

S.I. No. 663 OF 2007

Statutory Instrument

**EUROPEAN COMMUNITIES (MARKETS IN FINANCIAL INSTRUMENTS)
(AMENDMENT) REGULATIONS 2007**

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**EUROPEAN COMMUNITIES (MARKETS IN FINANCIAL INSTRUMENTS)
(AMENDMENT) REGULATIONS 2007**

I, Brian Cowen, Minister for Finance, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), as amended by the European Communities (Amendment) Act 1993 (No. 25 of 1993), for the purpose of giving effect to Directive 2004/39/EC, dated 21 April 2004, of the European Parliament and of the Council, as amended by Directive 2006/31/EC of 5 April 2006, and Directive 2006/73/EC of 10 August 2006, hereby make the following Regulations:

Citation and commencement

1. (1) These Regulations may be cited as the European Communities (Markets in Financial Instruments) (Amendment) Regulations 2007.
- (2) These Regulations and the European Communities (Markets in Financial Instruments) Regulations may be cited together as the European Communities (Markets in Financial Instruments) Regulations 2007 (Nos. 1 and 2).
- (3) These Regulations come into operation on 1 November 2007.

Parts 11 to 17 renumbered as Parts 10 to 16.

2. Parts 11 to 17, respectively, of the European Communities (Markets in Financial Instruments) Regulations, S.I. No. 60 of 2007 are renumbered as Parts 10 to 16.

Amendment of Regulation 2.

3. Regulation 2 of S.I. No. 60 of 2007 is amended by substituting the following for paragraph (2):

“(2) The following provisions apply to credit institutions authorised under Directive 2006/48/EC, that provide one or more investment services under these Regulations:

- (a) Regulations 3, 4, 5(1), 5(2), 31, and 33 to 41,
- (b) Parts 7 and 8 except Regulation 109(9) of Part 7,
- (c) Part 9 except Regulations 122, 123(2) to (6), 124(1) to (6), 125(2) to (5), 127(1) to (5), and 127(7) to (8); and
- (d) Parts 10, 11 and 12.”

Amendment of Regulation 3.

4. Regulation 3 of S.I. No. 60 of 2007 is amended—
 - (a) by substituting the following for subparagraph (b) of the definition of “close link”:

“(b) control, being the relationship between a parent undertaking and a subsidiary, in all the cases referred to in Regulation 4 of the European Communities (Companies: Group Accounts) Regulations, 1992 (S.I. No. 201 of 1992), or”,

(b) by adding the following definition:

“ ‘eligible counterparties’ means—

- (a) investment firms,
- (b) credit institutions,
- (c) insurance companies,
- (d) undertakings for the collective investment in transferable securities authorised pursuant to EU Council Directive 85/611/EEC of 20 December 1985 and the management companies of the undertakings,
- (e) pension funds and their management companies,
- (f) undertakings exempted under Regulation 5(1)(j) and (k) from the application of these Regulations,
- (g) national governments and their corresponding offices including public bodies that deal with public debt, central banks and supranational organisations,
- (h) other financial institutions authorised or regulated under Community legislation or the national law of a Member State and
- (i) third country entities equivalent to the categories of entities mentioned in sub-paragraphs (a) to (h);”

(c) by adding the following definition:

“ ‘investment research’ means research or other information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several financial instruments or the issuers of financial instruments, including any opinion as to the present or future value or price of such instruments, intended for distribution channels or for the public, and in relation to which the following conditions are met:

- (a) it is labelled or described as investment research or in similar terms, or is otherwise presented as an objective or independent explanation of the matters contained in the recommendation;
- (b) if the recommendation in question were made by an investment firm to a client, it would not constitute the provision of investment advice for the purposes of Directive 2004/39/EC;”

(d) by substituting the following for the definition of “parent undertaking”

“ ‘parent undertaking’ means an undertaking that has one or more subsidiary undertakings;”

(e) by adding the following definition:

“ ‘personal transaction’ means a trade in a financial instrument effected by or on behalf of a relevant person, where—

- (a) that relevant person is acting outside the scope of the activities the person carries out in that capacity, or

- (b) the trade is carried out for the account of any of the following persons:
 - (i) the relevant person;
 - (ii) any person with whom the relevant person has a family relationship or has close links;
 - (iii) a person whose relationship with the relevant person is such that the relevant person has a direct or indirect material interest in the outcome of the trade, other than a fee or commission for the execution of the trade.”
- (f) by adding the following definition:
 - “ ‘qualifying shareholder’ means a person who has or controls a qualifying holding;”
- (g) by substituting the following for the definition of “relevant person”:
 - “ ‘relevant person’, in relation to an investment firm or a credit institution, means any of the following:
 - (a) a director, partner or equivalent, manager or tied agent;
 - (b) a director, partner or equivalent, or manager of any tied agent;
 - (c) a person who is an employee or tied agent
 - (d) a person—
 - (i) whose services are placed at the disposal, and under the control, of
 - (I) the investment firm or its tied agent, or
 - (II) the credit institution, and
 - (ii) who is involved in the provision of investment services and activities;
 - (e) a natural person who, under an outsourcing arrangement, is directly involved in the provision of services to—
 - (i) the investment firm or its tied agent, or
 - (ii) the credit institution;” and
- (h) by substituting the following for the definition of “subsidiary”:
 - “ ‘subsidiary’ means a subsidiary undertaking within the meaning of Regulation 4 of the European Communities (Companies: Group Accounts) Regulations, 1992 (S.I. No. 201 of 1992);”.

