intermediary investment firms shall—

- (a) ensure that relevant product information is passed from the person who devises or otherwise creates financial instruments to the final distributor in the chain,

- (b) if the first-mentioned person in clause (a) requires information on product sales in order to comply with his or her own product governance obligations, enable that person to obtain it, and
- (c) apply the product governance obligations for persons who devise or otherwise create financial instruments, as relevant, in relation to the service they provide.

**SCHEDULE 5**

## INDUCEMENTS

*Regulation 32**Inducements*

1. (1) Investment firms paying or being paid any fee or commission or providing or being provided with any non-monetary benefit in connection with the provision of an investment service or ancillary service to the client are required to ensure that all the conditions set out in Regulation 32(17) of these Regulations and the requirements of paragraphs 2 to 7 are met at all times.

(2) A fee, commission or non-monetary benefit shall be considered to be designed to enhance the quality of the relevant service to the client if all of the following conditions are met:

- (a) it is justified by the provision of an additional or higher level service to the relevant client, proportional to the level of inducements received, such as:
  - (i) the provision of non-independent investment advice on and access to a wide range of suitable financial instruments including an appropriate number of instruments from third party product providers having no close links with the investment firm;
  - (ii) the provision of non-independent investment advice combined with either: an offer to the client, at least on an annual basis, to assess the continuing suitability of the financial instruments in which the client has invested; or with another on-going service that is likely to be of value to the client such as advice about the suggested optimal asset allocation of the client; or
  - (iii) the provision of access, at a competitive price, to a wide range of financial instruments that are likely to meet the needs of the client, including an appropriate number of instruments from third party product providers having no close links with the investment firm, together with either the provision of added-value tools, such as objective information tools helping the relevant client to take investment decisions or enabling the relevant client to monitor, model and adjust the range of financial instruments in which they have invested, or providing periodic reports of the performance and costs and charges associated with the financial instruments.
- (b) it does not directly benefit the recipient firm, its shareholders or employees without tangible benefit to the relevant client;
- (c) it is justified by the provision of an on-going benefit to the relevant client in relation to an on-going inducement,



and a fee, commission, or non-monetary benefit shall not be considered acceptable if the provision of relevant services to the client is biased or distorted as a result of the fee, commission or non-monetary benefit.

(3) Investment firms shall fulfil the requirements of paragraph 2 on an ongoing basis as long as they continue to pay or receive the fee, commission or non-monetary benefit.

(4) Investment firms shall hold evidence that any fees, commissions or non-monetary benefits paid or received by the firm are designed to enhance the quality of the relevant service to the client:

- (a) by keeping an internal list of all fees, commissions and non-monetary benefits paid or received by the firm from a third party in relation to the provision of investment or ancillary services, and
- (b) by recording how the fees, commissions and non-monetary benefits paid or received by the firm, or that it intends to use, enhance the quality of the services provided to the relevant clients and the steps taken in order not to impair the firm's duty to act honestly, fairly and professionally in accordance with the best interests of the client.

(5) Investment firms shall disclose to the client the following information in relation to any payment or benefit received from or paid to third parties—

- (a) prior to the provision of the relevant investment or ancillary service, the investment firm shall disclose to the client information on the payment or benefit concerned in accordance with the second paragraph of Regulation 32(17) of these Regulations. Minor non-monetary benefits may be described in a generic way. Other non-monetary benefits received or paid by the investment firm in connection with the investment service provided to a client shall be priced and disclosed separately,
- (b) where an investment firm was unable to ascertain on an ex-ante basis the amount of any payment or benefit to be received or paid, and instead disclosed to the client the method of calculating that amount, the firm shall also provide its clients with information of the exact amount of the payment or benefit received or paid on an ex-post basis, and
- (c) at least once a year, as long as (on-going) inducements are received by the investment firm in relation to the investment services provided to the relevant clients, the investment firm shall inform its clients on an individual basis about the actual amount of payments or benefits received or paid. Minor non-monetary benefits may be described in a generic way.

(6) In implementing those requirements, investment firms shall take into account the costs and charges rules set out in Regulation 32(7) of these Regulations and Article 50 of Commission Delegated Regulation (EU) No 2017/565.

(7) When more firms are involved in a distribution channel, each investment firm providing an investment or ancillary service shall comply with its obligations to make disclosures to its clients.

*Inducements in respect of independent investment advice on an independent basis or portfolio management services*

2. (1) Investment firms providing investment advice on an independent basis or portfolio management shall return to clients any fees, commissions or any monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the services provided to that client as soon as reasonably possible after receipt. All fees, commissions or monetary benefits received from third parties in relation to the provision of independent investment advice and portfolio management shall be transferred in full to the client.

(2) Investment firms shall formulate and implement a policy to ensure that any fees, commissions or any monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of independent investment advice and portfolio management are allocated and transferred to each individual client.

(3) Investment firms shall inform clients about the fees, commissions or any monetary benefits transferred to them, such as through the periodic reporting statements provided to the client.

(4) Investment firms providing investment advice on an independent basis or portfolio management shall not accept non-monetary benefits that do not qualify as acceptable minor non-monetary benefits in accordance with subparagraph (5).