Amendment of Regulation 5.

5. Regulation 5 of S.I. No. 60 of 2007 is amended as follows:

- (a) by substituting the following for subparagraph (g) and (h):
 - “(g) any of the following who acts on behalf of, the National Treasury Management Agency:
 - (i) An Post, including any postmaster acting on its behalf,
 - (ii) the Prize Bond Company Ltd. or any successor to the Prize Bond Company Ltd, as operator of the Prize Bond scheme,
 - (h) persons—

- (i) dealing on own account in financial instruments, or
- (ii) providing, to the clients of their main business, investment services in commodity derivatives or derivative contracts referred to in subparagraphs (8)(e) or (11) of Part 3 of Schedule 1,

if doing so is ancillary in each case to the main businesses, when considered on a group basis, if the main businesses is not the provision of investment services within the meaning of these Regulations or any of the services mentioned in Annex I of Directive 2006/48/EC;”.

(b) by substituting the following for subparagraph (p):

“(p) collective investment undertakings and the depositories and managers of them, insofar as the activities of the collective investment undertaking, depositories or managers are subject to regulation by the Bank;”

(c) by substituting the following for subparagraph (q)(ii):

“(ii) the holding of the share certificates arises from the provision of professional services by the member to the client; and”,

(d) by substituting the following for subparagraph (r):

“(r) branches of non-EEA firms established in the State.”, and

(e) by substituting the following for paragraph (4):

“(4) A certified person as defined in section 55 of the Investment Intermediaries Act 1995 does not require 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.”

Amendment of Regulation 6.

6. Regulation 6 of S.I. No. 60 of 2007 is amended—

(a) by substituting the following for paragraphs (1) and (2):

“(1) Effective on 1 November 2007, the Investment Intermediaries Act, 1995 does not apply to an investment firm or a tied agent.

(2) Notwithstanding Regulation 7, an investment firm that, immediately before 1 November 2007, is an—

- (a) “authorised investment business firm” under the Investment Intermediaries Act 1995, or
- (b) “authorised member firm” under the Stock Exchange Act 1995, is deemed for the purposes of these Regulations to be an authorised investment firm.”, and

(b) by adding the following paragraph:

“(8) Investment firms authorised by the competent authority of another Member State pursuant to Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field who have exercised their entitlements to—

- (a) provide services in the State, or
- (b) establish a branch in the State,

before 1 November 2001 are deemed to have complied with Article 31 or 32 of the Directive, and hence these Regulations, if, for the purposes of the Directive, in their home Member State, they are authorised, or deemed authorised”.

Amendment of Regulation 7(2).

7. The following is substituted for Regulation 7(2) of S.I. No. 60 of 2007:

“(2) A market operator of a regulated market may operate an MTF in the State, subject to the prior verification of the market operator’s compliance with Part 4 and with Part 5 excluding Regulations 31 and 42.”

Amendment of Regulation 8(2).

8. Regulation 8(5) of S.I. No. 60 of 2007 is amended by renumbering paragraph (5) as paragraph (2).

Amendment of Regulation 10.

9. Regulation 10 of S.I. No. 60 of 2007 is amended by substituting the following for paragraphs (a) and (b):

- “(a) an investment firm which is a legal person must have its head office and its registered office (if required by law) in the State,
- (b) an investment firm that—
 - (i) is not a legal person, or
 - (ii) is a legal person but is not required by law to have a registered office,must have its head office in the State, and
- (c) an investment firm other than one referred to in subparagraph (a) that is a branch of another investment firm whose head or registered office is in a State other than a Member State must have a registered office in the State.”

Amendment of Regulation 11.

10. Regulation 11 of S.I. No. 60 of 2007 is amended—

(a) by substituting the following for paragraphs (1) and (2):

- “(1) The Bank—
 - (a) may grant or refuse to grant to any person applying to it under this Regulation an authorisation to operate as an investment firm, and
 - (b) shall not grant an authorisation under subparagraph (a) unless satisfied that the applicant complies with this Part and Part 5.

- (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.”,
- (b) by adding the following paragraph after paragraph (2):

- “(3A) The Bank may—
 - (a) may impose the conditions or requirements referred to in paragraph (2)(b) on authorised investment firms at the time of, or subsequent to, granting the authorisation, and
 - (b) may vary the conditions or requirements from time to time.”

Amendment of Regulation 20(2).

11. The following is substituted for Regulation 20(2) of S.I. No. 60 of 2007:

- “(2) An investment firm shall not provide any—
 - (a) investment business services referred to in paragraph (1)(c)(i), or
 - (b) services in respect of investment instruments referred to in paragraph (1)(c)(ii)unless the firm is authorised by the Bank to do so under these Regulations.”

Amendment of Regulation 34(2).

12. Regulation 34(2) of S.I. No. 60 of 2007 is amended by substituting “paragraph (1)” for “this Part”.

Amendment of Regulation 39.

13. The following is substituted for Regulation 39 of S.I. No. 60 of 2007:

“Personal transaction procedures

- 39.** (1) In relation to any relevant person who—
 - (a) is involved in activities that may give rise to a conflict of interest, or
 - (b) has access to inside information within the meaning of Article 1(1) of Directive 2003/6/EC, or to other confidential information relating to clients or transactions with or for clients by virtue of an activity carried out by the person on behalf of the firm,an investment firm shall establish, implement and maintain adequate arrangements aimed at preventing the relevant person from doing any of the following activities:
 - (i) entering into a personal transaction which meets either of the following criteria:
 - (I) Directive 2003/6/EC prohibits the person from entering into the transaction under;
 - (II) the transaction involves the misuse or improper disclosure of the inside information or confidential information;

- (III) the transaction conflicts or is likely to conflict with an obligation of the investment firm under these Regulations;
 - (ii) other than in the proper course of the relevant person's employment or contract for services, advising or procuring, any other person to enter into a transaction in financial instruments which, if a personal transaction of the relevant person, would be covered by subparagraph (i) of this paragraph, Regulation 155 (2)(a) or (b) or Regulation 107(3) and (4);
 - (iii) without prejudice to Article 3(a) of Directive 2003/6/EC, disclosing, other than in the normal course of employment or contract for services, any information or opinion to any other person if the relevant person knows, or reasonably ought to know, that as a result of that disclosure the other person will or would be likely to take either of the following steps:
 - (I) entering into a transaction in financial instruments which, if a personal transaction of the relevant person, would be covered by subparagraph (i) of this paragraph, Regulation 155 (2)(a) or (b) or Regulation 107(3) and (4);
 - (II) advising or procuring another person to enter into such a transaction.
- (2) Without prejudice to the generality of paragraph (1), an investment firm must ensure that the arrangements required under paragraph (1) are, in particular, designed so that—
- (a) a relevant person to which paragraph (1) applies is aware of—
 - (i) the restrictions on personal transactions, and
 - (ii) the measures established by the investment firm in connection with personal transactions and disclosure, in accordance with that paragraph,
 - (b) the firm is informed promptly of any personal transaction entered into by a relevant person, either by notification of that transaction or by other procedures enabling the firm to identify such transactions, and
 - (c) a record is made of the personal transaction notified to the firm or identified by it, including any authorisation or prohibition in connection with such a transaction.
- (3) Paragraphs (1) and (2) do not apply to the following kinds of personal transaction:
- (a) personal transactions effected under a discretionary portfolio management service where there is no prior communication in connection with the transaction between the portfolio manager and the relevant person or other person for whose account the transaction is executed;
 - (b) personal transactions in units in collective undertakings that—
 - (i) comply with the conditions necessary to enjoy the rights conferred by Directive 85/611/EEC, or

(ii) are subject to supervision under law which requires an equivalent level of risk spreading in the undertaking's assets, where the relevant person and any other person for whose account the transactions are effected is not involved in the management of that undertaking.

- (4) In the case of outsourcing arrangements, the investment firm must ensure that the firm to which the activity is outsourced—
- (a) maintains a record of personal transactions entered into by any relevant person, other than those transactions referred to in paragraph (3), and
 - (b) provides that information to the investment firm promptly on request.”

Amendment of Regulation 40(6).

14. The following is substituted for Regulation 40(6) of S.I. No. 60 of 2007:

- “(6) After consultation with the Minister and other interested parties, the Bank may impose additional obligations on investment firms relating to the recording of telephone conversations or electronic communications involving client orders.
- (7) The additional obligations imposed under paragraph (1) are not subject to the Regulation 79.”

Amendment of Regulation 41.

15. Regulation 41 of S.I. No. 60 of 2007 is amended—

- (a) in paragraph (1) by substituting “investment firm” for “investment firms”,
- (b) in paragraph (1)(d) by substituting “under Regulation 66(3)” for “under Regulation 66”, and
- (c) by substituting the following for paragraphs (2) and (3):

“(2) Regulations 76 to 101, 106, 108, 151 and 154 are not applicable to the transactions 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.

(3) However, the members of, or participants in, the MTF shall comply with Regulations 76 to 101, 106, 108, 151 and 154 with respect to their clients when the members or participants, on behalf of their clients, execute the clients' orders within the systems of an MTF.”

Amendment of Regulation 51(2).

16. Regulation 51(2) of S.I. No. 60 of 2007 is amended by substituting “of the Bank” for “or the Bank”.

Amendment of Regulation 68(1).

17. The following is substituted for Regulation 68(1) of S.I. No. 60 of 2007:

- “(1) The market operator of a regulated market shall, for shares admitted to trading, make public on reasonable commercial terms and on a continuous basis during normal trading hours—
- (a) current bid and offer prices, and
 - (b) the depth of trading interests at those prices which are advertised through the regulated market’s systems.”

Amendment of Regulation 76(2).

18. Regulation 76(2) of S.I. No. 60 of 2007 is amended by substituting “is fair, clear and not misleading” for “are fair, clear and not misleading”.

Amendment of Regulation 77.