(5) Without prejudice to subparagraph (6), the following benefits shall qualify as acceptable minor non-monetary benefits only if they are—

- (a) information or documentation relating to a financial instrument or an investment service that is generic in nature or personalised to reflect the circumstances of an individual client,
- (b) written material from a third party that is commissioned and paid for by a corporate issuer or potential issuer to promote a new issuance by the company, or where the third party firm is contractually engaged and paid by the issuer to produce such material on an ongoing basis, provided that the relationship is clearly disclosed in the material and that the material is made available at the same time to any investment firms wishing to receive it or to the general public,
- (c) participation in conferences, seminars and other training events on the benefits and features of a specific financial instrument or an investment service,
- (d) hospitality of a reasonable de minimis value, such as food and drink during a business meeting or conference, seminar or other training events mentioned in clause (c), and

- (e) other minor non-monetary benefits which are capable of enhancing the quality of service provided to a client and, having regard to the total level of benefits provided by one entity or group of entities, are of a scale and nature that are unlikely to impair compliance with an investment firm's duty to act in the best interests of the client.

(6) Minor non-monetary benefits, to be regarded as acceptable, shall be reasonable and proportionate and of such scale that they are unlikely to influence the investment firm's behaviour in any way that is detrimental to the interests of the relevant client.

(7) Disclosure of minor non-monetary benefits shall be made prior to the provision of the relevant investment or ancillary services to clients. In accordance with paragraph 1(5)(a), minor non-monetary benefits may be described in a generic way.

*Inducements in relation to research*

3. (1) The provision of research by third parties to investment firms providing portfolio management or other investment or ancillary services to clients shall not be regarded as an inducement if it is received in return for any of the following:

- (a) direct payments by the investment firm out of its own resources;
- (b) payments from a separate research payment account controlled by the investment firm, provided the following conditions relating to the operation of the account are met:
  - (i) the research payment account is funded by a specific research charge to the client;
  - (ii) as part of establishing a research payment account and agreeing the research charge with their clients, investment firms set and regularly assess a research budget as an internal administrative measure;
  - (iii) the investment firm is held responsible for the research payment account;
  - (iv) the investment firm regularly assesses the quality of the research purchased based on robust quality criteria and its ability to contribute to better investment decisions.

(2) Where an investment firm makes use of the research payment account, it shall provide the following information to clients:

- (a) before the provision of an investment service to clients, information about the budgeted amount for research and the amount of the estimated research charge for each of them; and

(b) annual information on the total costs that each of them has incurred for third party research.

(3) Where an investment firm operates a research payment account, the investment firm shall also be required, upon request by their clients or by the Bank, to provide a summary of the providers paid from that account, the total amount they were paid over a defined period, the benefits and services received by the investment firm, and how the total amount spent from that account compares to the budget set by the firm for that period, noting any rebate or carry-over if residual funds remain in that account. For the purposes of subparagraph 1(b)(i), the specific research charge shall—

(a) only be based on a research budget set by the investment firm for the purpose of establishing the need for third party research in respect of investment services rendered to its clients, and

(b) not be linked to the volume or value (or both) of transactions executed on behalf of the clients.

(4) Every operational arrangement for the collection of the client research charge, where it is not collected separately but alongside a transaction commission, shall indicate a separately identifiable research charge and fully comply with the conditions in subparagraph (1) (b) and (c).

(5) The total amount of research charges received may not exceed the research budget.

(6) The investment firm shall agree with clients, in the firm's investment management agreement or general terms of business, the research charge as budgeted by the firm and the frequency with which the specific research charge will be deducted from the resources of the client over the year. Increases in the research budget shall only take place after the provision of clear information to clients about such intended increases. If there is a surplus in the research payment account at the end of a period, the firm should have a process to rebate those funds to the client or to offset it against the research budget and charge calculated for the following period.

(7) For the purposes of subparagraph (1)(b)(ii), the research budget shall be managed solely by the investment firm and is based on a reasonable assessment of the need for third party research. The allocation of the research budget to purchase third party research shall be subject to appropriate controls and senior management oversight to ensure it is managed and used in the best interests of the firm's clients. Those controls include a clear audit trail of payments made to research providers and how the amounts paid were determined with reference to the quality criteria referred to in subparagraph (1)(b)(iv). Investment firms shall use the research budget and research payment account to fund internal research.

(8) For the purposes of subparagraph (1)(b)(iii), the investment firm may delegate the administration of the research payment account to a third party, provided that the arrangement facilitates the purchase of third party research

and payments to research providers in the name of the investment firm without any undue delay in accordance with the investment firm's instruction.

(9) For the purposes of subparagraph (1)(b)(iv), investment firms shall establish all necessary elements in a written policy and provide it to their clients. It shall also address the extent to which research purchased through the research payment account may benefit clients' portfolios, including, where relevant, by taking into account investment strategies applicable to various types of portfolios, and the approach the firm will take to allocate such costs fairly to the various clients' portfolios.

(10) An investment firm providing execution services shall identify separate charges for these services that only reflect the cost of executing the transaction. The provision of each other benefit or service by the same investment firm to investment firms, established in the Union shall be subject to a separately identifiable charge; the supply of and charges for those benefits or services shall not be influenced or conditioned by levels of payment for execution services.



GIVEN under my Official Seal,  
10 August 2017.

PASCHAL DONOHOE,  
Minister for Finance.

## EXPLANATORY NOTE

*(This note is not part of the Instrument and does not purport to be a legal interpretation)*

The Markets in Financial Instruments Directive (Directive 2014/65/EU), along with its accompanying Regulation (Regulation 600/2014/EU), collectively known as “MiFID 2”, establishes requirements in respect of the provision of investment services and activities in the EU. In particular, requirements are established in respect of the authorisation and operation of investment firms, stock exchanges and other types of trading venues, and certain data reporting service providers. Credit institutions, when providing investment services, are also subject to MiFID 2.

These regulations transpose MiFID 2 into national law and will enter into force on 3 January 2018. As MiFID 2 replaces MiFID 1 (Directive 2004/39/EC), accordingly these regulations revoke the regulations transposing MiFID 1 (SI 60/2007).

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