19. Regulation 77 of S.I. No. 60 of 2007 is amended—

(a) by substituting the following for paragraph (2):

“(2) Where, pursuant to these Regulations, an investment firm provides information to a client by means of a website, where that website does not qualify as a durable medium, and that information is not addressed personally to the client, the investment firm shall ensure that the following conditions are satisfied:

- (a) the provision of that information in that medium is appropriate to the context in which the business between the firm and the client is, or is to be, carried on;
- (b) the client specifically consents to the provision of that information in that form;
- (c) the client must be notified electronically of the address of the website, and the place on the website where the information may be accessed;
- (d) the information must be up-to-date;
- (e) the information must be accessible continuously by means of that website for such period of time that the client may reasonably need to inspect it.”

(b) by adding the following paragraph:

“(3) For the purposes of this Regulation,

- (a) the provision of information by means of electronic communications shall be treated as appropriate to the context in which the business between the firm and the client is, or is to be, carried on if there is evidence that the client has regular access to the internet, and
- (b) the provision by the client of an e-mail address for the purposes of the carrying on of that business shall be treated as such evidence.”

Amendment of Regulation 79.

20. Regulation 79 of S.I. No. 60 of 2007 is amended by adding the following:

- “(5) The Bank may draw up and issue one or more codes of conduct for the activities of investment firms that consist of the provision of any—
- (a) investment business services, or
 - (b) investment advice
- as defined in the Investment Intermediaries Act 1995 and not included in the definition of investment services under these Regulations.
- (6) Any code issued under paragraph (5)(a) may cover such matters as the Bank considers appropriate and may be revised by the Bank from time to time.
- (7) The restrictions under this Regulation do not apply in respect of the imposition by the Bank of requirements in any code issued under paragraph (5).”

Amendment of Regulation 80(2).

21. Regulation 80(2) of S.I. No. 60 of 2007 is amended by substituting the following for paragraphs (j) and (k):

- “(j) if it refers to a particular tax treatment, the information prominently states that the tax treatment depends on the individual circumstances of each client and may be subject to change in the future, and
- (k) does not use the name of any competent authority in a way that would indicate or suggest endorsement or approval by that authority of the products or services of the investment firm.”

Amendment of Regulation 81(1)(a).

22. The following is substituted for Regulation 81(1)(a) of S.I. No. 60 of 2007:

- “(a) notify existing clients that the firm has newly categorized and new clients of their categorization as retail clients, professional clients or eligible counterparties,”.

Amendment of Regulation 93.

23. The following is substituted for Regulation 93 of S.I. No. 60 of 2007:

“Collective investment undertakings

93. In respect of units in a collective investment undertaking covered by Directive 85/611/EEC, a simplified prospectus complying with Article 28 of that Directive is regarded—
- (a) as appropriate information for the purposes of Regulation 76(2)(c)(ii), and
 - (b) as appropriate information for the purposes of Regulation 76(2)(c)(iv),
- with respect to the costs and associated charges related to the UCITS itself including the exit and entry commissions.”

Amendment of Regulation 94.

24. Regulation 94 of S.I. No. 60 of 2007 is amended—
- (a) in paragraph (2) by substituting “the purposes of paragraph (1)(b)(iii).” for “the purposes of paragraph (1)(b)(iii), and”,
 - (b) by substituting the following for paragraph (3):

“(3) Where the investment service consists only of the provision of investment advice to a professional client referred to in Part 2 of Schedule 2, the investment firm is entitled to assume for the purposes of paragraph (1)(b)(ii) that the client is able financially to bear any related investment risks consistent with the investment objectives of that client.”,
 - (c) in paragraph (6) by substituting “under Regulation 76(3)” for “under Regulation 76(3) and (4)”, and
 - (d) in paragraph (7) by substituting “in Regulation 76(4), (5) and (6)” for “in Regulation 76 (5) and (6)”.

Amendment of Regulation 96.

25. Regulation 96 of S.I. No. 60 of 2007 is amended—
- (a) in paragraph (10)(h) by substituting “paragraphs (14) to (16) apply” for “paragraph 14 applies”,
 - (b) in paragraph (11)(b) by substituting “where paragraph (14) applies” for “where paragraph (6) applies”, and
 - (c) in paragraph (13) by substituting “or any of points 8 to 11 in Part 3 of Schedule 1.” for “any of the points in Part 3 of Schedule 1”.

Amendment of Regulation 98.

26. Regulation 98 of S.I. No. 60 of 2007 is amended by deleting paragraphs (5) to (7).

Amendment of Regulation 99.

27. Regulation 99 of S.I. No. 60 of 2007 is amended by substituting the following for paragraph (1):
- “(1) When an investment firm provides to its clients investment services that consist only of—
- (a) the execution of client orders,
 - (b) the reception and transmission of client orders, or
 - (c) both,
- with or without ancillary services, the firm may do so without the need to obtain the information, or to make the assessment, provided for in Regulation 76(4) if all of the following conditions are met:
- (i) those services relate to—
 - (I) shares admitted to trading on a regulated market or on an equivalent third country market,

- (II) money market instruments, bonds or other forms of securitised debt (excluding those bonds or securitised debt that embed a derivative), or
- (III) units in a UCITS and other non-complex financial instruments;
- (ii) those services are provided at the initiative of the client or potential client;
- (iii) the investment firm warns the client or potential client that—
 - (I) in the provision of those services, the investment firm is not required to assess the suitability of the 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 warning that may, but need not, be provided in a standardised format;
- (iv) the investment firm complies with its obligations under Regulations 74 and 75.”

Amendment of Regulation 106.

28. Regulation 106 of S.I. No. 60 of 2007 is amended by adding the following paragraphs:

- “(7) An investment firm shall review—
 - (a) the execution policy established under this Regulation and Regulation 106, and
 - (b) the firm’s order execution arrangements,
 both annually and whenever a material change occurs that affects the firm's ability to continue to obtain the best possible result for the execution of its client orders, on a consistent basis, using the venues included in its execution policy.
- (8) An investment firm shall provide the firm’s retail clients with the following information about the firm’s execution policy in good time prior to the provision of services:
 - (a) an account of the relative importance the investment firm assigns, in accordance with the criteria specified in Regulation 97(2), to the following:
 - (i) the factors referred to in Regulation 106(1);
 - (ii) the process by which the firm determines the relative importance of those factors;
 - (b) a list of the execution venues on which the firm places significant reliance in meeting its obligation to take all reasonable steps to obtain on a consistent basis the best possible result for the execution of client orders;
 - (c) a clear and prominent warning that any specific instructions from a client may prevent the firm from taking the steps that it has

designed and implemented in its execution policy to obtain the best possible result for the execution of those orders in respect of the elements covered by those instructions.

- (9) An investment firm required under this Regulation to provide information shall provide the information in a durable medium, or by means of a website (where that does not constitute a durable medium) provided that the conditions specified in Regulation 77(2) are satisfied.”

Amendment of Regulation 107.

29. Regulation 107 (5) of S.I. No. 60 of 2007 is amended by inserting “or a transaction on its own account” after “not perform a client order”.

Amendment of Regulation 108.

30. Regulation 108 of S.I. No. 60 of 2007 is amended by substituting the following for paragraph (1):

- “(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, or
 - (ii) the trading interestsof that investment firm, and
 - (b) provide for the execution of comparable client orders in accordance with the time of their receipt by the investment firm.”

Amendment of Regulation 109.

31. Regulation 109 of S.I. No. 60 of 2007 is amended—

- (a) in paragraph (2) (a) by substituting “on behalf of the firm,” for “on behalf of the firm, and”,
- (b) by adding “and” at the end of subparagraph (b)(ii),
- (c) by adding the following:
 - “(c) shall ensure that the tied agent is—
 - (i) of sufficiently good repute, and
 - (ii) possesses the appropriate general, commercial and professional knowledge so as to enable the tied agent to communicate accurately all relevant information about any proposed services to the client or potential client of the investment firm for whom the tied agent acts.”,
- (d) by substituting the following for paragraph (4):
 - “(4) An investment firm—
 - (a) shall report proposed tied agency arrangements to the Bank at least 6 months before entering into the arrangements, and

(b) must confirm to the Bank that the requirements of paragraph (2) have been satisfied.”

(e) by adding the following:

“(8) The Bank may impose requirements additional to those contained in these Regulations on tied agents operating in the State.

(9) Tied agents operating in the State may not handle clients’ money or client’s financial instruments.”

Amendment of Regulation 110.

32. The following is substituted for Regulation 110(3) of S.I. No. 60 of 2007:

“(3) For the purposes of paragraph (2), the Bank may rely on the information supplied under Regulation 109 to the Bank by an investment firm.”

Amendment of Regulation 111.

33. The following is substituted for Regulation 111 of S.I. No. 60 of 2007:

“Transactions executed with eligible counterparties

111. (1) An investment firm authorised to—

- (a) execute orders on behalf of clients,
- (b) deal on own account, or
- (c) receive and transmit orders,

may bring about or enter into transactions with eligible counterparties without being obliged to comply with Regulations 76 to 101, 106, 108(1), 151 and 154(2) to (3).

(2) Notwithstanding the definition of “eligible counterparties” in Regulation 3, an entity that is an eligible counterparty under that definition—

- (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 Regulations 76 to 101, 106, 108(1), 151 and 154(2) to (3) and
- (b) if the investment firm accedes to the request, the entity shall be treated under these Regulations as set out in subparagraph (a).

(3) An undertaking may be considered as an eligible counterparty if it is in a category of clients who are to be considered professional clients in accordance with paragraphs 2(1), 2(2) or 2(3) of Schedule 2, excluding any category which is explicitly mentioned in the definition of “eligible counterparties” in Regulation 3.

(4) Undertakings in a category of clients who are to be considered professional clients in accordance with paragraph 2(4) of Schedule 2 or paragraph 3 of Schedule 2, on making a request, to the investment firm may also be considered as eligible counterparties, but only in respect of the services or transactions for which the undertakings could be treated as professional clients.

- (5) Investment firms may also recognise as eligible counterparties those EU entities recognised as such by the law of their home Member State, not otherwise falling within the definition of “eligible counterparties” in Regulation 3.
- (6) Where, pursuant to this Regulation, an eligible counterparty—
 - (a) requests treatment as a client whose business with an investment firm is subject to Regulations 76 to 101, 106, 108(1), 151 and 154(2) to (3) and
 - (b) does not expressly request treatment as a retail client, and the investment firm agrees to the request, the firm shall treat that eligible counterparty as a professional client.
- (7) However, where an eligible counterparty expressly requests treatment as a retail client, the provisions in respect of requests of non-professional treatment specified in paragraph 2(5) of Schedule 2 apply.
- (8) An investment firm which enters into a transaction with an entity who may be treated as an eligible counterparty in accordance with paragraphs (3), (4) or (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.
- (9) 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.”

Amendment of Regulation 112.

34. Regulation 112(3)(a) of S.I. No. 60 of 2007 is amended by substituting “operated by a market operator; or” for “operated by a market operator; and”.

Amendment of Regulation 114.

35. Regulation 114(1) of S.I. No. 60 of 2007 is amended by adding the following:
 - “(c) shares for which there is a liquid market are those “liquid shares” determined in accordance with Regulation 121A.”

Addition of Regulations 121A and 121B.

36. S.I. No. 60 of 2007 is amended by adding the following Regulations:

“Determination of liquid shares

- 121A (1) For the purposes of Commission Regulation EC 1287/2006 and these Regulations, shares in entities, which shares are admitted to trading on a regulated market in the State, are liquid shares if—
 - (a) the shares are traded daily;
 - (b) the shares have a free float of not less than EUR 500 million, and
 - (c) either—

- (i) the average daily number of transactions in the shares is not less than 500, or
 - (ii) the average daily turnover for the shares is not less than EUR 2 million;
- (2) Where the number of the entities (in which there are shares that qualify under paragraph (1) as liquid shares) is less than 5, the Bank—
 - (a) shall designate as additional liquid shares those shares that are traded daily on a regulated market in the State with the highest average daily turnover, so that the maximum number of liquid shares is 5, or
 - (b) may require a regulated market to so designate the additional liquid shares on the Bank’s behalf.
- (3) The Bank may require from regulated markets in the State the figures for average daily turnover for shares admitted to trading on those regulated markets covering such period as the Bank may specify and a regulated market shall comply with any such requirement.
- (4) The number of liquid shares that qualify in accordance with paragraph (1) of this Regulation may exceed 5.
- (5) The Bank shall from time to time arrange to make public a list of liquid shares in the State.
- (6) The Bank may require a regulated market to make public a list of liquid shares on that regulated market including, if the Bank so requests, an amount of additional liquid shares that the Bank may specify.
- (7) A regulated market shall comply with a requirement imposed under paragraph (6).
- (8) A reference in Commission Regulation EC 1287/2006 to the designation of additional liquid shares (under Article 22(3) of Commission Regulation EC 1287/2006) shall be construed for the purposes of Irish investment services law as a reference to additional liquid shares as designated by the Bank, or on the Bank’s behalf, under this Regulation.
- (9) Article 22 of Commission Regulation EC 1287/2006 shall apply as adapted by this Regulation.

Units in collective investment undertakings

121B Compliance with the requirements referred to in paragraph 1 of Article 36 of Commission Regulation EC 1287/2006 shall not be a necessary precondition for the admission of units in a collective investment undertaking to trading on a regulated market in the State.”

Amendment of Regulation 122.

37. The following is substituted for Regulation 122 of S.I. No. 60 of 2007:

“Definition for this Part

122. Under this Part—

- (a) the freedom to provide services, and

(b) the freedom of establishment, in the State, or in other Member States, each apply only in respect of ancillary services if those services are provided together with an investment service, an investment activity or both.”

Amendment of Regulation 123.

38. Regulation 123 of S.I. No. 60 of 2007 is amended by substituting the following for paragraphs (5) to (8):

“(5) In the event of a change in any of the particulars of the information communicated under paragraph (2), the Member State investment firm concerned shall give written notice of the change to the competent authority of its home Member State at least one month before implementing the change.

(6) Where—

(a) a Member State investment firm, or

(b) a market operator,

that operates an MTF authorised in its home Member State, intends to provide in the State the facilities that MTF provides in the home Member State, the firm or operator, as the case may be, shall communicate that intention to the competent authority of the home Member State.”

Amendment of Regulation 124(4).

39. Regulation 124 of S.I. No. 60 of 2007 is amended by substituting the following for paragraph (4):

“(4) An investment firm may commence to provide the services communicated by it under paragraph (1) after the Bank has forwarded the information referred to the relevant competent authority.”

Amendment of Regulation 126.

40. S.I. No. 60 of 2007 is amended by substituting the following for Regulation 126:

“Application of this Part to investment firms with branches in the State

126 (1) Regulations 76 to 101, 106, 108, 112, 114, 119, 151 and 154 apply to and in respect of an investment firm that has established a branch in the State.

(2) In monitoring and enforcing compliance with Regulations 76 to 101, 106, 108, 112, 114, 119, 151 and 154 by an investment firm that has a branch in the State, 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 limiting the generality of paragraph (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 76 to 101, 106, 108, 112, 114,

119, 151 and 154 with respect to the services the investment firm provides in the State through the branch.

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

Amendment of Regulation 127.

41. Regulation 127 of S.I. No. 60 of 2007 is amended by renumbering the last 3 paragraphs as paragraphs (7) to (9).

Amendment of Regulation 135.

42. Regulation 135 of S.I. No. 60 of 2007 is amended by deleting paragraphs (5) and (6).

Amendment of Regulation 144(1).

43. Regulation 144 of S.I. No. 60 of 2007 is amended by substituting the following for paragraph (1):

“(1) Investment firms and market operators of regulated markets shall ensure that their external auditors report at least annually to the Bank on the adequacy of the firm's arrangements under—

- (a) Regulation 33(1)(h) and (i), and
- (b) Regulations 160 to 162.”

Amendment of Regulation 151.

44. S.I. No. 60 of 2007 is amended by substituting the following for Regulation 151:

“Definition of “specified” for Regulation 152

- 151 In Regulation 152, “specified” means specified by a direction given by the Bank.”

Amendment of Regulation 155.

45. Regulation 155 of S.I. No. 60 of 2007 is amended—

- (a) in paragraph (1) by substituting “set out in Regulation 75(4) to (6)” for “set out in paragraph (2)”,
- (b) in paragraph (2) by substituting “opportunity to act on the research” for “opportunity to act on it”,
- (c) in paragraph (3) by substituting “Regulation 155(1)” for “Regulation 152(1)”, and
- (d) by adding the following paragraph:

“(4) In this Regulation, “related financial instrument” means a financial instrument the price of which is closely affected by price movements in another financial instrument which is the subject of investment research, and includes a derivative of that other financial instrument.”

Amendment of Regulation 158.

46. Regulation 158 of S.I. No. 60 of 2007 is amended—

(a) by substituting the following for paragraph (2):

“(2) For the purposes of Regulation 157 and this Regulation, an investment firm is deemed to hold client money where—

- (a) the money has been lodged on behalf of a client of the firm to an account with a credit institution or relevant party in the name of the firm or of any nominee of the firm, and
 - (b) the firm has the capacity to effect transactions on that account.”
- and

(b) by adding the following:

“(3) For the purposes of Regulation 157 and this Regulation, an investment firm is deemed to ‘hold’ client financial instruments where the firm—

- (a) has been entrusted by or on account of a client with those instruments, and
- (b) either—

- (i) holds those instruments, including by way of holding documents of title to them, or

- (i) entrusts those instruments to any nominee,

and the firm has the capacity to effect transactions in respect of those 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, and

“relevant party” means an exchange, clearing house, intermediate broker, OTC counterparty or investment firm.”

Amendment of Regulation 160.

47. Regulation 160 of S.I. No. 60 of 2007 is amended—

(a) by substituting the following for Regulation 160(1):

“(1) In this Regulation and in Regulation 161, “qualifying money market fund” means a collective investment undertaking—

- (a) authorised under Directive 85/611/EEC, or
- (b) which is subject to supervision

and, if applicable, authorised by an authority under the national law of a Member State, and which satisfies the following conditions:

- (i) 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;
- (ii) it must, with a view to achieving that primary investment objective,

- (I) 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, or
 - (II) invest on an ancillary basis in deposits with credit institutions;
- (iii) it must provide liquidity through same day or next day settlement.”, and
- (b) by adding the following:
- “(1A) For the purposes of paragraph (1)(ii), a money market instrument—
 - (a) shall be considered to be of high quality if it has been awarded the highest available credit rating by each competent rating agency which has rated that instrument, and
 - (b) shall not be considered of high quality if it is not rated by any competent rating agency.
 - (1B) For the purposes of paragraph (1A), a rating agency shall be considered to be competent if the agency—
 - (a) issues credit ratings in respect of money market funds regularly and on a professional basis, and
 - (b) is an eligible External Credit Assessment Institution within the meaning of Article 81(1) of Directive 2006/48/EC.”

Amendment of Regulation 161.

- 48.** Regulation 161 of S.I. No. 60 of 2007 is amended—
- (a) in paragraphs (3) and (4), by substituting “An investment firm” for “An investment firms”,
 - (b) in paragraph (5), by substituting “Paragraph (4) does not apply” for “Paragraph (1) does not apply”, and
 - (c) by adding the following:
 - “(7) Investment firms shall not place funds of a client in a qualifying money market fund if the client objects to that placement.”

Amendment of Regulation 183.

- 49.** Regulation 183 of S.I. No. 60 of 2007 is amended by substituting the following for paragraph (b):
- “(b) 12 months after the end of the 3 month period referred to in Regulation 180(b).”.

Amendment of Regulation 188.

- 50.** The following is substituted for Regulation 188 of S.I. No. 60 of 2007:

“Summary conviction offences

- 188.** (1) Any person guilty of an offence under these Regulations, being an offence created by Section 5 of the Markets in Financial Instruments and Miscellaneous Provisions Act 2007, is liable on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both.
- (2) Paragraph (1) is without prejudice to any provision of the Markets in Financial Instruments and Miscellaneous Provisions Act 2007 that makes provision for that offence to be prosecuted on indictment.
- (3) Where the contravention, failure to comply or failure to discharge a duty in respect of which a person is convicted of an offence under these Regulations is continued after the conviction, the person—
- (a) is guilty of a further offence on every day on which the contravention or failure continues, and
 - (b) for each such further offence, is liable on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both.”

Amendment of title to Part 17.

- 51.** S.I. No. 60 of 2007 is amended by substituting the following for the title to Part 17:

“PART 17 — REPEALS, ETC.”

Amendment of Regulations 192 and 193

- 52.** S.I. No. 60 of 2007 is amended by deleting Regulations 192 and 193.

Amendment of Regulation 194.

- 53.** S.I. No. 60 of 2007 is amended by substituting the following for Regulation 194:

“Repeal of section 12 of Investment Intermediaries Act 1995

- 194.** Section 12 of the Investment Intermediaries Act 1995 is repealed.”

Amendment of Schedule 1.

- 54.** S.I. No. 60 of 2007 is amended—
- (a) by substituting the following for paragraph 1 of Part 1 of Schedule 1:
 - “1. The reception and transmission of orders in relation to one or more financial instruments.”,
 - (b) by substituting the following for paragraph 7 of Part 2 of Schedule 1:
 - “7. Investment services and ancillary services related to the underlying reference of the instruments listed at subparagraphs (b) to (e) of paragraph (8) and at paragraph (11) of the definition of “financial instruments” in Part 3 where—

- (a) these are connected to the provision of investment or ancillary services, and
 - (b) the underlying reference is not itself a financial instrument.”,
- (c) by substituting the following for paragraph 3 of Part 3 of Schedule 1:
- “3. Units or shares in undertakings for collective investments in transferable securities within the meaning of the European Communities (Undertakings for Collective Investments in Transferable Securities) Regulations, 2003 (S.I. No. 211 of 2003).”,
- (d) by substituting the following for paragraph 8(d) of Part 3 of Schedule 1:
- “(d) commodities, other than as described in subparagraph (c), and not being for commercial purposes, if the commodities can be physically settled and have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are cleared and settled through recognized clearing houses or are subject to regular margin calls;” and
- (e) in Part 3 of Schedule 1, by adding the following paragraph:
- “12. For the avoidance of doubt, a forward foreign exchange contract is not a financial instrument unless:
- (a) its terms are determined principally by reference to standard or regularly published economic terms, such as price, lot and delivery date,
 - (b) it is traded, or is expressly stated to be equivalent to a contract that is traded, on a regulated market, an MTF or a third country trading facility that performs a similar function , and
 - (c) it is cleared or settled through a recognised clearing house or is subject to regular margin calls .
- However, the provision of services in relation to forward foreign exchange contracts that are not financial instruments may be an ancillary service where these are connected to the provision of investment services.”

Amendment of Schedule 2.

55. Schedule 2 of S.I. No. 60 of 2007 is amended—

- (a) by substituting the following for paragraph 1:

“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 a professional client, the client is required to be a client to whom paragraph 2 or 3 relates.”
- (b) in paragraph 2 by substituting “at least two of the following size requirements” for “two of the following size requirements”,
- (c) by substituting the following subparagraphs for subparagraph (4) of subparagraph (4):

“(4) Other institutional investors whose main activity is to invest in financial instruments, including entities dedicated to the securitisation of assets or other financing transactions.

(5) The entities mentioned in paragraphs 1 to 4 are considered to be professionals.

They must however be allowed to request non-professional treatment and investment firms may agree to provide a higher level of protection.

Where the client of an investment firm is an undertaking referred to above, the investment firm must inform it before any provision of services that, on the basis of the information available to the firm, the client is deemed to be a professional client, and will be treated as such unless the firm and the client agree otherwise.

The firm must also inform the customer that the customer can request a variation of the terms of the agreement in order to secure a higher degree of protection.

It is the responsibility of the client, considered to be a professional client, to ask for a higher level of protection when the client deems it is unable to properly assess or manage the risks involved.

(6) This higher level of protection will 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 the client shall not be treated as a professional for the purposes of the applicable conduct of business regime.

The agreement should specify whether this applies to one or more particular services or transactions, or to one or more types of product or transaction.”,

(d) by substituting the following subparagraphs for subparagraph (1) of paragraph 3:

“(1) Clients who may be treated as professionals on request are clients other than those mentioned in subparagraphs (1) to (4) of paragraph 2 of this Schedule, including public sector bodies and private individual investors, may be treated as professional investors on request and may be allowed to waive some of the protections afforded by the conduct of business rules.”,

(e) in subparagraph (5) of paragraph 3, by substituting “paragraph (3) of this Schedule” for “these Regulations”,

(f) in subparagraph (6), by substituting “referred to in paragraph (3) of this Schedule” for “referred to in this Schedule”, and

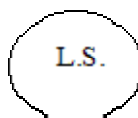
(g) by substituting the following for subparagraph (8) of paragraph 3:

“(8) If, before 1 November 2007, clients have already been categorised as professionals under parameters and procedures similar to those set out in subparagraphs (3) to (6) of paragraph 3 of this Schedule, that categorisation may satisfy the requirements of this Schedule.

Investment firms shall inform such clients about the conditions established in these Regulations for the categorisation of clients.”

GIVEN under my Official Seal,

26 September 2007.



BRIAN COWEN

Minister for Finance.